



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

Exhibit

Inquiry into ACT's heritage arrangements

Exhibit Number: 015

Date Authorised for Publication: 23 May 2023

ISCCC Submission

Summary:

- Value of heritage is incalculable
- Garden City character of the Inner South is integral to the story of the evolution of the national capital
- A level of heritage recognition was introduced – by the NCDC - prior to self-govt
- 1990s - the Heritage Register was opened & included in the Territory Plan (TP)
- 2004 - new Heritage Act coincided c the removal of the Heritage Register from the TP

Recommendations:

- A. Integration of Heritage Recognition c Territory Planning [9 points]
[points8/9] *When in the – expert - opinion of the Heritage Council a proposal would diminish heritage significance of a place, that expert opinion must prevail.*
- B. Review of Heritage Arrangements [6 points]
- C. Heritage Act 2004 [7 points]
Note: reinstate right of merit review
- D. Heritage Council [9 points]
Stand alone [see A. above]
- E. Heritage Register [2 points]
Register is difficult to navigate
Clear & concise mandatory requirements are not applied
- F. Heritage Advice in practice [2 points]
Consistent “one stop” access point?
Publications which reinforce value of heritage

Individual Submission: AF

The pathway for assessment of development proposals affecting/ involving properties with heritage value must be clarified, simplified and legislated. Furthermore, the power to approve or reject these development proposals must reside with the Heritage Council, or a properly constituted Heritage Council Taskforce. The final approving body must be the Heritage Council independent of day to day political pressures.

Suggestions:

- more details re the points raised in our submissions?
- conducted walk within a Heritage Precinct



ACT Heritage Council

File ref: Forrest-S4-B4

Contact Officer: [REDACTED]

Phone: 13 22 81

Date Received: 19 July 2022

Heritage Advice – Block 4, Section 4, Forrest

Please find attached a copy of ACT Heritage Council (Council) advice to the ACT planning and land authority, regarding proposed works at Block 4, Section 4, Forrest.

The Council notes that Section 1.14 of the *Planning and Development Regulation 2008* provides the following criteria for exempt development in relation to heritage places:

- 1) A development must not contravene the *Heritage Act 2004*, the *Tree Protection Act 2005*, the *Environment Protection Act 1997* or other applicable laws;
- 2) A development (other than a class 10 building or structure) must not be located at a place or on an object included in the heritage register or under a heritage agreement; or cause any part of a building or structure (other than a class 10 building or structure) to be located at a place or on an object included in the heritage register or under a heritage agreement;
- 3) Subsection (2) does not apply if the Council gives the planning and land authority written advice that, in the Council's opinion, the development:
 - a. will not diminish the heritage significance of the place or object; or
 - b. is in accordance with heritage guidelines, or a conservation management plan approved by the Council under Section 61K the *Heritage Act 2004*; or
 - c. is an activity described in a statement of heritage effect approved by the Council under Section 61H of the *Heritage Act 2004*.

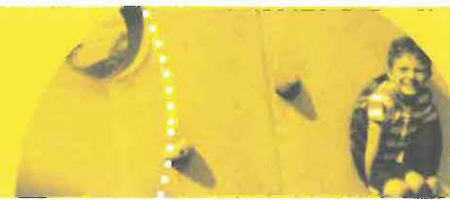
The attached Council advice concludes that proposed works will not diminish the heritage significance of the place, subject to conditions. However, the Council cannot determine whether any other approval is required for the works, and it is recommended that you also seek advice on whether all exemption criteria have been met.

Yours sincerely

[REDACTED]

ACT Heritage Council

20 September 2022



Exempt Development and Exemption Declarations

(Draft Planning Bill)

The planning system currently allows low-risk development to occur without development approval. This is called exempt development. Things like garden sheds, clothes lines and single dwelling homes may be exempt when certain requirements are met.



Exempt development allows the planning system to operate more effectively.

The new planning system creates a standalone Exempt Development Regulation, which will make it easier to find out about the types of exempt development.

What's different?

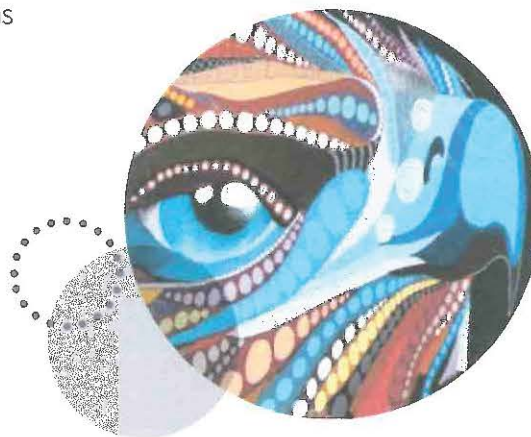
Given the regular use of exemptions by the development and building industries, the approach through the reform process has been to prioritise certainty over change, with change happening only where necessary. Minor changes to some of the existing provisions have been made to make them clearer.

The General Exemption Criteria will also remain as they provide important safeguards for exempt works and require other regulatory schemes to be considered before exemptions can apply.

New exemptions

Murals

A new exemption has been added to allow some murals (street art) to be painted on to buildings without development approval. This reflects a desire to support street art, which adds to the vibrancy and attractiveness of the city. The new exemption contains important limitations to protect against offensive or unsightly murals, and potential driver distraction.



Minor utility works

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. The new exemption contains important limitations to protect against impacts to nearby residents and the public including, where relevant, height and plan area limits, a limit on distance to residential blocks, written public notice and compliance with other regulatory schemes.





Exemption declarations

Single dwellings may be exempt from requiring development approval under the current planning system where they meet the requirements of the Single Dwelling Housing Development Code (and other required criteria).

An exemption declaration is a type of minor approval that can be issued by the Territory Planning Authority. It allows a single dwelling, which would be exempt except for one or more minor departures from the requirements (called encroachments), to continue to be dealt with as exempt development. For example, to depart slightly from the boundary setback requirements or the need to provide open space on your own block.

This minor approval process allows many developments to avoid the lengthy and expensive development application process in circumstances where the minor departure is unlikely to have an adverse impact on anyone but the owner of that house.

Under the current legislation, the planning authority can declare a dwelling to be exempt even with a minor departure from the rules of the Single Dwelling Code. In all cases, the departures must be consistent

with the applicable criteria under the Single Dwelling Code and the planning authority must be satisfied the departures are minor and will not adversely affect neighbours.

Exemption declarations have caused concern amongst some community members who believe there is a lack of transparency around the issuing of exemption declarations. Sometimes neighbours tell us they are impacted by an encroachment.

These concerns have been considered and weighed against the important role exempt development and exemption declarations play in keeping low-impact developments outside of the development assessment process. It is proposed they will remain in the new Exempt Development Regulation but with additional transparency measures and a change for solar encroachments.

The draft Regulation also introduces an expiry for exemption declarations. Exemption declarations will be effective for 36 months (i.e. the exempt development must happen during this period), or such longer period as is specified in writing by the planning authority.

Increasing transparency

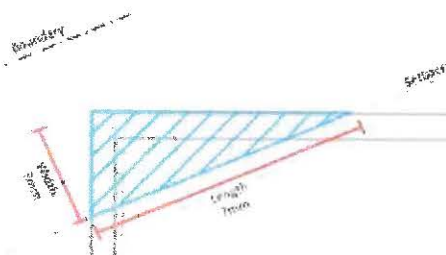
The draft Exempt Development Regulation aims to increase transparency where exemption declarations are issued:

- ✦ The Territory Planning Authority may only make a declaration where it is satisfied the requirement to provide information to neighbours has been met.
- ✦ Neighbours will be entitled to receive:
 - site plans
 - elevation plans
 - shadow diagrams where an encroachment into the solar building envelope is proposed.

Limits for solar building envelope

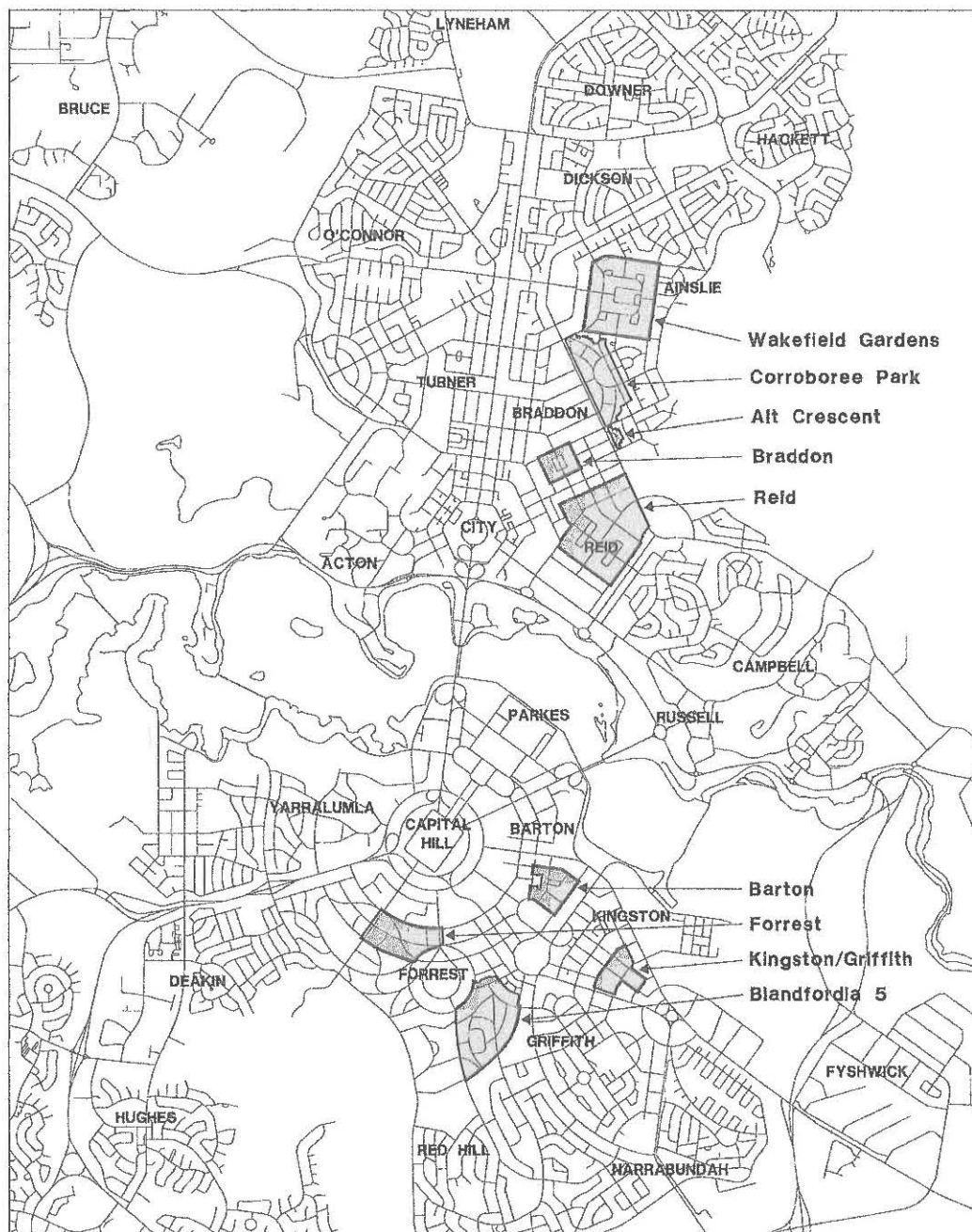
The draft regulation provides that encroachments into the solar building envelope may only be the subject of an exemption declaration where the encroachment does not cause shadowing to any habitable room or principal private open space of another block. This will protect neighbours and make clear that exemption declarations that relate to encroachments into the solar building envelope are only available in very limited circumstances.

Example: An encroachment (blue area) into the area between the boundary line and the setback line. An exemption declaration could be issued to approve this encroachment.



EXTRACT FROM ACT HERITAGE REGISTER

Figure 1: Canberra's Early Garden City Planned Precincts





Notice About Building Work

Address: 71 Flinders Way
Griffith

Block: 15 Section: 10

This Project being undertaken is for the construction of
Construction of a new dwelling including basement

Development Approval Number: DA Exempt

Builder

Estate Constructions

ACT Licence Number: 2020773

ACN Number: 640 951 980

Phone Number: 0412 508 306

Building Certifier

BCA Certifiers Australia Pty Ltd

ABN Number: 58 119 735 734

Phone Number: 0285 1604

After Hours Contact: Anthony Malachuk - 0412 608 306

DANGER

CONSTRUCTION SITE

**UNAUTHORISED PERSONS
KEEP OUT**



**SAFETY FOOTWEAR
MUST BE WORN
ON SITE**



**HIGH VISIBILITY
CLOTHING MUST BE
WORN ON THIS SITE
WHERE REQUIRED**

