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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

ELEVENTH ASSEMBLY

AMENDMENTS TO THE PLANNING (TERRITORY PRIORITY PROJECT) AMENDMENT BILL 2025

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by
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PLANNING (TERRITORY PRIORITY PROJECT) AMENDMENT BILL 2025

INTRODUCTION

This supplementary Explanatory Statement relates to proposed Amendments to the Planning (Territory Priority Project) Amendment Bill 2025 (the Government Bill) as presented to the Legislative Assembly by the Minister for Planning and Sustainable Development (the Minister) on 5 February 2025. It has been prepared to assist the reader to help inform debate. It does not form part of the proposed Amendments and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Amendments and the Government Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

CONSULTATION ON THE PROPOSED APPROACH

Consultation was undertaken on the proposed Amendments with the Government and a range of environmental, community and housing groups**.** There was close engagement with the Minister for Planning and Sustainable Development on the development of these amendments. In the interest of clarity for the Assembly it was agreed that Ms Clay MLA would bring forward the amendments, including those which were proposed by the Minister.

Prior consultation was undertaken on the Government Bill with the Territory Planning Authority and with other Government Directorates, including Housing ACT, ACT Health, Treasury and the Justice and Community Safety Directorate. The Standing Committee on Environment and Planning (the Committee) also inquired into the Government Bill. Submissions were received from a broad range of individuals, community organisations, advocacy groups as well as community housing providers and the Government, including the Ministers for Planning and Sustainable Development; Homes and New Suburbs; and Health.

The information provided through all of these processes was considered in establishing the proposed Amendments.

OVERVIEW OF TERRITORY PRIORITY PROJECTS IN THE PLANNING ACT

The *Planning Act 2023* (the Planning Act) came into effect in November 2023. The Planning Act is the legal foundation of the Territory's new planning system. It moves away from a rules-based system to one that uses development outcomes to provide better opportunities to accommodate Canberra's projected population growth over the next 25 years.

Both the Planning Act, and its predecessor, the Planning and Development Act 2007 (P&D Act) continue the use of third party appeals except in specified circumstances. In the case of Development Applications, a representor who made a representation on a Development Application (DA) and who believes a decision may cause them material detriment can apply to appeal that decision in the ACT Civil and Administrative Tribunal.

Under both the current Planning Act and the former P&D Act, the Minister plays a limited role in the day-to-day application of the Territory Plan or assessing a DA. The former P&D Act allowed the Minister for Planning and Land Management to 'call-in' developments and make decisions on DAs that were subject to assessment but on which a decision had not been made by the Planning Authority. There was limited transparency and accountability around the process and there were no criteria contained in the P&D Act which would determine the basis on which the Minister 'called-in' the DA. These features were subject to considerable criticism.

This process was changed and improved in the Planning Act through the introduction of Territory Priority Projects. A project can now be a 'Territory Priority Project' either by being established directly in the Planning Act under s 216 (which is currently only available for light rail) or through a s 218 declaration made by the Chief Minister and the Minister. Once a project is a Territory Priority Project under ss 216 or 218, there is no merits review available but there is a limited time available to seek judicial review.

Before a project can be declared under the current section 218, it must meet three criteria:

a) achieve a major government policy outcome that is of significant benefit to the people of the ACT; and

b) substantially facilitate the achievement of the desired future planning outcomes set out in the Planning Strategy, a District Strategy, the Territory Plan or any zone; and

c) be for significant infrastructure, or significant facilities, that are of significant benefit to the people of the ACT. The legislative note says that 'significant infrastructure or facilities includes community, social and public housing projects of any scale.'

In addition to meeting these three criteria, a declared Territory Priority Project must be notified on the Planning Authority website for at least 15 working days to invite comments and it must be tabled in the Legislative Assembly, who can approve or refuse (disallow) it.

OVERVIEW OF GOVERNMENT AMENDMENTS TO TERRITORY PRIORITY PROJECTS

Government has indicated that the current s 218 is difficult to use. At the time of this Bill's debate, the Government has recently commenced the s 218 declaration process with community consultation for the Inner South Health Centre and for the Northside Hospital Project.

The Government Bill does not propose any amendments to s 218 to make it easier to use. Instead, the Government Bill lists public housing and public health facilities as s 216 Territory Priority Projects. The Government Bill also removes the explanatory note indicating that public, social and community housing are 'significant infrastructure', which effectively proposes the removal of community housing from the Territory Priority Project provisions altogether.

WHY ARE AMENDMENTS NEEDED?

Territory Priority Projects are designed to provide increased certainty about construction times and to fast-track delivery of key infrastructure by removing third party appeal rights.

This is particularly critical for public and community housing at the moment because Canberra is in a housing crisis. The public housing waitlist has risen from around 3,000 households in November 2024 to 3,402 households in June 2025 and then again to 3,486 as of 30 September 2025. The ACT needs more public and community housing, and new funding for public and community housing from both ACT Government and the Commonwealth Government.

The Government has signed up to the National Housing Accord and has committed to delivering 5,000 additional public, community and affordable rental dwellings in Canberra by the end of 2030 including 1,000 new public housing dwellings. Some of these will be supported by funding from the Commonwealth under the Housing Australia Future Fund (HAFF), through Territory Budget funding or through a Commonwealth-Territory funding agreement and other Commonwealth funding sources. The community housing sector advises that providing planning and development certainty, and providing an ability to roll out rapid construction, influences whether a public or community housing project receives Commonwealth funding – so more certainty and speed is likely to attract more funding.

Government has also advised that the current s 218 is not easily used for public housing. One issue stated was that all three criteria needed to be satisfied when making a declaration and this was a difficult threshold to meet. But the Government solution - adding the entire public housing program into section 216 in the Government Bill - is very broad. It would list any public housing project as an automatic Territory Priority Project, regardless of whether it is funded by the Commonwealth or by the Government or through the sale of public housing properties. It provides no Assembly oversight through the possibility of disallowance and no public notification and comment period prior to declaration. It also does not provide any particular protection for environmental or First Nations cultural rights.

The Government solution also includes public health facilities in the s 216 declaration track, despite the fact that during the Committee inquiry, the health minister and officials repeatedly said they could and would use s 218 to declare public health facilities as Territory Priority Projects, and have now in fact commenced their first public health facility declaration.

The Government solution also does not properly address community housing in either ss 216 or 218 but instead removes all mention of community housing from Territory Priority Project provisions.

WHAT DO THE PROPOSED AMENDMENTS DO?

Section 216 proposed amendments

The Amendments remove public health facilities from the Government Bill, which inserts them into s 216. The practical impact of this is that public health facilities can continue to be declared under s 218.

The Amendments allow community housing projects to be s 216 Territory Priority Projects if they are run by a registered non-profit community housing provider, and the project is wholly or partly funded by the Commonwealth or Territory. However, if the development involves more than 100 dwellings, including dwellings not used for community housing, or if

the development is comprised of less than 15% community housing, then the development is not and cannot be a Territory Priority Project.

The Government Bill includes public housing projects to be s 216 Territory Priority Projects if they are to run by the Housing Commissioner. But there are few limits on this.

The Amendments limit which public housing projects can be s 216 Territory Priority Projects. They must be funded with new money – they cannot be funded from projects funded under the Growing and Renewing Public Housing Program and attract Commonwealth and Territory funding for public housing projects.

The Amendments also allow community housing projects to be s 216 Territory Priority Projects if the project is attracting new ACT or Commonwealth funding and meets certain protections and definitions to ensure it is genuinely a community housing project.

In addition to the above protections, the Amendments add in two additional protections that are not contained in the Government Bill or the Planning Act for s 216 projects. These additional protections are designed to ensure that the environment and First Nations cultural rights are protected. If the development requires an Environmental Impact Statement (EIS), or if it would impact on an Aboriginal object or place, then its Territory Priority Project status is removed.

The Amendments also brings in a sunset clause. The new provisions for s 216 public and community Territory Priority Projects expire on 31 December 2029. In a housing crisis, it is appropriate to bring in an additional means of attracting new funding and quickly building public and community housing, but it is also appropriate that these measures be time limited.

The Amendments also bring in a legislative review that must be conducted after 1 December 2028 and tabled in the Assembly by 30 June 2029 to ensure clear Assembly oversight.

Section 218 proposed amendments

The Amendments address the Government's stated problems with s 218 by allowing a project to be declared if it meets only one criterion. Section 218 declarations would continue to be covered by the existing protections of public notification and a public comment period and Assembly oversight and a disallowance period.

The Amendments also add into s 218 additional environmental and heritage protections, which is to require the Territory Planning Authority (the Authority) to consult the Conservator of Flora and Fauna if the Authority considers the proposed declaration is likely to have a significant adverse environmental impact. A similar requirement exists for the Authority to consult the Heritage Council if the Authority considers that the project is likely to have a significant adverse impact on an Aboriginal object or an Aboriginal place. The Minister has agreed that this advice will be published on the Authority's website and published with the notice papers provided to the Assembly for disallowance to ensure that the community and Assembly see this advice and can take steps if they believe a s 218 Territory Priority Project declaration should not go ahead.

CLIMATE IMPACT

The Amendments have been identified as having no direct material impact on climate change. None of the amendments contribute directly to emissions production or abatement within the ACT community nor are there any adaptation impacts against key climate risks to the ACT. It is expected that the construction of new dwellings will have a climate impact in terms of embedded emissions in construction materials, but those new dwellings are likely to have lower ongoing emissions as they will be built to meet relevant building construction standards.

CONSISTENCY WITH HUMAN RIGHTS

A statement of compatibility under the Human Rights Act is not required. It is noted that the Government Bill was not considered a Significant Bill. These amendments support the new right to housing. It includes additional protections to uphold cultural rights and the right to a healthy environment that were not included in the Government Bill. It also includes stricter limitations on third party appeal rights than were in the Government Bill, including a sunset clause on s 216.

It is noted that amendments from the ACT Greens and the Government were considered by the Standing Committee on Legal Affairs (Legislative Scrutiny Role). The Committee noted that the expansion of the section 216 definition of Territory Priority Project will mean that the developments now included in that definition will be exempt from third party appeal rights in the ACT Civil and Administrative Tribunal, and that this restricts the right to a fair trial protected under section 21 of the *Human Rights Act 2004.*

Limiting the ability to review decisions of developments on their merits is a serious matter. These amendments provide protections to promote the right to housing, the right to a healthy environment and cultural rights whilst limiting third party appeal rights. The amendments also provide more protections on that limitation of appeal rights than are in the Government Bill. There will be public notification requirements for all Development Applications, including those related to Territory Priority Projects. During this process, the decision-maker is required to consider all representations made during the public notification period. The amendments introduces a sunset clause so that limitations on appeal rights are limited to a finite period of time to deal with the housing crisis.

The Government's Bill preserves the existing safeguard that allows members of the public to still seek judicial review of development decisions where this is available under the *Administrative Decisions (Judicial Review) Act 1989*.

The objective is to provide certainty in the development and construction of critical public and community housing. This will help achieve wider policy outcomes and broader public benefits, especially for those who are vulnerable and find it difficult to access housing in the ACT. It is designed to support ACT bids for Commonwealth funding to ensure that the ACT gets its fair share of resources to tackle our housing crisis, noting that Commonwealth funds are often only granted where there is a high degree of confidence that the project can go ahead and can be complete within a short timeframe.

Limiting the ability to review a Development Application for public and community housing is considered proportionate to the significant benefits these projects will provide to the ACT community, such as incentivising the delivery of more public and community housing, giving more people the opportunity of safe, cheap and sustainable accommodation. These steps are appropriate in a housing crisis.

Limiting the application of these changes to community housing and public housing helps achieve the legitimate purpose of assisting the delivery of infrastructure that is of significant benefit to the people of the ACT. Specifically, private housing developments continue to be excluded as these proposals account for most housing development in the Territory. Their inclusion would exacerbate the limitation on the right to a fair trial where it would no longer be proportionate to the legitimate purpose.

CLAUSE NOTES

Clause 1 Amends Clause 4

This clause omits paragraph (c) of clause 4 of the Government Bill. This omits a development proposal related to public health facility as a default Territory Priority Project.

Clause 2 Amends Clause 4

This clause inserts a new paragraph (e) into s 216 to provide that a development proposal that is related to community housing is a Territory Priority Project.

Clause 3 Proposes a new Clause 4A

New clause 4A inserts new section 216(2) and (3) with respect to the new (d) or (e) in section 216. Section 216(2) provides that a development proposal under 216(d) or (e) is no longer a Territory Priority Project if:

- An Environmental Impact Statement (EIS) is required for the proposal under section 105. Developments that are likely to have a significant adverse environmental impact will generally require an EIS.
- The DA for the proposal is required to be referred to the Heritage Council because the development will impact an Aboriginal object or place.

It also defines an Aboriginal object and an Aboriginal place referencing definitions in the Heritage Act 2004.

Clause 4 Amends Clause 5

The amendment is to omit 217A. This omits a development proposal related to a public health facility as a Territory Priority Project.

Clause 5 Proposes a new section 217B(1A)

This clause provides that public housing developments that are undertaken as part of the Growing and Renewing Public Housing Program are not a Territory Priority Project.

The Growing and Renewing Public Housing Program is due to be finalised by 2026-2027. This clause excludes any Development Applications from the Growing and Renewing Public Housing Program as being a Territory Priority Project.

Clause 6 Proposes a new section 217C

The new clause 6 inserts section 217C that provides a meaning of 'related to community housing' in section 216.

In section 217C a development related to community housing consists of the construction of housing by or on behalf of a community housing provider that is a registered community housing provider (see the Community Providers National Law (ACT) section 4(1)) that is a registered entity under the Australian Charities and Not-for-profits Commission Act 2012. The construction of the housing is to be wholly or partly funded by the Commonwealth or the Territory.

The provision facilitates the construction, ongoing operation and maintenance, repairs, refurbishment or replacement of community housing.

The provision outlines that a development proposal is not related to community housing if there are more than 100 dwellings total, including housing not used for community housing, or less than 15 per cent of the constructed dwellings will be used for community housing.

The terms 'ACNC registered entity', 'community housing' and 'registered community housing provider' are also defined.

Clause 7 Proposes a Section 218 (1)

This clause makes an amendment to the criteria for a development to be declared a Territory Priority Project. It now means that a development would need to either achieve a major policy outcome that is of significant benefit to the people of the ACT, or 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 relevant zone or is for significant infrastructure, or significant facilities that are of significant benefit to the people of the ACT. Previously, a development would need to satisfy all of the criterion in order to be declared a Territory Priority Project. The proposal will still need to be subject to sufficient consultation under section 218(3).

Clause 8 Amends Clause 6 adding 6A to 6G

Clause 6A – 6D makes wording changes to section 218(3) that requires the Minister to always seek the advice of the Territory Planning Authority before making a Territory Priority Project declaration.

Clause 6E inserts new section 218(3A) which specifies that before giving advice to the Minister under section (3)(a) the Territory Planning Authority must consult the Conservator of Flora and Fauna if the Authority considers the proposed declaration is likely to have a significant adverse environmental impact on a protected matter or affect a protected tree or declared site. It also specifies that the Territory Planning Authority must consult the ACT Heritage Council if the Authority considers the proposed declaration relates to a place or object registered, or nominated for provisional registration, under the Heritage Act 2004 or may impact an Aboriginal object or place.

Clause 6F inserts definitions in section 218(5) for an Aboriginal object and place, referencing definitions in the Heritage Act 2004.

Clause 6G inserts a new section 220A and section 220B. Section 220A requires the Minister to undertake a review into the operation and effectiveness of the amendments. This needs to be undertaken after 1 December 2028 with a report on the review being tabled in the Assembly before 30 June 2029.

Section 220B specifies that some provisions expire on 31 December 2029.

Clause 9 Proposes new definitions in the Dictionary

Clause 9 inserts a definition of related to community housing that refers to section 217C in Clause 5.

Clause 10 Amends Clause 8

Clause 8 omits the proposed definition of ‘related to public health facility’.