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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

**GOVERNMENT 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 Government amendments to the Planning (Territory Priority Project) Amendment Bill 2025 (the **bill**) as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the 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.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The government amendment introduces new clauses to define development related to community housing as a territory priority project (TPP), under section 216 *Planning Act 2023* (the **Act**). This is in addition to development proposals related to public health facilities and public housing, as introduced in the bill. The effect of this, developments related to community housing will not need to be declared as TPPs under section 218 of the Act.

The government amendments also provide that, if a development that is related to community or public housing requires an environmental impact statement (EIS), or if it would impact on an Aboriginal object or place, then it's TPP status is removed.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on the government amendments was conducted with the Territory Planning Authority, internally within the City and Environment Directorate and externally with the community housing industry.

CLIMATE IMPACT

This government amendment has been assessed, and it has been identified as having no material impact on climate change. None of the amendments contribute to emissions production or abatement within the ACT community nor are there any adaptation impacts against key climate risks to the ACT.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the bill due regard was given to its compatibility with the rights set out in the *Human Rights Act 2004* (the **HR Act**). As outlined in the explanatory statement presented in the Legislative Assembly on 5 February 2025, the bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the HR Act.

Rights engaged

However, the government amendments engage with the right to a fair trial under section 21 of the HR Act.

Right to a Fair Trial

1. Nature of the right and the limitation (s 28 (a) and (c))

The right to a fair trial is protected by section 21 of the HR Act. Section 21 protects the right to procedural fairness, and can also extend to protect third parties whose substantive legal rights may be affected by a determination, for example in planning decisions.

The bill limits the right to a fair trial by placing restrictions on appeal rights, as expanding the section 216 definition of a TPP to include a development proposal relating to a community housing will mean that these proposals are exempt from third party appeal rights in the ACT Civil and Administrative Tribunal (ACAT).

In accordance with chapter 15 and part 6.2 of the Act, all TPPs are exempt from third party appeal rights. This is irrespective of whether the TPP is for a development mentioned in section 216 of the Act, or for a TPP where a declaration is made under section 218 of the Act.

The amendment of section 216 of the Act through clause 4A of the government amendments, results in development applications (DA) for community housing being

automatically considered as TPPs, without the need for a declaration under section 218 of the Act. In effect, this means that DA decisions for a development proposal related to public housing and a development relating to a public health facility are exempt from third party ACAT review.

2. Legitimate purpose (s 28 (b))

The objective sought to be achieved by these provisions is to provide certainty in the development and construction of critical community housing that will help achieve wider policy outcomes and broader public benefits. The inclusion of developments related to community housing as a TPP will help incentivise their proposal by ensuring lengthy delays which often result from third-party appeals are avoided.

For proposals related to community housing, these developments will help achieve a major government policy outcome that will be of significant benefit for the people of the ACT.

3. Rational connection between the limitation and the purpose (s 28 (d))

Restricting third parties who may wish to challenge DAs limits review rights, meaning fewer parties are able to seek ACAT review.

Reducing the number of potential reviews on these development decisions will maximise efficient decision-making and will help ensure timely delivery of critical community housing. These developments will help achieve a major government policy outcome that will be of significant benefit for the people of the ACT.

4. Proportionality (s 28 (e))

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose.

In the case of limiting the ability to review a DA on community housing development proposals, the limitations are proportionate to the significant benefits these projects provide to the ACT community, such as by incentivising the delivery of more affordable housing.

Limiting the ability to review decisions of developments mentioned in clause 4A of the government amendments is justified on the basis that division 7.5.4 of the Act includes extensive public notification requirements for all DAs, including those

related to TPPs. During this process, the decision-maker is required to consider all representations made during the public notification period. A further safeguard is that members of the public may still seek judicial review of development decisions where this is available under the *Administrative Decisions (Judicial Review) Act 1989*.

Limiting the application of these changes to community housing, in addition to public health facilities and public housing proposed in the bill, helps achieve the legitimate purpose of assisting to deliver infrastructure that will be of significant benefit to the people of the ACT. Specifically, private housing developments continue to be excluded as these proposals account for the majority of 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

Government amendment 1

Clause 4 Section 216, definition of territory priority project, proposed new paragraph (e)

This clause inserts a new paragraph (e) into section 216 to provide that a development proposal related to community housing is a territory priority project.

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 Legislation amended

This clause sets out that the Act amends the *Planning Act 2023*.

Clause 4 Meaning of *territory priority project* Section 216, definition of *territory priority project*, new paragraph (c) and (d)

This clause inserts new paragraphs (c) and (d) into section 216 to provide that, a development proposal related to a public health facility or a development proposal related to public housing, is a territory priority project.

Government amendment 2

Clause 4A New section 216 (2) and (3)

This clause inserts new paragraphs specifying that, a development proposal related to public housing or community housing, as mentioned in subsection (1), no longer is a territory priority project if:

- An 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 subsequent development application for the proposal is required to be referred to the heritage council because the development will impact an Aboriginal object or place.

Government amendment 3

Clause 5 New section 217C

This clause inserts a meaning of 'related to community housing'. This definition limits what is considered to be a territory priority project under section 216.

This definition outlines that essentially all development undertaken by, or on behalf of, a registered community housing provider that is an ACNC registered entity are

captured. This is provided the development is wholly or partly funded by the Territory or the Commonwealth, such as through the Territory or Commonwealth budget, grants, or the like.

The intent of this provision is to provide for the various circumstances of initial construction, knockdown-rebuilds, other extensions or additions, and associated subdivisions, consolidations, boundary adjustment and lease variations, including when they are undertaken by someone contracted by the community housing provider. This also provides that government-proposed projects that include a mixture of housing typologies, including some market value housing, are captured.

However, the provision outlines that developments that involves more than 100 dwellings, including any dwellings not used for community housing, or where the development is comprised of less than 10% community housing are not a territory priority project.

Government amendment 4

Clause 6A-6D Section 218 (3) wording change

This clause makes several wording changes that mandates the Minister to always seek advice of the territory planning authority, before making a territory priority project declaration. Previously, this was optional.

Clause 6E New section 218 (3A)

This clause inserts paragraphs specifying that before giving advice to the Minister under subsection (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 authority must also consult the 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 Section 218 (5), new definitions

This clause inserts definitions for Aboriginal object and place, referencing existing definitions articulated by the *Heritage Act 2004*.

Clause 6G New section 220A

This clause inserts a requirement that the Minister must, as soon as practicable after 1 December 2028, review the operation of the amendments made to this chapter by the *Planning (Territory Priority Project) Amendment Act 2025*, and must present a report of the review to the Legislative Assembly before 30 June 2029. It defines an expiry date for the section of on 30 June 2030.

Government amendment 5

Clause 8 Dictionary, new definitions

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