

Planning Bill 2022— Key changes from the Planning and Development Act 2007



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The Planning Bill 2022 is a fundamental element of the reformed planning system. After the Bill is passed by the Legislative Assembly, the Planning Act will be a key tool in delivering a simpler and easier to use planning system that is focussed on good planning and design outcomes across Canberra while supporting the wellbeing of our residents, respecting our natural environment and heritage and responding to climate change.

The Planning Bill retains many existing policy positions from the current Planning and Development Act 2007 that are fit-for-purpose and remain effective. The following table compares the key issues between the Planning and Development Act and the draft Planning Bill that went for community and stakeholder comment between March and June 2022. The table also shows changes that were made following community and stakeholder engagement.

Comparison of key reforms - Planning and Development Act 2007 / Planning Bill 2022

Issue	Planning and Development Act 2007 / Regulations	Consultation Planning Bill 2022 / Regulations	Changes post-consultation Planning Bill 2022 / Regulations
2.1 Object of the Act	<ul style="list-style-type: none">• Objects in 2007 Act are:<ul style="list-style-type: none">○ orderly and sustainable development of the ACT○ social, environmental and economic aspirations of the people of the ACT○ sound financial principles.	<ul style="list-style-type: none">• Objects in Planning Bill:<ul style="list-style-type: none">○ enhance liveability and prosperity○ promote wellbeing of residents○ create effective, efficient, accessible and enabling planning system that is outcomes focussed○ promotes and facilitates ecologically sustainable development○ provides a scheme for community participation.• The definition of <i>ecologically sustainable development</i> includes the 'the achievement of economic development'.	<ul style="list-style-type: none">• Refers to traditional custodians in general terms.• The definition of <i>ecologically sustainable development</i> has been amended to include the 'achievement of economic growth and prosperity'.

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2.2 Principles of good planning and good consultation	<ul style="list-style-type: none"> Principles of good planning and good consultation are not a concept in the 2007 Act. 	<ul style="list-style-type: none"> New principles of ‘good planning’: activation and liveability principles, high-quality design principles, integrated delivery principles, investment facilitation principles, long-term focus principles, natural environment conservation principles, sustainability and resilience principles and urban regeneration principles. New principles of ‘good consultation’ are required but not included in the Act. Minister ‘may’ make guidelines about principles of good consultation and how the principles are to be implemented. 	<ul style="list-style-type: none"> Principles of good planning: cultural heritage conservation has been included as a principle. Principles of good consultation: high level principles have been included in the Act. Consultation must be accessible, balanced, inclusive, meaningful, resourced, respectful, timely, transparent and understandable. Minister ‘must’ make guidelines about principles of good consultation and how the principles are to be implemented.
3. Territory planning authority and chief planner	<ul style="list-style-type: none"> Planning and land authority functions are: <ul style="list-style-type: none"> to prepare and administer the Territory Plan to continually review the Territory Plan and propose amendments as necessary to plan and regulate the development of land to advise on planning and land policy, including the broad spatial planning framework for the ACT to maintain the digital cadastral database under the <u>Districts Act 2002</u> 	<ul style="list-style-type: none"> Planning Bill provides for a new entity to be created as the planning authority—the Territory Planning Authority. The functions for the authority in the reformed planning system are (added functions underlined): <ul style="list-style-type: none"> to prepare and administer the Territory Plan to continually review the Territory Plan, propose amendments <u>and consider amendments initiated by proponents and the Minister</u>, as necessary to plan and regulate the development of land to advise on planning and land policy, including the broad spatial planning framework for the ACT <u>and the achievement of desired future planning outcomes</u> <u>to promote and implement the planning strategy and district strategies</u> 	<ul style="list-style-type: none"> No changes.

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	<ul style="list-style-type: none"> ○ to make available land information ○ to grant, administer, vary and end leases on behalf of the Executive ○ to grant licences over unleased Territory land ○ to decide applications for approval to undertake development ○ to make controlled activity orders under part 11.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other Territory laws ○ to provide planning services, including services to entities outside the ACT ○ to review its own decisions ○ to provide opportunities for community consultation about, and participation in, planning decisions ○ to promote public education and understanding of the planning process, including by providing easily accessible public information and documentation on planning and land use. 	<ul style="list-style-type: none"> ○ <u>to promote high-quality design and good planning outcomes</u> ○ to maintain the digital cadastral database under the <u>Districts Act 2002</u> ○ to make available land information ○ to grant, administer, vary and end leases on behalf of the Executive ○ to grant licences over unleased Territory land ○ to decide applications for approval to undertake development ○ to make controlled activity orders under part 12.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other Territory laws ○ to provide planning services, including services to entities outside the ACT ○ to review its own decisions and <u>participate in external review processes</u> ○ to provide opportunities for participation in planning and decision-making processes ○ to promote public education about, and understanding of, the planning system, including by providing easily accessible public information and documentation on planning and land use. 	

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4. Strategic and spatial planning	<ul style="list-style-type: none"> • 2007 Act requires: <ul style="list-style-type: none"> ○ Planning Strategy ○ estate development plans ○ Statement of Planning Intent 	<ul style="list-style-type: none"> • Planning Bill expands strategic planning provisions, including the introduction of district planning through district strategies. • Planning Bill requires: <ul style="list-style-type: none"> ○ Planning Strategy ○ district strategies ○ estate development plans ○ Statement of Planning Priorities (formerly Statement of Planning Intent) • A district strategy is a continuation of strategic and spatial planning (expressed through the Planning Strategy) at the district-level but looking at the same long-term timeframe. • District strategies contain the long-term planning policy and goals for a district and must be consistent with the Planning Strategy. They include strategies, spatial policies and desired future planning outcomes for the district to guide and manage change in the district in the future. They set out principles and policies for development of areas within the district, including future urban areas. • District strategies may identify areas within a district for future detailed planning, such as planning studies and investigations. 	<ul style="list-style-type: none"> • The Territory Planning Authority must decide whether to review the district strategies at least once every 5 years. • Estate development plans are now known as subdivision design applications. • Subdivision design applications includes strategic planning elements that will be incorporated into a district strategy through the preparation of a planning and response report. • A planning and response report is a detailed planning report which may be prepared for a district, or for an area within a district, and may also identify proposed amendments to the Territory Plan. • A subdivision design application may now also include: <ul style="list-style-type: none"> ○ landscape design and ongoing management requirements for the protection of connected native wildlife habitat ○ design and construction requirements for climate change adaptation and mitigation measures ○ design and construction requirements for water-sensitive urban design.

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			<ul style="list-style-type: none"> •The Planning Bill removes third party appeals in greenfield areas, however estate developments in existing/established areas will still be subject to review.
5. Territory Plan	<ul style="list-style-type: none"> • Legislative Assembly may approve the Territory Plan by motion. Once the Territory Plan is approved by the Assembly, it is a notifiable instrument placed on the Legislation Register. • Minor amendments to the Territory Plan are prepared and approved by the planning authority following any required consultation. • Major amendments to the Territory Plan require public and NCA consultation, are approved by the Minister, may be referred to a Legislative Assembly committee for consideration, and are subject to Legislative Assembly review and disallowance (for a five-day period). The Minister may direct the planning authority to prepare an amendment to the Territory Plan. 	<ul style="list-style-type: none"> • The Planning Bill provides: <ul style="list-style-type: none"> ○ provisions for establishing a new, outcomes-focussed Territory Plan ○ a similar process for approving the Territory Plan as the 2007 Act ○ a similar process for approval of and amendments to the Territory Plan as the 2007 Act ○ a process for proponents to propose amendments to the Territory Plan ○ the Territory Planning Authority, when preparing the new Territory Plan or preparing amendments to it, to give effect to other Government strategies, policies and plans in the Territory Plan, provided there has been adequate public consultation ○ the removal of the strategic environmental assessment process ○ the Minister ‘may’ refer the draft plan amendments to the relevant Assembly committee. The committee has ‘20’ working days to advise the Minister whether it will prepare a report on the draft amendment. 	<ul style="list-style-type: none"> •The Planning Bill includes: <ul style="list-style-type: none"> ○ a process for an interim Territory Plan to be approved by the Legislative Assembly, while the draft Territory Plan is referred to the Legislative Assembly Standing Committee for a potential inquiry ○ the Minister ‘must’ refer the draft plan amendments to the relevant Assembly committee. The committee has ‘10’ working days to advise the Minister whether it will prepare a report on the draft amendment ○ the Minister may consult with community on the need to review Territory Plan.

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6. Significant development	<ul style="list-style-type: none"> • Significant development not a concept in 2007 Act. • The National Capital Design Review Panel commenced in the ACT in an interim capacity in 2017 and through formal statutory processes in 2019. Design review is recognised across Australia and internationally as an effective way to raise the design quality of the built environment. It offers the opportunity for peer review of development proposals by independent design professionals with the aim of achieving the best possible outcome for development proposals and public spaces. • Threshold requiring design review at the current thresholds, being a proposal for a building with five or more storeys, or to increase the floorspace of a shop by more than 2,000m² (in particular zones). • The 2007 Act provides for three mechanisms for the assessment of likely environmental impacts of a development: environmental significance opinions (ESO), environmental impact statements 	<ul style="list-style-type: none"> • The Planning Bill introduces the concept of significant development. A development is a significant development if it requires: <ul style="list-style-type: none"> ○ a subdivision design application ○ consultation with the Design Review Panel and/or ○ an environmental impact statement. • A significant development: <ul style="list-style-type: none"> ○ is a sub-category of assessable development ○ provides that development applications for significant development are required to be publicly notified for an additional 10 working days ○ provides that the authority has an extra 10 working days for deciding applications for a significant development. • The Planning Bill removes pre-DA consultation, however significant improvements to the transparency of processes, such as proactively publishing documents for Territory Plan amendments and DA processes, and improvements to strategic and spatial planning processes, through district strategies, provide greater clarity about how areas may change and evolve in the future. • The Planning Bill retains the Design Review Panel and current thresholds. • Environmental Impact Assessment: <ul style="list-style-type: none"> ○ retains the ESO process ○ retains the EIS process, with some minor improvements to processes. EISs are required to describe the development proposed, its expected environmental impact (ascertained through required investigations and other studies), proposed 	<ul style="list-style-type: none"> • No significant changes

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	(EIS) and environmental impact statement exemptions (EIS exemptions).	<p>mitigation strategies and the approaches available to manage the remaining environmental impacts</p> <ul style="list-style-type: none"> ○ removes the concept of an EIS exemption. The Planning Bill omits the ability to apply for an exemption to the requirement to provide an EIS. Instead, the Bill retains the substance of this EIS exemption process by providing that recent studies may be relied on in the preparation of an EIS. 	
7. Development assessment	<ul style="list-style-type: none"> • The 2007 Act introduced assessment tracks: three different pathways to assessment having regard to the impact of the proposal. • Development assessment under the 2007 Act is largely focussed on code-compliance. The rules and criteria set out in codes provide the bulk of development controls, reflecting the prescriptive and regulatory nature of the planning system. 	<ul style="list-style-type: none"> • The Planning Bill provides for: <ul style="list-style-type: none"> ○ a shift to an outcomes-focussed planning system. The development assessment process allows consideration of development on performance and merit, having regard to the scale and complexity of development proposals, context and design ○ a streamlined development assessment system, with a single, efficient and transparent pathway. Significant developments, such as those that trigger an environmental impact statement or a referral to the National Capital Design Review Panel, must meet additional documentation and assessment requirements ○ the introduction of pre-decision advice on development applications ○ a revised approach to decision-making timeframes ○ simplification of when development approval ends ○ changes to the concurrent process to omit previous processes that have proven not to be effective or efficient (e.g. lengthy and complex consultation) ○ the Suburban Land Agency must provide an endorsement notice for certain development proposals before a development application for the 	<ul style="list-style-type: none"> • For the purposes of public notification, ‘working day’ does not include the period of 20 December to 10 January.

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		<p>proposal can be lodged. This applies where a Project Delivery Deed is entered into as a condition of the sale of land</p> <ul style="list-style-type: none"> ○ a regulation or the Territory Plan to outline when a development application is required to be referred to entities. The Territory Plan continues to prescribe the bulk of entity referral requirements. The Territory Planning Authority is provided discretion to refer a development application to other areas of government whose advice may be relevant when the authority is considering a development application. Where an application was not originally referred to an entity, but because of the amendment or further information the authority considers that the entity may be able to provide relevant advice, the authority may refer the application to an entity. Where the advice is provided by a prescribed entity within the provided time, the authority generally must not depart from that advice in deciding the development application (limited exemptions apply) ○ public notification of a development application, unless a regulation provides that one or both forms of notification is not required in a particular case ○ that development applications for significant development will also be required to be publicly notified for an additional 10 working days ○ broadened decision-making considerations to include: <ul style="list-style-type: none"> - any pre-decision advice 	

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		<ul style="list-style-type: none"> - where the site adjoins another zone, whether the proposal achieves an appropriate transition between zones - the suitability of the proposed development in the context of the site and site surrounds, including permissible uses - the interaction of any proposed development with any other adjoining or adjacent development proposals for which a development application has been lodged, or development approval has been given. 	
7.2 Exempt development	<ul style="list-style-type: none"> • The 2007 Act allows certain low-risk development to occur without development approval. 	<ul style="list-style-type: none"> • The Planning Bill largely retains exemptions from the 2007 Act, however these have been relocated to the exempt development regulation (see below). • The new planning system creates a standalone Exempt Development Regulation, to make it easier to find out about the types of exempt development. • The Planning Bill provides simplified Environmental Impact Statement (EIS) process, with removal of EIS exemptions (as outlined above). 	<ul style="list-style-type: none"> • No significant changes.
8. Territory Priority Projects	<ul style="list-style-type: none"> • Under the 2007 Act, the Minister has a 'call-in' power where the Minister is able to direct the planning and land authority to refer a development application to the Minister for consideration and potential decision. • Where the Minister decides a development application, there is extended ability to depart from entity advice, merits review is not 	<ul style="list-style-type: none"> • Planning Bill provides for the introduction of processes for Territory Priority Projects (TPP). • The Minister is given a new power: to declare a proposal to be a TPP. This provides for certain significant projects to proceed through a new pathway. • The Minister's power is available only where all of the following criteria are met: <ol style="list-style-type: none"> 1. the proposal is of significant benefit to the people of the ACT and 2. the proposal is for critical public infrastructure or facilities and 	<ul style="list-style-type: none"> • Development applications for TPP will be decided by Minister rather than the Chief Planner. • Declaration of a Territory Priority Project to be made by the Minister and Chief Minister jointly. • Criteria for a TTP has changed to the proposal: <ul style="list-style-type: none"> ○ would achieve a major government policy outcome that

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	<p>available and judicial review of the Minister's decision is time limited.</p>	<p>3. the development is time-critical and 4. there has been sufficient public consultation on the proposal.</p> <ul style="list-style-type: none"> • The Minister must publish a consultation notice setting out the Minister's proposal to declare a stated project. • Once declared, a development proposal must be decided by the Chief Planner. 	<p>is of significant benefit to the people of the ACT or</p> <ul style="list-style-type: none"> ○ would substantially facilitate the achievement of the desired future planning outcomes set out in the planning strategy, a relevant district strategy, the Territory Plan or any other relevant zone or ○ is for significant infrastructure or facilities that are of significant benefit to the people of the ACT. <p>• Before making a TPP declaration, the Minister may seek the advice of the planning authority. Before the Minister decides a development application for a TPP, the authority must advise the Minister whether, in its opinion, the proposal meets the requirements of the Act and the Territory Plan.</p>
9. Offsets	<ul style="list-style-type: none"> • Chapter 6A of the 2007 Act sets out the requirements for offsets. • Offsets are usually land that is used to help manage the adverse impact of development on threatened species and habitats by providing compensation, often by setting aside additional land as a nature reserve (which then requires ongoing management). 	<ul style="list-style-type: none"> • The Planning Bill retains the offsets provisions from the 2007 Act. • The Australian Government is reviewing the EPBC Act, with the final report released in January 2021. It is currently considering its response to the review and any legislative changes which may result. • The ACT Government is also reviewing potential legislative changes to environmental approvals and offsets because of this work. Depending on the approach the Australian Government takes, 	<ul style="list-style-type: none"> • No significant changes.

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		amendments may be required to the ACT's planning legislation in the future, however this is will not align with the timing of the Planning Bill.	
10. Leases and licenses	<ul style="list-style-type: none"> • Under the 2007 Act, the lessee of a concessional lease can apply to the authority to vary the lease and remove its concessional status. However, the authority must refuse a development application to vary a concessional lease if the Minister decides that considering the application is not in the public interest. • The Minister is called to decide if it is in the public interest for the authority to consider whether to vary a concessional lease to remove its concessional status. In making that judgment, the Minister is required to take into account various matters, such as whether the proposed change would cause disadvantage to the community having regard to other potential assessable uses of the land, whether the Territory should buy back or acquire the land, whether the Territory should continue to monitor the use of the land, and so forth. 	<ul style="list-style-type: none"> • The Planning Bill: <ul style="list-style-type: none"> ○ provides for modest legal policy changes to be made, while the bulk of policy positions underpinning the leasing and licensing chapter remain unchanged ○ reshapes the relevant processes in relation to varying a concessional lease so that, where a development application relates to a proposal to remove the concessional status of a concessional lease, the development application is referred to the Minister for consideration and decision in accordance with specific criteria relevant to assessing the public interest. Those criteria build on the criteria in the 2007 Act, and the Minister will not be empowered to approve the removal of the concessional status of a lease without the Executive's approval. ○ allows the Territory Planning Authority to authorise, for a short-term period, the use of land for additional purposes where there is a significant public benefit and time criticality. The authority may only authorise an extended use where the authority is satisfied that giving the authorisation is necessary, considering the urgent nature of the proposed use of the land and whether other processes of the Act are available to facilitate the proposed use in the circumstances. 	<ul style="list-style-type: none"> • No changes.

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11. Public land	<ul style="list-style-type: none"> Chapter 10 of the 2007 Act sets out the requirements for the management of public land. Public land may be reserved for certain purposes such as a nature reserve, urban open space or a sport and recreation reserve, and must be maintained in accordance with a public land management plan and the management objectives set out in the Act. 	<ul style="list-style-type: none"> The Planning Bill retains the provisions of the management of public land chapter. 	<ul style="list-style-type: none"> No changes.
12. Development offences and controlled activities	<ul style="list-style-type: none"> The 2007 Act contains a series of offences, predominantly in relation to development. Presently, a person may apply to the authority for a controlled activity order to be made where the person thinks another person is conducting a controlled activity. Unlike with the complaints process, the authority has no discretion to dismiss the application on the basis it is frivolous or vexatious, and cannot consider whether, having regard to Access Canberra's risk-based regulatory model, compliance action is appropriate. 	<ul style="list-style-type: none"> The Planning Bill: <ul style="list-style-type: none"> retains the substance of the offence provisions. However, the offence provisions relating to development have been moved out of the development assessment provisions and placed into a consolidated development offences and controlled activities chapter. The move makes these offences clearly identifiable and result in the provisions being located close to the compliance and enforcement powers in the Planning Bill introduces discretion into the controlled activity order process. A person will be able to lodge a complaint in accordance with the existing complaints process. The authority will then have discretion whether or not to consider making a controlled activity order. 	<ul style="list-style-type: none"> Strict liability has been removed from section 466 – power to require help on entry under warrant, following further consideration of human rights implications. 'Reasonable use of force' can only be used by inspectors against property, not a person (e.g. when carrying out a warrant). To meet the recommendations in the Guide to Framing Offences, the regulation making power in the Planning Bill has reduced the maximum penalty units that can be set through a regulation from 60 to 30 penalty units. Modified drafting to clarify that retrospective approval of a development does not validate the

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			<p>previous conduct which constituted an offence at the time.</p> <ul style="list-style-type: none"> • Note included to clarify that failure to keep a leasehold clean may also be an amenity impacted under the <u>Litter Act 2004</u>.
13. Enforcement	<ul style="list-style-type: none"> • Chapter 12 of the 2007 Act sets out the provisions enabling enforcement to be undertaken. • The enforcement chapter of the 2007 Act provides for the appointment of inspectors and their powers of entry; the Authority's power to require information; seizure, forfeiture and return of seized items, search warrants and monitoring warrants; and rectification works orders. 	<ul style="list-style-type: none"> • The Planning Bill retains the provisions of the enforcement chapter. 	<ul style="list-style-type: none"> • No changes.
14. Access to information	<ul style="list-style-type: none"> • Certain development application information and documents are required to be publicly available on the public register on the planning website. 	<ul style="list-style-type: none"> • The Planning Bill provides for greater use of the planning website to provide improved transparency and access to information on planning processes and decisions. • The Bill includes: <ul style="list-style-type: none"> ○ exemption declaration documentation will be added to the public register as an increased transparency measure ○ wherever a development approval is given as a result of a Tribunal mediation process, the approval may be published on the authority's website. 	<ul style="list-style-type: none"> • No changes.

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		<ul style="list-style-type: none"> • The Planning Bill introduces several new requirements for advice, decisions and information to be published on the authority's website. Examples of what must be published under the Bill include: <ul style="list-style-type: none"> ○ development applications ○ requests for further information ○ further information provided ○ applications to amend a development application ○ notice extending period of public notification ○ decision to waive further entity referral or public notification requirements, with reasons ○ any pre-decision advice ○ notices of decision ○ applications for reconsideration. 	
15. Review of decisions	<ul style="list-style-type: none"> • The 2007 Act makes provision and identifies decisions that are reviewable by the Tribunal, and those that are exempt from third-party review. • The framework provides for review and identifying reviewable decisions and the persons who may seek review. • 17 items were listed as exempt from review under the Planning and Development Regulation 2008 	<ul style="list-style-type: none"> • The Planning Bill simplifies the statutory framework by identifying categories of decision that are exempt from review in the Act itself, rather than by regulation made under the Act. • Schedule 7 of the Planning Bill contains eight items and a significant simplification of the items. • Developments in the city centre, a town centre, industrial zone or Kingston Foreshore continue to be exempt. • Developments in other non-residential zones will be exempt where a set of criteria are met. These are: <ul style="list-style-type: none"> ○ the development must be at least 50m from a block within a residential zone ○ if the development involves any construction of or alteration to a building or other structure on the land, any new or altered building or structure on the land meets the performance outcome for any 	<ul style="list-style-type: none"> • No changes.

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		<p>applicable height and plot ratio provisions by meeting the quantitative measure.</p> <ul style="list-style-type: none"> • Where an application is made to ACAT for review of a decision made under the Planning Bill, ACAT has the same powers to assess the merits of the matter and make a decision as the original decision maker (i.e. the authority). This departs from the approach of the 2007 Act, which placed a limitation on ACAT's review jurisdiction in relation to several matters. 	
16. Miscellaneous	<ul style="list-style-type: none"> • The Miscellaneous chapter contains provisions that are important to the effective functioning of the planning system: providing for the making of regulations, the setting of fees, and evidentiary provisions. 	<ul style="list-style-type: none"> • The Planning Bill proposes no policy changes to the provisions contained in the Miscellaneous chapter of the 2007 Act. • Some of the provisions in this chapter have been relocated to new chapters of the Planning Bill, such as the Access to Information chapter. 	<ul style="list-style-type: none"> • No changes.
Regulations	<ul style="list-style-type: none"> • A single regulation, the Planning and Development Regulation 2008, sets out provisions for regulations in relation to: <ul style="list-style-type: none"> ◦ strategic environmental assessments ◦ exempt development ◦ environmental impact statements ◦ inquiry panels ◦ matters relating to the administration of leases such as the grant of further leases, subletting of leases and 	<ul style="list-style-type: none"> • The Planning Bill splits the existing regulation into a standalone exempt development regulation and a general regulation. • The general regulation contains detailed provisions and thresholds for the application of processes under the Bill, process requirements and administrative detail to support the provisions of the Planning Act. • The exempt development regulation provides a standalone regulation providing for exempt development. This approach has been taken to make it easier to locate and navigate the provisions for exempt development, as these are provisions which are regularly accessed by the building and development industry. 	<ul style="list-style-type: none"> • No changes (further changes to the regulations will be considered based on feedback following the introduction of the Planning Bill).

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	<p>eligibility criteria for the direct sale of leases</p> <ul style="list-style-type: none"> ○ the referral of development applications to entities ○ controlled activities ○ merit and impact track decisions exempt from AAT review. 	<ul style="list-style-type: none"> ● A new exemption has been added to allow some murals (street art) to be painted on to buildings without development approval. ● A new exemption for minor utility works exempts minor works that are necessary for utilities to support essential services to the community, such as fences around their facilities, lighting, modifications to existing infrastructure and excavation for exempt work. 	