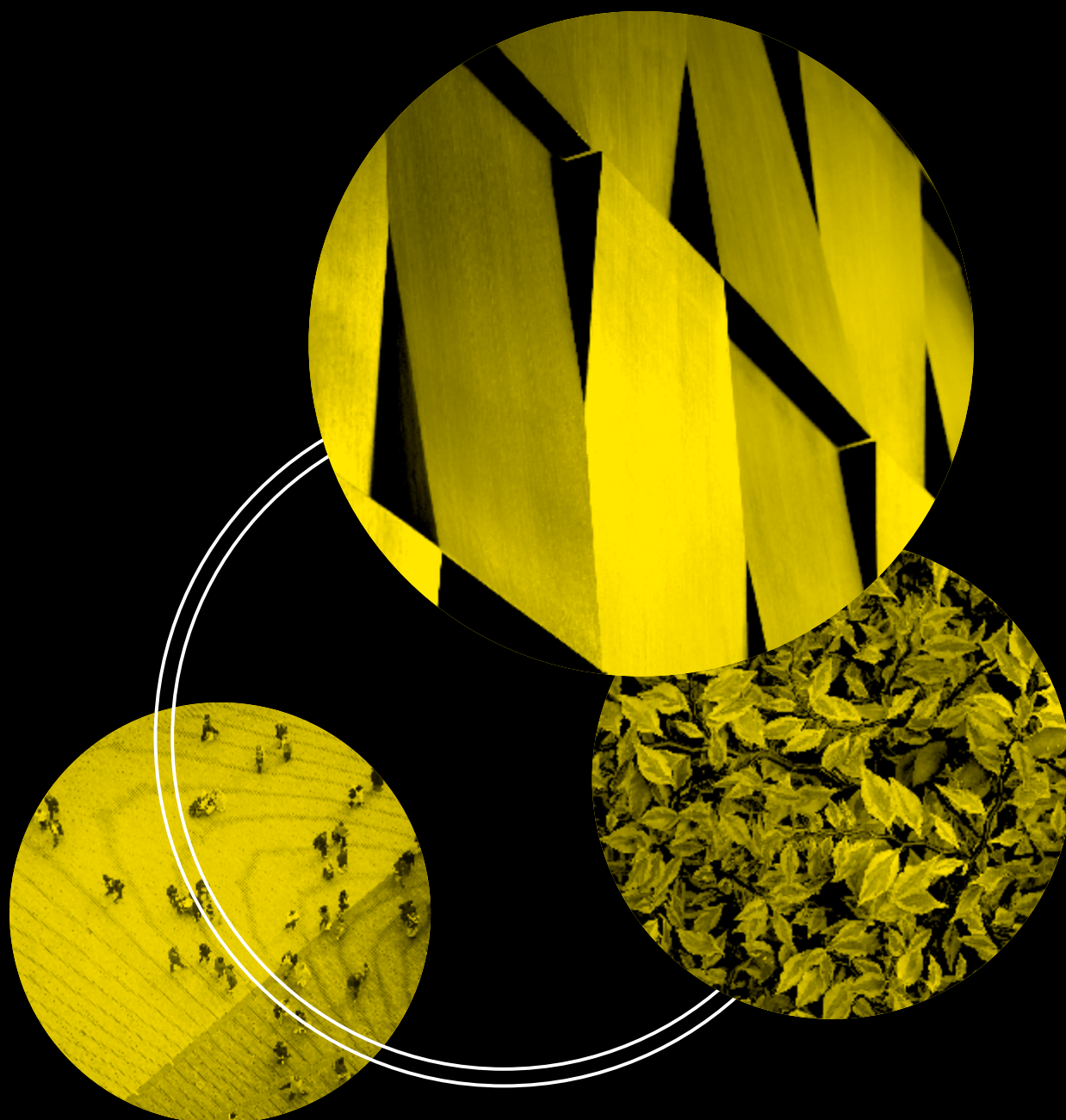


# ACT Planning System Review and Reform

November 2020





## Acknowledgement of Country

Yuma

Dhawura Nguna Dhawura Ngunnawal

Yanggu ngalawiri dhunimanyin Ngunnawalwari  
dhawurawari

Nginggada Dindi yindumaralidjinyin

Dhawura Ngunnawal yindumaralidjinyin

Hello,

This is Ngunnawal Country

Today we are meeting on Ngunnawal country

We always respect Elders, male and female

We always respect Ngunnawal Country

The Environment, Planning and Sustainable Development Directorate acknowledges the Ngunnawal people as Canberra's first inhabitants and Traditional Custodians. We recognise the special relationship and connection that Ngunnawal peoples have with this Country. Prior to the dislocation of Ngunnawal people from their land, they were a thriving people whose life and culture was connected unequivocally to this land in a way that only they understand and know, and is core to their physical and spiritual being. The disconnection of the Ngunnawal people from Culture and Country has had long-lasting, profound and ongoing health and well-being effects on their life, cultural practices, families and continuation of their law/lore. The Environment, Planning and Sustainable Development Directorate acknowledges the historic dispossession of the Ngunnawal people of Canberra and their surrounding regions. We recognise the significant contribution the Ngunnawal people have played in caring for Country as for time immemorial they have maintained a tangible and intangible cultural, social, environmental, spiritual and economic connection to these lands and waters.

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# ACT Planning System Review and Reform

Paper 4 / Development Assessment



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# 1. Introduction

## 1.1 Review of the ACT planning system

Over the next 20 years Canberra's population is expected to increase by more than 40 per cent. The city needs a planning system that can facilitate this growth without compromising the characteristics of the city that its residents value. Importantly, it needs a planning system that can deliver on the long-term vision for Canberra to be a city that is liveable, sustainable, resilient and diverse.

Compared to other parts of Australia facing similar challenges, the Australian Capital Territory (the ACT) is uniquely placed to innovate and implement change. It has a single tier of government that spans the entire urban area of Canberra, where many cities have multiple councils and state government. While the current planning system is working, the ACT Planning System Review and Reform project (the Project) presents an opportunity to evolve the system in line with contemporary best practice. The Project will deliver a proactive and responsive planning system that further enhances Canberra's strong international reputation.

The Environment Planning and Sustainable Development Directorate (EPSDD) began the three-year process of reviewing and reforming the planning system in January 2019. Beyond the need to effectively manage growth, the Project has been driven by the need to conduct a five-yearly review of the Territory Plan. This includes the review of the strategic directions and actions outlined in the ACT Planning Strategy 2018 and concerns from community, industry and the government with respect to the development outcomes that the current planning system is facilitating.

The desired outcome of the Project is to implement a **clear, easy to use** planning system that delivers **improved spatial and built outcomes** across the Territory. In particular, the reformed system should:

- facilitate development and housing supply while protecting those aspects of the city that make it an attractive place to live
- instill confidence in the community through greater clarity and expression of desired outcomes
- enable greater flexibility in the assessment of varying development types.

The purpose and objectives of the Project are described in Figure 1.

The Project has been structured around a three-stage process that progressively defines and implements the preferred future direction for the ACT planning system (see Figure 2).

Stage 1—Investigation was undertaken throughout 2019. More than 1,000 people's views were gathered through targeted community engagement, in addition to feedback from a range of consultation undertaken in recent years.

**Figure 1:** Project purpose and objectives

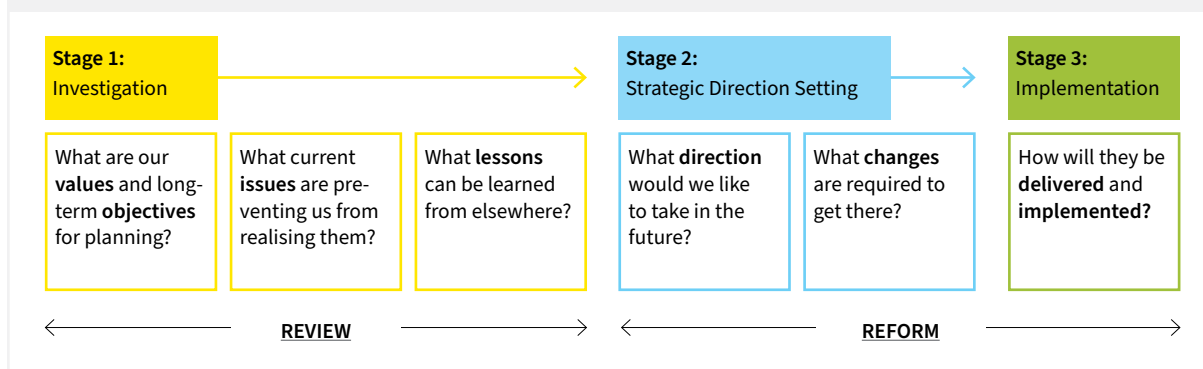
#### **Project purpose**

To deliver a planning system that is clear, easy to use and that facilitates the realisation of long-term aspirations for the growth and development of Canberra while maintaining its valued character.

#### **Project objectives**

- Enabling the sustainable growth of the city without compromising its valued character
- Providing clarity of processes, roles and outcomes for the city's community
- Providing flexible assessment pathways that are appropriate to the scale and scope of development

**Figure 2:** Project stages



This was critical to understanding what the community's values and expectations were, and to identifying the issues and challenges with the existing system. Further, Stage 1 involved benchmarking of the existing system against contemporary examples from cities and states elsewhere in Australia and internationally. This enabled the team to investigate a range of approaches to responding to the issues and challenges currently faced in the Territory.

The Project is currently within Stage 2, which involves direction setting, and identification of a clear scope for proposed change.

## 1.2 Focus areas for reform

As identified in the ACT Planning System Review and Reform Overview, Stage 1 identified five interrelated focus areas to be addressed as part of the review process. This paper is the fourth in a series of five which covers the proposed directions for reforming development assessment (see Figure 3).

All planning systems have a primary function to assess developments to determine whether or not to grant approval. Development proposals that require approval typically have application 'tracks' or 'pathways' for assessing the proposals. Other forms of development are exempt or prohibited. Development assessment operates this way in the ACT; depending on which zone a proposed development is located, it may be exempt, assessable in one of three application tracks (code, merit or impact) or prohibited. Additional guidance for buildings and works is provided within development, precinct and general codes (in the form of rules and criteria) as discussed in Paper 3—Development Controls.

This paper focuses on the frameworks in place for development assessment in the ACT and, specifically, how the system can manage growth and change to best effect while continuing to maintain and preserve Canberra's valued character.



**Figure 3:** Five papers on the focus areas

**FOCUS AREA 1 / SYSTEM STRUCTURE**

The hierarchy of the various components of the system as well as their individual roles and interrelationships

**FOCUS AREA 2 / STRATEGIC PLANNING**

The long-term strategic or policy objectives that describe the purpose and direction of the planning system

**FOCUS AREA 3 / DEVELOPMENT CONTROLS**

The interpretation of strategic and policy objectives into regulations that define and shape development

**THIS PAPER**

**FOCUS AREA 4 / DEVELOPMENT ASSESSMENT**

The processes through which development applications are assessed and determined

**FOCUS AREA 5 / SYSTEM OPERATION**

The useability of the system from the perspective of applicants, agencies, and other interested parties

### 1.3 Guiding principles for development assessment

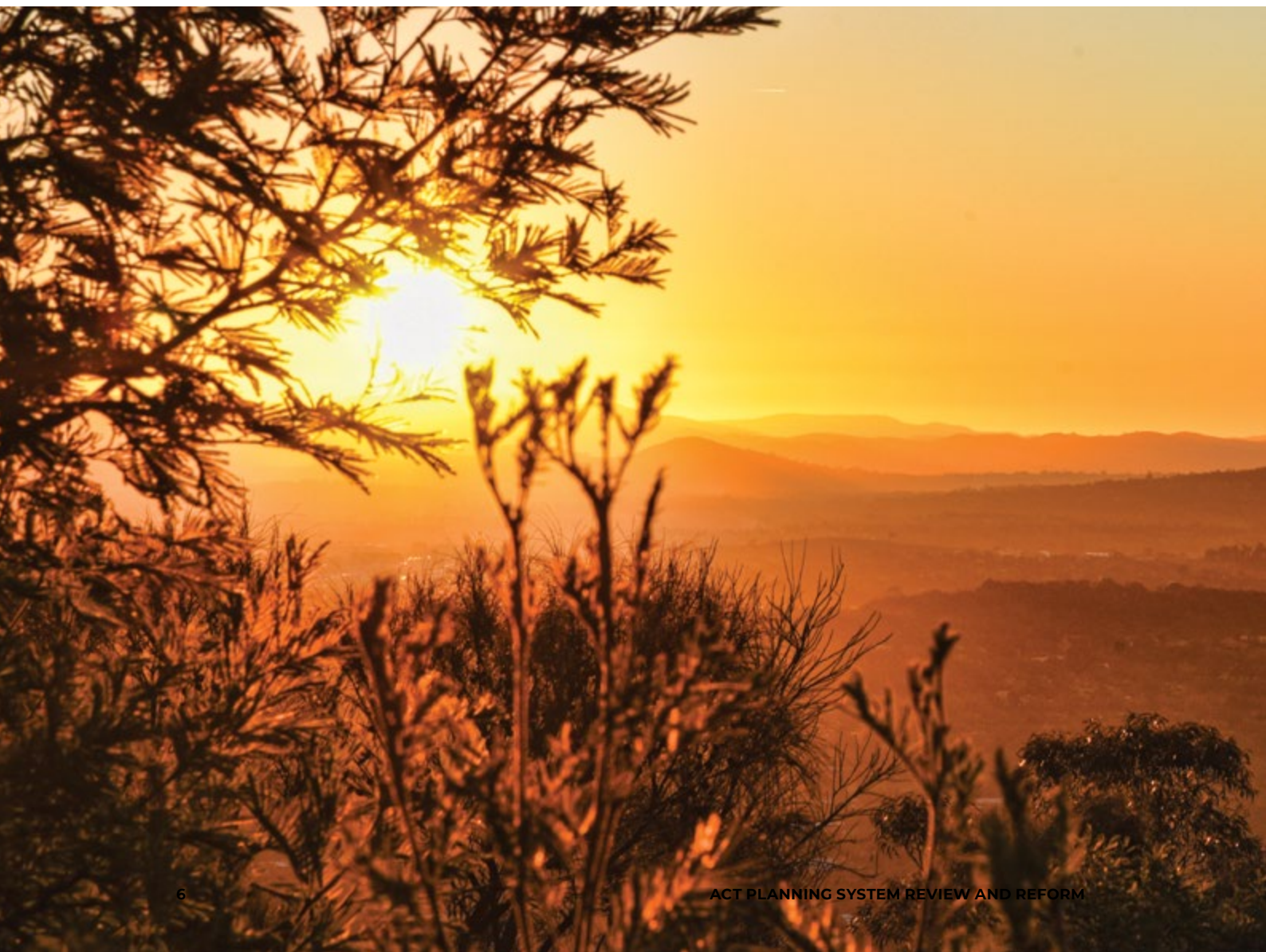
The following guiding principles (GP) of development assessment support the delivery of the overarching Project objectives. That development assessment pathways are clear and based on simple categories of development.

- GP1.** That development assessment scales levels of assessment to the complexity or impact of development.
- GP2.** That development assessment provides clarity as to how decisions are made and the factors that are considered.
- GP3.** That development assessment provides a means for considering larger and more complex strategic applications.

**GP4.** That development assessment provides flexibility for innovative and non-conforming proposals to be considered where they would contribute to broader strategic planning objectives and deliver good development outcomes.

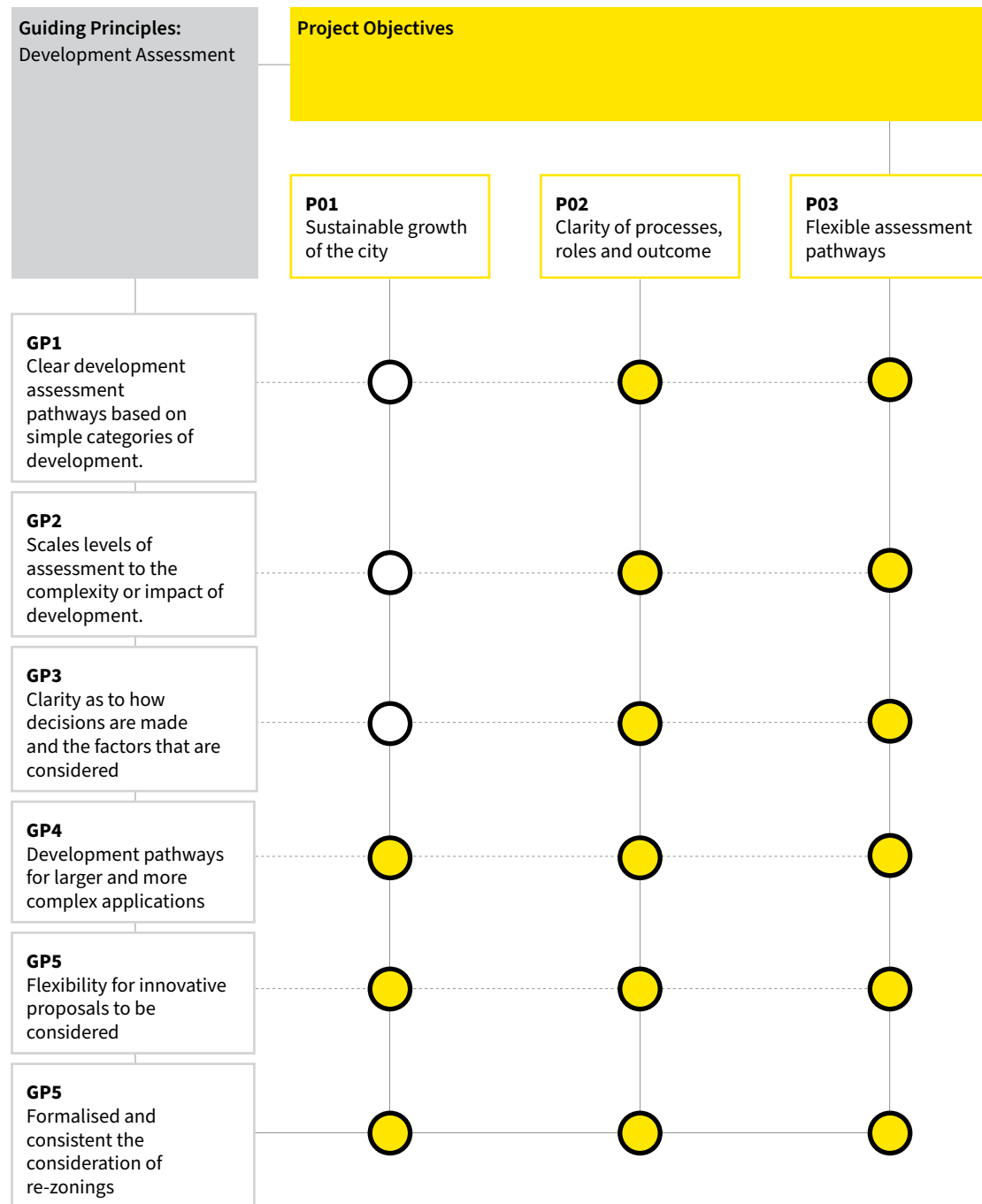
**GP5.** That development assessment formalises and makes consistent the consideration of re-zonings.

These have been mapped in Figure 4 to demonstrate the relationship between development assessment and the broader objectives for the Project.





**Figure 4:** Relationship between Project context and development assessment



## 2. Review of the existing development assessment process



### 2.1 Background

Development assessment in the ACT is largely focused on code compliance (ensuring development applications meet the rules and criteria set out in relevant codes), reflecting the regulatory nature of the planning system. Each zone sets out what types of development are exempt, assessable and prohibited. Exempt development, including code compliant single dwellings, do not require a development approval and prohibited development cannot be approved under most circumstances.<sup>1</sup>

<sup>1</sup> Prohibited development may be approved where it is considered to be ancillary to an otherwise assessable or exempt use, or where it is permitted by an existing lease.

All other development is assessable, meaning that an application must be submitted to and considered by the planning and land authority for approval. The *Planning and Development Act 2007* (the Act) defines three assessment tracks through which assessable development may be considered:

- **Code track** for simple developments that meet all relevant rules in the Territory Plan as set out in the zone. In most zones this is limited to applications to vary a lease.
- **Merit track** for larger, more complex developments that are likely to have a higher impact. Most development applications are considered through this track.

→ **Impact track** for developments that may potentially have a major impact on the environment. This might include construction of a major road or clearing a significant area of native vegetation.

The Act defines the criteria against which applications in each of these tracks will be considered, what is involved in the assessment process (e.g. public notification) and who is responsible for granting approval. Development tables in each land use zone in the Territory Plan define what types of development fall into each category (see Figure 5).

**Figure 5:** Development tables for medium density residential zone

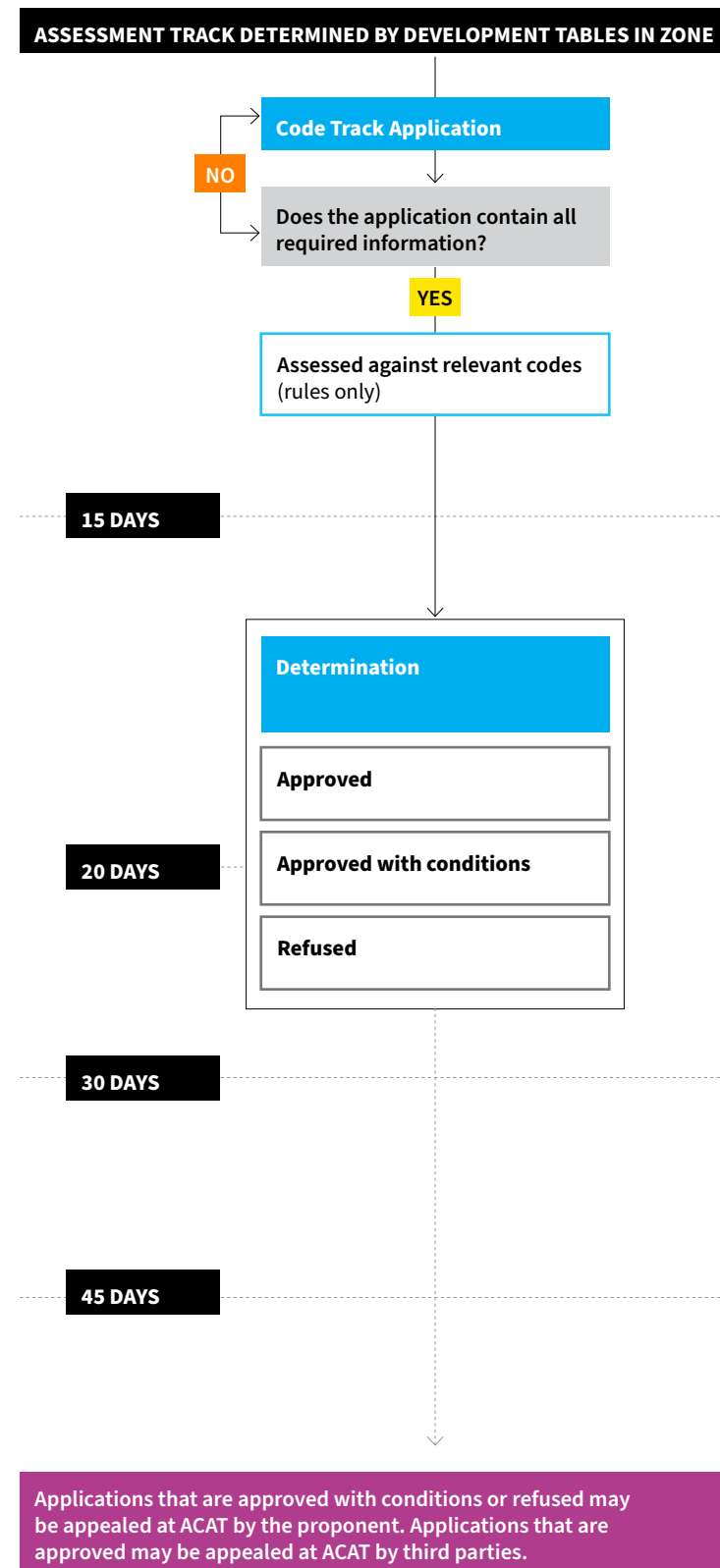
| RZ4 – Medium density residential zone development table   |   | MINIMUM ASSESSMENT TRACK IMPACT<br>Development application required and assessed in the impact track   |  |
|---|---|--|--|
| <b>EXEMPT DEVELOPMENT</b><br>Development approval is not required. Building approval may be required.<br>On leased land, development must be authorised by a lease.<br>Single dwelling housing – new residential land, subject to section 20 and schedule 1 of the Planning and Development Regulation 2008.<br>Exempt development identified in section 20 and schedule 1 of the Planning and Development Regulation 2008.   |   | 1. Development that is not:<br>a. Exempt, code track or merit track development (see section 132 of the Planning and Development Act 2007); or<br>b. Prohibited development, other than development that is permitted under s137 of the Planning and Development Act 2007. |  |
| <b>ASSESSABLE DEVELOPMENT</b><br>Development application required.<br>On leased land, development must be authorised by a lease.  |   | 2. Development specified in schedule 4 of the Planning and Development Act 2007 and not listed as a prohibited use in this table.  |  |
| <b>MINIMUM ASSESSMENT TRACK CODE</b><br>Development application required and assessed in the code track   |   | 3. Development that is authorised by a lease and listed as a prohibited use in this table.   |  |
| <b>Development</b><br>Single dwelling housing that complies with the relevant rules, except where exempted from requiring development approval by section 20 and schedule 1 of the Planning and Development Regulation 2008.<br>Development specified as additional code track development in a suburb precinct code for land shown on the relevant suburb precinct map<br>Varying a lease to do one or more of the following:<br>1. express or change the number of approved or lawfully erected dwellings<br>2. allow a secondary residence where erection of a secondary residence has been approved<br>3. remove, relocate or change easements. |   | 4. Development declared under section 124 or section 125 of the Planning and Development Act 2007 and not listed as a prohibited development in this table.  |  |
| <b>MINIMUM ASSESSMENT TRACK MERIT</b><br>Development application required and assessed in the merit track, unless specified in schedule 4 of the Planning and Development Act 2007 (as impact track)  |   | 5. Varying a lease to add a use assessable under the impact track.   |  |
| <b>Development</b>  |   | <b>PROHIBITED DEVELOPMENT</b><br>Development listed below is prohibited development except where it is listed elsewhere in this development table.   |  |
| ancillary use   | parkland  | agriculture  | liquid fuel depot                      |
| boarding house  | residential care accommodation  | airport  | mining industry                        |
| child care centre   | retirement village  | animal care facility   | mobile home park                       |
| community activity centre   | sign  | animal husbandry   | motel                                  |
| consolidation   | single dwelling housing (where not exempt development or code track assessable) | aquatic recreation facility  | municipal depot                        |
| demolition  | secondary residence   | bulk landscape supplies  | nature conservation area               |
| development specified as additional merit track development in a suburb precinct code for land shown on the relevant suburb precinct map  | special dwelling  | business agency  | offensive industry                     |
| guest house   | subdivision   | car park   | office                                 |
| health facility   | supportive housing  | caretakers residence   | outdoor recreation facility            |
| home business   | temporary use   | caravan park/camping ground  | overnight camping area                 |
| minor road  | varying a lease (where not prohibited, code track or impact track assessable)   | cemetery   | pedestrian plaza                       |
| minor use   |   | civic administration   | place of assembly                      |
| multi-unit housing  |   | club   | place of worship                       |
|   |   | communications facility  | plant and equipment hire establishment |
|   |   | community theatre  | plantation forestry                    |
|   |   | commercial accommodation unit  | produce market                         |
|   |   | corrections facility   | public agency                          |
|   |   | craft workshop   | public transport facility              |
|   |   | cultural facility  | railway use                            |
|   |   | defence installation   | recyclable materials collection        |
|   |   | development specified as additional prohibited development in a suburb precinct code for land shown on the relevant suburb precinct map  | recycling facility                     |
|   |   | drink establishment  | religious associated use               |
|   |   | drive-in cinema  | restaurant                             |
|   |   | educational establishment  | sand and gravel extraction             |
|   |   | emergency services facility  | scientific research establishment      |
|   |   | farm tourism   | serviced apartment                     |
|   |   | freight transport facility   | service station                        |
|   |   | funeral parlour  | SHOP                                   |
|   |   | general industry   | stock/sale yard                        |
|   |   | group or organised camp  | store                                  |
|   |   | hazardous industry   | tourist facility                       |



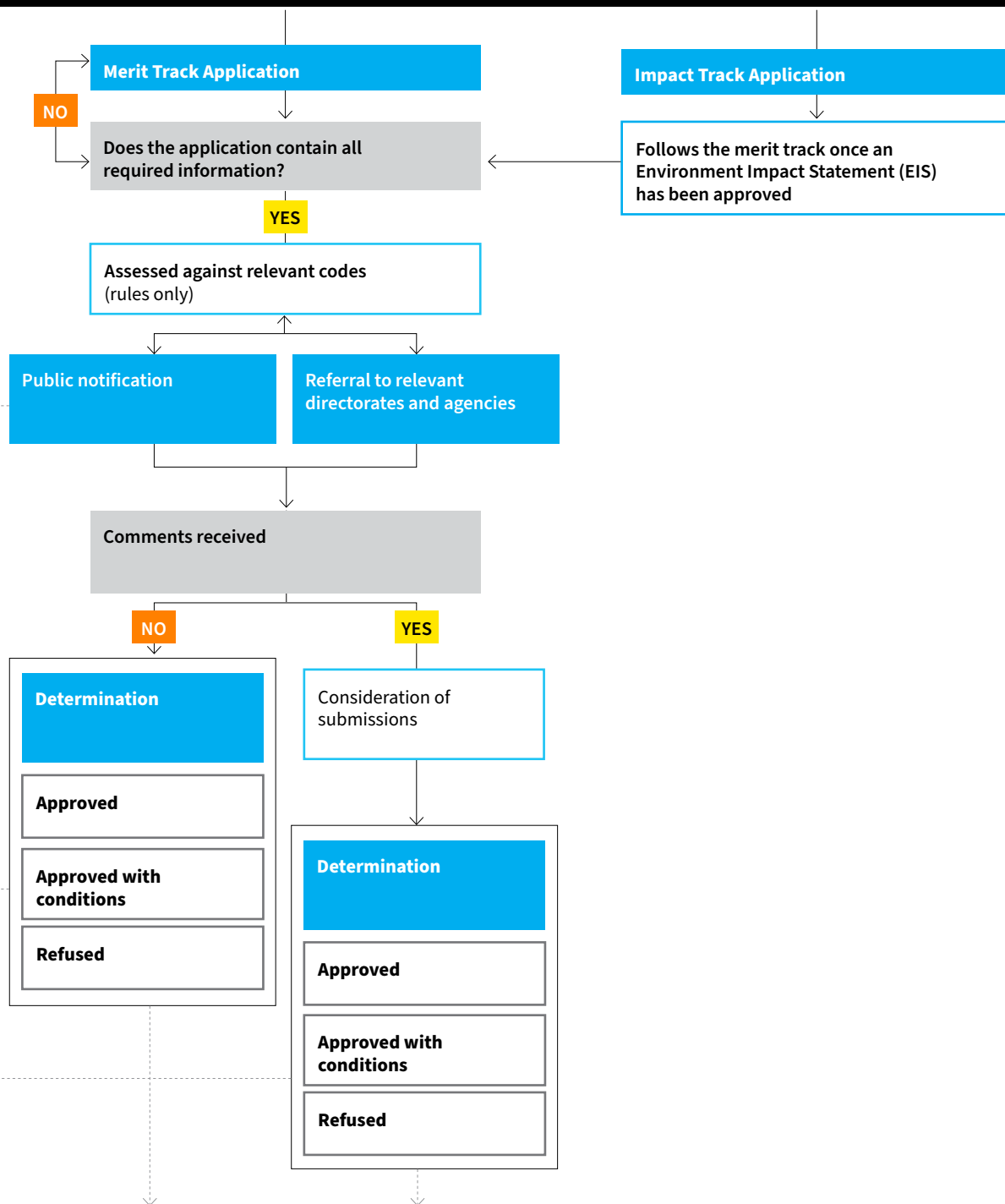
Figure 6 provides a basic illustration of the three assessment tracks. The figure identifies the key steps to reach a determination as well as the timeframes in which a determination is made. Despite differences, one basic similarity remains—under all tracks, applications are determined based on their compliance with the rules and criteria of the relevant codes.

Figure 6 highlights the role of public notification and referral agencies, and the ability of both applicants and third parties to appeal determinations through the ACT Civil and Administration Tribunal (ACAT). The focus of this paper is on the types of applications that can be made, the assessment pathways, their appropriateness in light of major trends in development, and the factors considered in reaching a determination. Consequently, these other factors are not a key focus of the Project.

**Figure 6:** Three assessment tracks and prescribed timeframes







## 2.2 Development assessment gaps and challenges

### *Areas where our planning system can be improved*

The existing development assessment system is operating as intended and provides a level of certainty given its compliance-based nature. However, it creates several challenges that are amplified by the growth, renewal and change being experienced in parts of Canberra and projected to continue:

- Rigid application of assessment tracks defined in legislation make the system complex and inflexible.
- Assessment tracks that do not respond to the scale and complexity of development mean that, in some cases, minor applications go through an arduous process.
- The ambiguity of decision-making criteria in the Act and Territory Plan means the role and weight of policies and other material considerations is not clear.
- The absence of a planning process for large-scale strategic redevelopments limits the ability to plan for and facilitate urban renewal and intensification.
- The approach to re-zoning makes it unclear how it is consistent with the Planning Strategy.

### **Rigid application of assessment tracks defined in legislation**

The Act defines the assessment tracks (code, merit and impact) for developments that are assessable (i.e. require approval). The Act also prescribes requirements for each track in terms of public notification and decision making. This provides a degree of rigidity; while variations to the Territory Plan can change which track a certain type of development falls into, the three assessment tracks can only be amended through primary legislation. Using primary legislation to manage the operational functions of each pathway is unique to the ACT in the context of

contemporary planning systems in Australia. In other systems, the primary legislation states that developments may be exempt, permitted or prohibited, with the pathways for permitted applications established in secondary legislation or development controls.

Having assessments based on legislated pathways means that some types of development are unintentionally caught and must be assessed in an unsuitable track. It also means that applicants are required to determine which track is appropriate (in consultation with the planning and land authority from the outset), and that the application pathway cannot change as the proposal evolves. The Act requires applications made in the wrong track to be refused (s114).

### **Assessment tracks that do not respond to scale or complexity of development**

Assessment tracks are pre-determined by the zone. Development tables in each zone identify the assessment track for a list of specific land uses. Even a relatively simple development that meets all rules in the relevant code must be assessed through the merit track if prescribed by the development table. Therefore, in practice, a single-storey and single-use development is considered in the same assessment track as a 27-storey mixed-use development.

This highlights how the definition of the assessment tracks is inconsistent with the way they operate. As identified earlier, the code assessable track is intended for simple development that meets the rules of relevant codes. This is not always the case in practice.

### **Ambiguous decision-making criteria**

The Act identifies the factors that must be considered in determining an application as well as the circumstances under which an application must be refused. For example, for applications in the merit track, the Act states that the decision maker must consider, among other factors, the:

- objectives for the zone in which the development is proposed to take place
- suitability of the land where the development is proposed to take place.

The Act also states that approval must not be given for the application unless it is consistent with, among other factors, the relevant code. This approach creates significant uncertainty about how these factors should be considered and the relative weight that the decision maker should give each of them in considering an application. For instance, the objective for the zone must be considered, however the Act does not clearly stipulate whether the application may be refused if it is inconsistent with those objectives, yet remains consistent with the relevant code. Consequently, in practice the objectives play little role in the assessment of development applications.

The criteria identified in the Act may also create ambiguity for a user of the planning system. For instance, it is unclear why the zone objectives are listed but not the strategic directions of the Territory Plan. Similarly, a user may wonder why the Planning Strategy is not considered. The Act is clear that the Planning Strategy is not a relevant consideration in respect to development approvals but does not explain why. This is because the policy directions should have been interpreted by zone objectives and codes; however, as discussed in Paper 1–System Structure, Paper 2–Strategic Planning and Paper 3–Development Controls, this line-of-sight is not clear.

### **The absence of a process for strategic developments**

Strategic developments are those that are large, complex and generally include a range of uses and/or building typologies. The current assessment process does not provide a specific or tailored track for these developments, meaning they are currently assessed under the merit track against standard land use zones and codes. The result is that strategic developments often require a Territory Plan variation to tailor the development controls to the proposal.

This results in prolonged decision making (re-zonings typically take 18 months) and may constrain strategic planning for precincts. This contrasts to greenfield developments, where there is a process for managing large-scale development through a structure plan and estate development plan process. Given Canberra's growth and the Planning Strategy's emphasis on urban intensification, the existing development assessment system may not be well placed to meet the contemporary planning needs of the ACT to best effect.

### **The absence of a formal process for proponent-led re-zoning**

Proponent-led re-zoning, through amendments to the Territory Plan, can be considered by the planning and land authority; however, there is no clear or formalised process for doing so. The Act specifies that the Statement of Strategic Directions is to guide the preparation and making of variations, however, the Act does not make clear what factors should be considered in determining whether to approve a re-zoning. This means that re-zonings are considered on their own merits but without a consistent process. This raises concerns about the transparency of the system due to potential inconsistencies in decision making. It may also raise questions in respect to how the process supports or implements the directions of the Planning Strategy.

## 2.3 Community and industry feedback

### *What we've heard from planning stakeholders*

The review of system performance was complemented by ongoing community engagement. We started by analysing feedback from stakeholders on a range of policies, Territory Plan variations, master plans, development proposals and planning projects over the past few years. We then conducted targeted engagement with stakeholders and community on their experience in using or interacting with the planning system and their views on the types of development outcomes it is facilitating.

Three broad issues identified through the consultation process relate, to varying degrees, to system structure:

- The community is broadly supportive of the Planning Strategy but is concerned that its directions will not be implemented.
- The community is concerned by the scale and density of new development and its impact on the character of Canberra.
- The community feels that the current planning system is too complex, which makes the planning process and long-term development directions for the Territory difficult to understand.

These issues are caused by many parts of the planning system, including development assessment. The development assessment process is complex and contributes to the planning system being difficult to navigate. How decisions are made can be similarly hard to understand, particularly due to the limited line-of-sight from policy directions and objectives through to development controls that are described in Paper 1–System Structure, Paper 2–Strategic Planning and Paper 3–Development Controls.

Overall, it is likely that clarifying and streamlining development assessment would address many

of the concerns raised by the community. Development assessment is the means through which most residents and stakeholders engage in the planning system. As such, providing a more streamlined and fit-for-purpose system would increase levels of understanding and support ease of navigation. Incorporating processes for managing growth and change in development assessment would support implementation of the Planning Strategy, providing Canberrans with greater confidence that strategic policy is being implemented at the neighbourhood and Territory-wide level.

## 2.4 System benchmarking

### *What we've learned from elsewhere in Australia and overseas*

The ACT planning system has a relatively similar development assessment framework to other jurisdictions, particularly those in Australia. However, when compared to other contemporary planning systems across Australia and internationally, development assessment in the ACT is less flexible, difficult to interpret and understand, and lacks a means for managing growth and change to best effect.

Other jurisdictions are increasingly streamlining development assessment processes for minor and standard applications. This is complemented by bespoke processes for managing large-scale urban redevelopments and re-zonings in line with strategic planning objectives. In contrast, development assessment in the ACT uses assessment tracks that have unclear purposes or are increasingly redundant. For example, the merit track does not—as its name suggests—enable the consideration of applications on their full merit, and the code track is largely redundant as most development formerly in that category is now exempt. These tracks are also defined in primary legislation that cannot be easily amended. This contrasts to other systems, like Victoria and New South Wales, where assessment pathways are defined in secondary legislation or development controls.





Despite the Planning Strategy identifying future growth and areas of change, there are currently no provisions in place for considering development applications for urban intensification in a streamlined process. Other jurisdictions have arrangements to manage these processes. For example, in the United Kingdom the broad scale and nature of a development can be assessed in an ‘outline application’, with detailed schematic design developed for subsequent approvals known as ‘reserved matters’. In Minneapolis and Toronto, there are clear statutory processes for re-zoning land that are closely tied to the long-term planning strategies of each city. Victoria’s approach is less consistent and straight forward with a range of potential zones and controls to deal with large-scale development that are not used consistently across local governments.

Benchmarking also found that in other jurisdictions the items that are considered in planning decisions are more clearly articulated. For example, all planning schemes (development controls) in Victoria include detailed decision guidelines stating which factors will be considered when determining development applications. As well as detailing the development controls that must be considered, other criteria include “the orderly planning of the area” and “the effect on the amenity of the area”. These support positive development outcomes and provide a level of discretion to refuse applications even where they are compliant with the requirements of zones and overlays.

Other systems also have mechanisms for permitting proposals that do not conform with development controls but contribute to broader planning outcomes. In Minneapolis and Toronto, processes are in place to apply for variances where individual projects are unable to meet specific codes. The approval of these types of applications is considered in the context of long-term planning strategies. These examples provide a means for discretion in systems based on zones, in contrast to the United Kingdom’s discretionary planning system where all proposals are assessed on their merit.

In summary, the important conclusions that were drawn from the benchmark exercise were that other jurisdictions:

- offer greater flexibility in the way development applications are assessed, enabling discretion to be exercised in facilitating complex or integrated development applications
- provide a process to manage change on large sites and precincts that are identified for urban intensification
- provide a process for the re-zoning of land that is led by an owner
- offer much clearer line-of-site between the different tools that make up the planning system, their individual roles, and how they will be used in decision making.

# 3. Proposed directions for reform

## 3.1 Opportunity areas

Development assessment is one of the more complex areas of proposed reform, as any change could impact the application pathways that are currently used by proponents, agents and third parties. While the changes could result in a more streamlined and simpler process, changes to the Act, regulations and Territory Plan would be required. Because the arrangement for processing applications would change, there would also need to be institutional change to the statutory planning functions of the Environment, Planning and Sustainable Development Directorate.



One identified opportunity is to provide clearer and simpler application tracks that would see 'code', 'merit' and 'impact' replaced with one track for simple applications and one or more tracks for complex applications. The triggers, requirements and assessment process could be defined in secondary legislation or the Territory Plan and updated as necessary. This would bring the ACT in line with other jurisdiction such as Victoria, where planning schemes (development controls) establish the circumstances in which streamlined applications for straightforward applications (called 'VicSmart') and standard applications can be made. A system with simpler assessment tracks would be easier to understand than the three-track approach that currently exists.

By clearly defining assessment criteria, the ACT would have an opportunity to establish the relevant considerations and how much weight should be afforded to each. It could provide a means to show where a proposal is consistent with development controls is deemed unsatisfactory. Or conversely, where a proposal that does not meet all standards is acceptable as it facilitates broader planning outcomes. A clear hierarchy of planning considerations would also provide legibility for the community.

Finally, planning reforms provide the ACT with the opportunity to better manage growth and change through the introduction of formal processes for considering re-zonings and larger, strategic applications.



## 3.2 Proposed changes to development assessment

Table 1 identifies the proposed directions for change within the context of development assessment (DA).

**Table 1:** Proposed directions and changes to development assessment

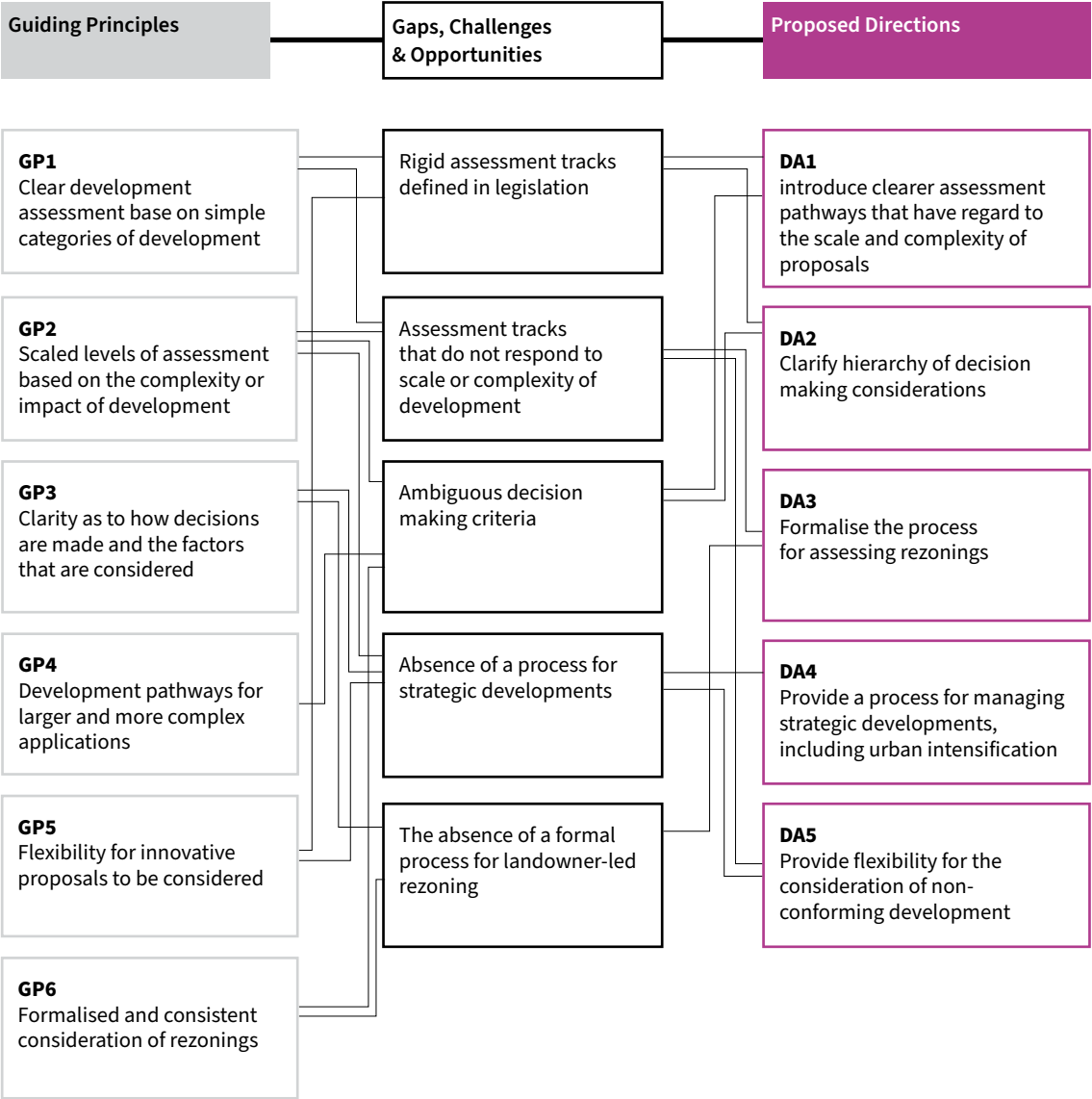
| Development Assessment Direction No. | Proposed Directions   | Potential changes   | Rationale   |
|--------------------------------------|---|---|---|
| DA1                                  | <b>Introduce clearer assessment pathways that have regard to the scale and complexity of proposals</b>  | Enable different classes of applications to exist, with the particulars set out in the regulations and Territory Plan. This could include a pathway for applications of relatively minor scale and complexity and another for standard applications.            | Provides clear development pathways that are based on the relative complexity of an application, rather than its use. Having the operational requirements of the pathways set out in the regulations and/or Territory Plan allows for these to be more easily updated.  |
| DA2                                  | <b>Clarify the hierarchy of decision-making considerations</b><br>(For example, the Planning Strategy, strategic directions, zone objectives, requirements and guidelines, precinct code rules and criteria, other government policies and strategies, responses to public notifications and amenity considerations). | Clarify the hierarchy of considerations that will be used to determine planning decisions. Factors in addition to those already identified might be compliance with strategic directions or other considerations such as the effect on the amenity of the area. | Provides clarity as to what is a relevant consideration and how developments will be assessed, taking into consideration both development controls and other considerations. The proposed direction would also make clear on which basis an application may be refused. |
| DA3                                  | <b>Formalise the process for considering proponent led re-zonings</b>   | Formalise a set of considerations and an assessment process for land re-zonings, including those that are concurrent with development applications. This should be linked to land use plans or directions included within the Planning Strategy.                | A formal process for considering re-zonings will ensure decisions are consistent with strategic planning objectives and provide for a consistent approach that is understood by the community.  |



| Development Assessment Direction No. | Proposed Directions  | Potential changes   | Rationale  |
|--------------------------------------|--|---|--|
| DA4                                  | <b>Provide a process for managing strategic developments, including urban intensification</b>                            | Establish a process for managing change and incremental development on large sites that may include multiple uses and varied built form typologies. This could be through an 'outline' application that considers broader planning outcomes, consistent with the Planning Strategy. The process could involve concurrent Territory Plan variations.   | Provides a streamlined development assessment process for larger developments. This process is likely to become more important as the number and scale of infill developments increases. |
| DA5                                  | <b>Provide flexibility for the consideration of non-conforming development and consideration of development on merit</b> | Provide the discretion for non-conforming developments (either land uses or developments that are non-compliant with codes) to be considered where appropriate to do so. This could include:<br>a provision prescribed where non-conforming development will be permitted<br>a process for concurrent Territory Plan variations.<br>To avoid too much uncertainty this provision should set boundaries on when such applications could be considered. At a minimum, even non-conforming developments should be consistent with the directions of the Planning Strategy or strategic directions of the Territory Plan. | Provides a means for considering innovative proposals that result in strategic planning outcomes being met.  |

Figure 7 summarises how the proposed directions address the current development assessment gaps and challenges and respond to the guiding principles (GP).

**Figure 7:** Reform summary for development assessment



### 3.3 Potential effect of these changes

The potential changes would make development assessment simpler and more relevant to the ACT, helping the Territory balance managing growth and change with preserving the valued character of the Territory. Development assessment 'track' would have regard to the scale and complexity of development and would be named and prescribed such that the community can understand their purpose. If the triggers for development applications and the process of assessing them were established in secondary legislation or the Territory Plan, minor amendments could be made more easily and to suit specific local circumstances. This would remove the rigidity of the current system.

Clearly defining the relevant considerations in planning decisions will support applicants and ensure consistency in assessments. Present ambiguity as to the role of different elements of the planning framework could be removed. In addition, the weight given to other government policies and strategies should be made clearer. Defined decision-making criteria should support

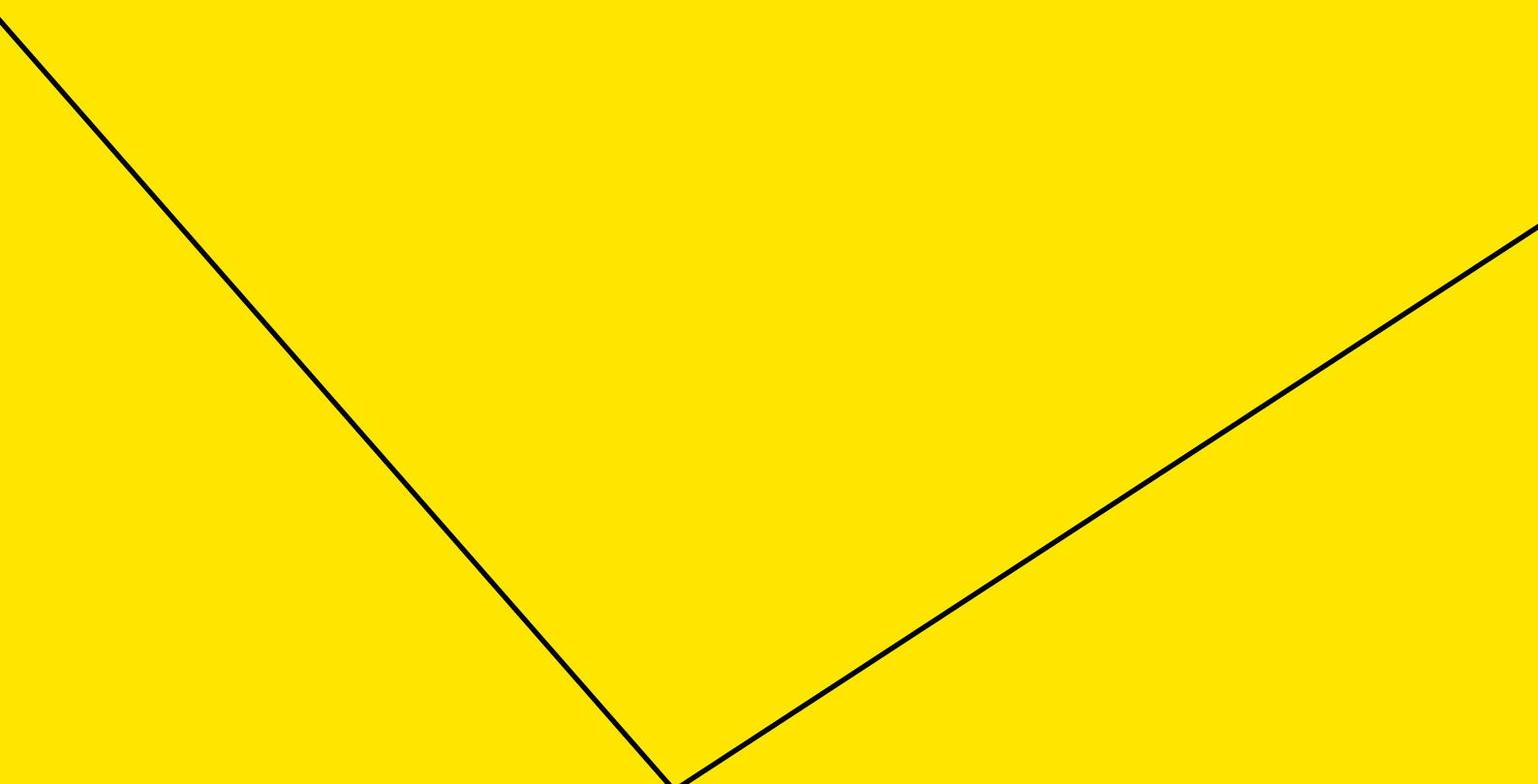
the refusal of conforming applications that would result in poor outcomes, while providing a means for allowing non-conforming development to proceed where the ACT's broader strategic planning objectives would be supported.

A formalised process for re-zoning and an application pathway for large-scale strategic developments would better equip the government to manage growth and change and facilitate planning outcomes that align with strategic planning objectives. It would support management of the Planning Strategy's priorities of urban renewal and intensification.

It is anticipated the proposed changes would benefit development assessment applicants and their agents through clearer and simpler application pathways. Greater clarity would potentially reduce reliance on pre-application discussions. Pathways suited to the scale and complexity of development would reduce time administering minor applications. A simpler process should be less resource intensive to manage and enable the planning and land authority to focus its efforts on strategic and significant applications.



## 4. Next Steps



Implementation of a reformed development assessment system requires changes to the *Planning and Development Act 2007*, and, in turn, the planning regulations and the Territory Plan. The implementation of development assessment recommendations therefore closely relates to other areas of reform, particularly development control, and cannot be undertaken in isolation. As the changes require changes to primary and secondary legislation and development controls, they must have regard to—and support—the broader directions.





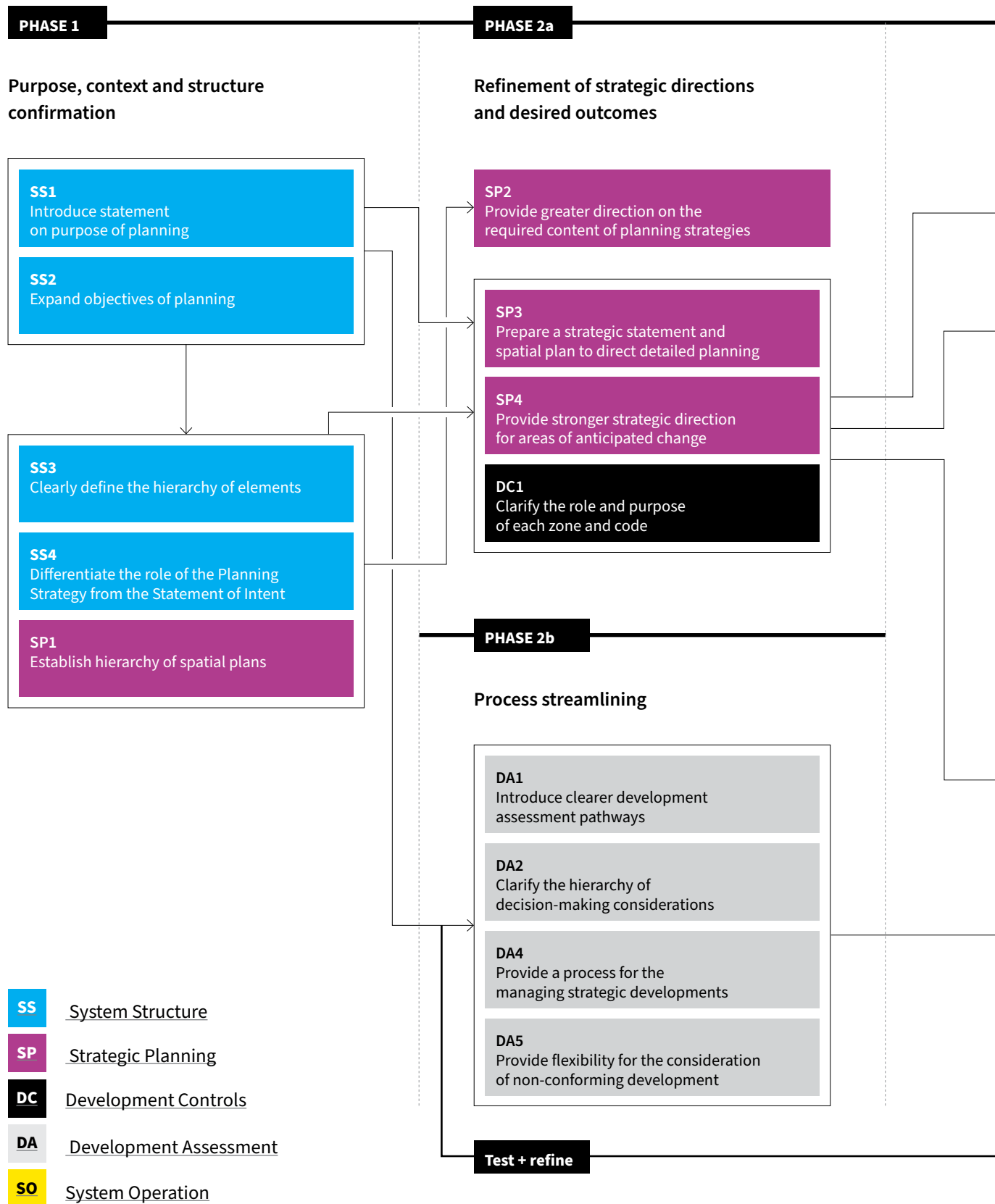
Figure 8 identifies the development pathway for the project and how the proposed development assessment directions relate to the proposed directions identified in the other four papers.

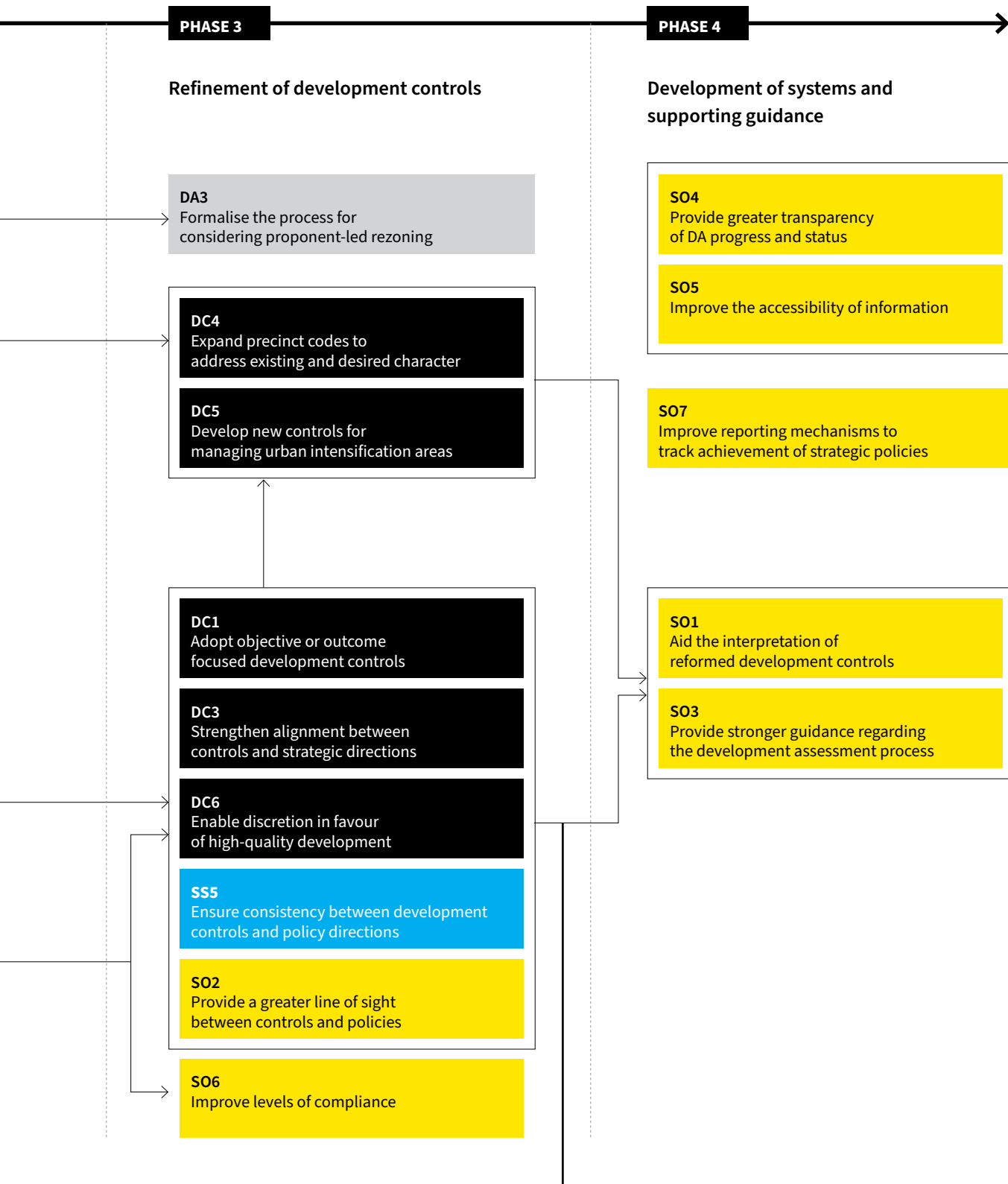
Figure 8 illustrates that confirming the purpose and objectives of planning (directions SS1 and SS2) are the most critical decisions of the Project, enabling subsequent development of strategic and statutory planning processes (including directions DA1, DA3, DA4 and DA5).

Development controls can, in turn, be shaped to suit the types of applications, application processes, and decision criteria proposed through this focus area. This may be an iterative process with the details of development application and determination processes needing to be reviewed once a preferred concept and structure for development controls has been agreed.

Work has commenced on a range of technical task, and will continue through 2021. Outcomes of this technical work will be used to develop implementation proposals in 2021.

**Figure 8:** Project pathway for development assessment





# Glossary of terms

**ACT planning and land authority:** The Chief Planning Executive of the Environment, Planning and Sustainable Development Directorate is the ACT planning and land authority.

**ACT Planning Strategy:** The strategy produced by the Environment, Planning and Sustainable Development Directorate titled ACT Planning Strategy 2018<sup>1</sup>.

**ACT planning system:** Legislation, policies, rules, plans and strategies that control and inform planning and development in the ACT.

**Area planning:** Planning at a district level to bridge the gap between ACT-wide and local area planning to provide an opportunity to build on existing and emerging government policies, plans and strategies.

**Built environment:** The structures and places in which we live, work and play, all of which are integral to improving the health, wellbeing and quality of life of our community as a whole.

**Character:** Character makes an area distinctive and contributes to the identity of the place.

**Codes:** A series of policies and instructions relating to planning. Three types of planning codes in the Territory Plan are: precinct, development and general codes.

**Concept plan:** A precinct code under the Territory Plan that guides the preparation and assessment of development in future urban areas.

**Design principles:** A set of design ideas that enable the consistent consideration of a range of design related issues including at a broader city, neighbourhood or site-specific scale.

**Development application:** The information package lodged with the planning and land authority to enable an assessment of a given proposed development to be conducted.

**Development assessment:** The processes through which development applications are assessed and considered. They are either approved, refused or required to resubmit with further detail.

**Development code:** A set of detailed rules and criteria which applies to a set of developments as outlined in the Territory Plan<sup>2</sup>.

**Development controls:** Are documented in the Territory Plan<sup>2</sup> in the various codes and development tables. They are the policies that are used to control or manage development in line with planning objectives.

**Exempt development:** The development proposed is exempt from requiring development approval under a development table or by regulation.

**General code:** Planning provisions that address particular planning and design issues which may relate to any kind of development across any of the zones within the Territory Plan<sup>2</sup>.

**Greenfield:** Greenfield areas are undeveloped land often located on the edge of existing urban areas and usually identified by a future urban area overlay in the Territory Plan.

1 [https://www.planning.act.gov.au/\\_\\_data/assets/pdf\\_file/0007/1285972/2018-ACT-Planning-Strategy.pdf](https://www.planning.act.gov.au/__data/assets/pdf_file/0007/1285972/2018-ACT-Planning-Strategy.pdf)

2 <https://www.legislation.act.gov.au/nj/2008-27>



**Guidelines:** Documents that provide guidance on how to implement official advice but do not include specific development controls.

**Land use:** The way in which a piece of land is used which includes the activities that are undertaken on it such as residential, industrial, community facility, recreational and commercial.

**Leasehold:** System of land ownership that applies to all land in the ACT, other than National land.

**Living infrastructure:** Refers to all the interconnected ecosystems within an urban catchment, including trees, gardens, green walls and roofs, parks, reserves, lakes, wetlands and open spaces.

**Master plan:** Non-statutory document that outlines a vision to guide growth and development of a centre over the next 20-30 years.

**National Capital Plan:** The metropolitan plan for Canberra and the Territory that requires 'Canberra and the Territory are planned and developed in accordance with their national significance'. It is prepared and administered by the [National Capital Authority](http://www.nca.gov.au)<sup>3</sup>.

**Outcomes-focused planning:** A system that focuses on the substantive matters to be addressed without specifying in detail how that will be achieved. It is one that is centred on the quality, results and performance of planning system outcomes, rather than rule compliance.

**Overlays:** Territory Plan overlays are a set of planning instructions that apply to areas which have special controls in place; e.g. Public Land Reserves, Future Urban Areas.

**Planning:** Also called urban or regional planning, is the process of making decisions to guide future action and is specifically concerned with shaping cities, towns and regions by managing development, infrastructure and services to improve social, economic and environmental outcomes.

**Planning and Development Act 2007** (the Act): The legislation which provides the framework for the ACT planning system<sup>4</sup>.

**Precinct code:** A set of planning instructions which sets out the requirements that apply to individual suburbs or geographical areas (precincts).

**Rules:** A series of provisions which provide definitive controls for development. In relation to a code, means the rules set out in the code.

**Spatial plan:** A document which provides the direction for a specific area within the planning system and is used to inform the outcomes of development applications.

**Spatially-led planning:** Planning that places a greater emphasis on strategic spatial planning and physical direction of the Territory at different scales, from the city level to the local-area and site levels of planning, as well as improved planning and built form outcomes.

**Stakeholder:** Any person, institution, organisation, agency, department, authority, club, association or the like which is directly involved in the planning process.

**Statement of Planning Intent:** A statement prepared by the Minister for Planning which sets out the main principles that are to govern planning and land development in the ACT.<sup>5</sup>

<sup>3</sup> <https://www.nca.gov.au>

<sup>4</sup> <https://www.legislation.act.gov.au/a/2007-24/>

<sup>5</sup> [http://www.cmd.act.gov.au/\\_\\_data/assets/pdf\\_file/0006/865482/Canberra-A-Statement-of-Ambition.pdf](http://www.cmd.act.gov.au/__data/assets/pdf_file/0006/865482/Canberra-A-Statement-of-Ambition.pdf)

**Statement of Strategic Directions:** A series of broad strategic principles to guide long term planning for the ACT in the [Territory Plan](#)<sup>2</sup>.

**Statutory planning:** The part of the planning process that is concerned with the regulation and management of changes to land use and development which includes act of controlling land uses within an area covered by a land use plan.

**Strategic planning:** The long-term strategic or policy objectives that describe the purpose and direction of the planning system.

**Structure plan:** A document which sets out the principles and policies for development of future urban areas.

**Territory Plan:** The key statutory planning document in the ACT<sup>2</sup>.

**Urban Footprint:** The geographic extent of the existing urban area.

**Urban infill:** Development of unused or underutilised land in existing urban areas. It involves increasing the capacity of our existing urban area to support growth.

**Urban intensification areas:** Targeted areas where development and redevelopment is directed and is aligned with supporting infrastructure and provides the opportunity for renewal and investment.

**Urban renewal:** The process of improving the economic, social and environmental sustainability of a particular urban area through redevelopment of underutilised urban areas.

**Zones:** Areas defined within the [Territory Plan](#)<sup>2</sup> which determine the appropriate land uses for an area.





