

# NEW PLANNING SYSTEM



Introduction to  
planning system reform  
- development assessment



ACT Planning &  
Land Authority



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# Introduction

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## About planning system reform

The ACT Government is committed to making the current planning system simpler, easier to use, faster and more effective for residents, industry, business and the community. Much of the reform deals with long-term fundamental change to the structure of the system. These changes have been reflected in the *Planning and Development Act 2007* and restructured Territory Plan.

## About this guide

ACTPLA has developed this guide to accompany new planning system training for both industry representatives and ACTPLA staff as well as for applicants and registered, licensed or accredited professionals for the purposes of making a development application in the ACT from March 31, 2008 onwards. This guide contains information about the key components of reform and the new development assessment model.

# Glossary

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AAT	Administrative Appeals Tribunal
ACTPLA	ACT Planning and Land Authority
DA	Development application
EIS	Environmental Impact Statement



# Overview of reform

## Key components of reform

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### Key reform components

The key components of planning system reform are:

- a restructured Territory Plan;
- a new piece of legislation, the *Planning and Development Act 2007*;
- an updated development assessment process;
- a redefined public register;
- widened exemptions from building approval and enhancement of building certifiers' regulatory role; and
- replacement of Preliminary Assessments with an EIS process.

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### Restructured Territory Plan

The following table lists the key changes to the Territory Plan under planning system reform and their benefits.

Changes	Benefits
Incorporates existing planning controls from guidelines such as Neighbourhood Plans and Master Plans into the Territory Plan	Consolidates and simplifies land use policies, guidelines and development codes
Technical amendments to the Territory Plan	Certain types of Territory Plan Variations can go through a quicker process
New terminology	Better aligns with the terminology of the <i>Planning and Development Act 2007</i>
Rules and criteria in Assessment Codes	Clear guidance on what ACTPLA will assess a DA against Provides options for the applicant in designing their proposal
New development tables	Clarifies the minimum assessment track, assessable and prohibited development, and the applicable Assessment Code for a DA

Key components of reform continued

**Planning and Development Act 2007**

The following table lists the key changes to the *Planning and Development Act 2007* and their benefits.

Changes	Benefits
Classifies new assessment track system	Enables easy identification of which assessment track a DA will follow Provides transparency and consistency in the DA process
Includes definitions of new terminology	Assists the consistent interpretation of requirements and removes ambiguity
Outlines new development assessment framework	Provides transparency and consistency in the way DAs are processed
Outlines new DA amendment process requirements	Clearly establishes when an amendment application can be made and what process the amendment must follow Provides the community with certainty that the amendment process can not be used to substantially change a development proposal
Outlines the EIS process	Clear and transparent process for completing EIS requirements Process works together with the <i>Environment Protection and Biodiversity Conservation Act 1999 (C'wth)</i> requirements
Outlines new compliance regime requirements	New compliance mechanisms ensure interests of community and individuals are protected Increased penalties provide added incentive for self-compliance Clear and transparent complaints process

## Key components of reform continued

**Updated  
development  
assessment  
process**

The following table lists the key changes to the development assessment process under planning system reform and their benefits.

Changes	Benefits
Includes a range of development assessment tracks	Enables easy identification of which assessment track a DA will follow Provides transparency and consistency in process
Outlines in detail timelines relating to the development assessment process	Applicants are provided with greater certainty of the time period a DA is likely to take for a decision to be made
Changes to appeals process	Tighter eligibility requirements for third party appeals No first or third party appeals for code track DAs
Refinement of entity referral process	Entities have a specified period in which they are to provide comments to ACTPLA once a referral is issued If an entity fails to provide advice in the specified time it is taken to have supported the application Entities are bound by their advice For code track DAs, entity advice must be sought prior to the lodgement of the DA For merit and impact track DAs, entity advice can be sought prior to the lodgement of the DA and submitted as a supporting document
Removal of six-month limit for ACTPLA to make approval decisions	Allows ACTPLA to make well considered decisions on the large-scale, more complex DAs which under the current system would have to be heavily conditioned or refused
Includes ability to request written pre-application advice	Allows a proponent to seek advice on: <ul style="list-style-type: none"> <li>the likely track a DA will be processed in;</li> <li>whether notification will be required;</li> <li>what entity referrals will be required; and</li> <li>any other issues that may need to be addressed as part of a DA</li> </ul>
New fees and charges	Easily understood fee structure aligns with development tracks

## Key components of reform continued

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### **Redefined public register**

The following table lists the key changes to the public register under planning system reform and their benefits.

<b>Changes</b>	<b>Benefits</b>
Clearly defines all documents that are available or not available	Removes confusion over what documents can be provided from the public register and what must be sought under the <i>Freedom of Information Act 1989</i>
Exempts residential floor plans from being included in the public register	Addresses issues around the security of a person's home Addresses copyright concerns raised by architects and draftspersons

## Key components of reform continued

**Widened exemptions from building approval and enhancement of building certifiers' regulatory role**

The following table lists the key changes provided by the *Building Legislation Amendment Act 2007* under planning system reform and their benefits.

Changes	Benefits
Updates building certifier's role to include certain site work that is not building work	Permits certifier to be the sole regulator of exempt houses; no need for ACTPLA approval
Extends the grounds that may be relied upon to prohibit carrying out building work by a stop work notice	Assists Government to ensure buildings are not built unlawfully
Outlines that a stop work notice suspends a building approval	Assists Government to ensure buildings are not built unlawfully
Exempt buildings or building work is now referenced in the <i>Planning and Development Regulation 2008</i>	Makes it easier for the public to find and understand what works are exempt
Certifiers must not approve a building application if it is not consistent with the advice of a referral entity	Reduces the risk of prosecution of building owners for contravention of laws that protect, for example, electricity, sewer and water networks
New process through regulation to enable a Certificate of Occupancy and Use to be issued in circumstances where it currently cannot happen	Allows building owners to use certain unlawfully constructed buildings but warns future purchasers of the unlawful construction

Key components of reform continued

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**Replacement of Preliminary Assessments with an EIS process**

The following table lists the key changes included in the replacement of Preliminary Assessments with an EIS process under planning system reform and their benefits.

<b>Changes</b>	<b>Benefits</b>
Clarifies the requirement for an EIS	Provides an appropriate level of environmental assessment for the type of development being considered
EIS scoping process	Ensures that the EIS is focused on those matters likely to cause a significant environmental impact
EIS is finalised prior to lodging DA	The adequacy of the EIS is determined prior to the consideration of the DA
DA addresses EIS outcomes	Assessment can focus on how the DA responds to the findings of the EIS rather than the adequacy of the EIS

## Development assessment

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- Development types** Under the *Planning and Development Act 2007*, development proposals are:
- exempt;
  - assessable; or
  - prohibited.

Development type	Description
Exempt	Certain small-scale or less complex proposals are classified exempt and will not require development approval and, in some cases, no building approval; proposal is either exempt under the relevant development table of the Territory Plan or exempted by regulation
Assessable	DAs that are assessed against the relevant Assessment Code of the Territory Plan and will be in: <ul style="list-style-type: none"> <li>• code track;</li> <li>• merit track; or</li> <li>• impact track</li> </ul>
Prohibited	A development prohibited under the relevant development table of the Territory Plan or a development by an entity other than the Territory or a Territory authority in a future urban area, unless the structure plan for the area states otherwise

- Determining development types and tracks** The Territory Plan includes development tables for each zone in the Territory Plan. By using the development tables from the relevant zone, a person will be able to determine whether a development is:
- exempt from development assessment;
  - assessable under the code, merit or impact tracks; or
  - prohibited.

## Development assessment continued

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### **Territory Plan development tables**

The development tables in the Territory Plan set out:

- development exempt from development assessment;
- development assessable within a zone;
- the assessment track that applies to a proposal;
- prohibited development;
- development exempt from development assessment; and
- the Codes in the Territory Plan that DAs must be assessed against to be considered for approval.

For further information see:

- [Territory Plan 2008](#)

## Development assessment continued

**Three DA assessment tracks**

Under the *Planning and Development Act 2007* there are three assessment tracks:

- code;
- merit; and
- impact.

For further information see:

- *Planning and Development Act 2007*, Part 7.2

Track	Description	Further information
Code	DAs that: <ul style="list-style-type: none"> <li>• are assessed against specific rules in the relevant Assessment Code of the Territory Plan; and</li> <li>• must be approved if they satisfy all of the relevant rules</li> </ul>	<i>Planning and Development Act 2007</i> , Part 7.2.2
Merit	DAs that: <ul style="list-style-type: none"> <li>• are assessed against specific rules and criteria in the relevant Assessment Code of the Territory Plan; and</li> <li>• may be approved, even if they do not meet the relevant rules, provided they meet the relevant criteria</li> </ul>	<i>Planning and Development Act 2007</i> , Part 7.2.3
Impact	DAs that: <ul style="list-style-type: none"> <li>• are assessed against:               <ul style="list-style-type: none"> <li>– specific rules and criteria in the relevant Assessment Code of the Territory Plan, and</li> <li>– Environment Impact Statements unless the EIS requirement is exempted by the Minister; and</li> </ul> </li> <li>• may be approved, even if they do not meet the rules or criteria provided they satisfy the intent, objectives and Statement of Strategic Directions of the Territory Plan</li> </ul>	<i>Planning and Development Act 2007</i> , Part 7.2.4

## Building certifier's role

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**Aim of reforms** Under the *Building Legislation Amendment Act 2007*, the building certifier's role has been reformed. The Act aims to "facilitate making private sector building certifiers a one-stop-shop for all of the plan approvals and associated certifications necessary to erect buildings that are exempted from requiring development approval".

It is anticipated that people seeking to build new houses that meet development exemption criteria will only have to deal with a single entity, the building certifier, to obtain all of the plan approvals necessary to commence construction.

For further information see:

- *Building Legislation Amendment Act 2007*
- *Building (General) Regulation 2008*

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### Reforms to certifier's role

The reforms that relate to the certifier's role include the following:

- widening the building certifier's role to include verifying that a development is exempt;
- empowering building certifiers to require applicants for building approval to provide information or documents necessary to help decide the application;
- encouraging certifiers to use electronic communication;
- creation of new offences against a certifier if a certifier issues a building approval under the *Building Act* in contravention of the relevant requirements of the *Building Act*;
- requiring certifiers to notify the Chief Planning Executive of any suspicions that the certifier forms about site work being done in contravention of the *Planning and Development Act 2007*;
- requiring the certifier to always notify the ACT Construction Occupations Registrar if the certifier finds building work that is fundamentally noncompliant with certain *Building Act* requirements;
- removing the need for a certifier or licensed builder for the construction of a wider range of exempt small-scale buildings such as garages, pergolas, carports and sheds. The parameters are prescribed in the *Building (General) Regulation 2008*.

## Building certifier's role continued

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### **Certifier's key role and responsibilities**

The certifier role now includes:

- determining whether a house is exempt from requiring a development approval;
- issuing building approvals for exempt houses after verifying that developments meet the development exemption criteria; and
- issuing approvals that include proposed site work such as driveways and damage to or removal of trees.

👉 Certifiers are prohibited from issuing a building approval where a development approval is required but has not been issued.



# Prohibited and exempt developments

## Prohibited developments

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### Definition

A prohibited development is a development:

- prohibited under the relevant development table; and
- by an entity other than the Territory or a Territory authority in a future urban area, unless the structure plan for the area states otherwise.

For further information see:

- *Planning and Development Act 2007*, Part 7.2.7

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### Rules

The following table outlines the rules that apply to prohibited developments.

If a development ...	then...
is prohibited	a person can not apply for approval of the development proposal
is authorised by a development approval then subsequently becomes prohibited	the development can continue – a development that is lawful when it begins, continues to be lawful
use is allowed under a lease, section 247 or a provision of Chapter 15 of the <i>Planning and Development Act 2007</i> , but beginning the use is a prohibited development	the proposal is not considered to be a prohibited development a person may apply for development approval for the proposal and the impact track will apply

## Exempt developments

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### Definition

A development proposal is exempt from requiring development approval if it is exempt under:

- the relevant development table of the Territory Plan;
- Section 134 of the *Planning and Development Act 2007*; or
- a regulation.

For further information see:

- *Planning and Development Act 2007*, Part 7.2.6
- *Planning and Development Regulation 2008*, Part 3.1 and Schedule 1

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### Rules

The following rules apply to exempt developments:

- an exempt development may be undertaken without a DA and development approval; and
- a person cannot apply for approval of a development proposal for an exempt development.

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### Exempt development types

The *Planning and Development Act Regulation 2008* specifies what types of development are exempt from requiring development approval. These include the following, providing they comply with the specific requirements of the regulations:

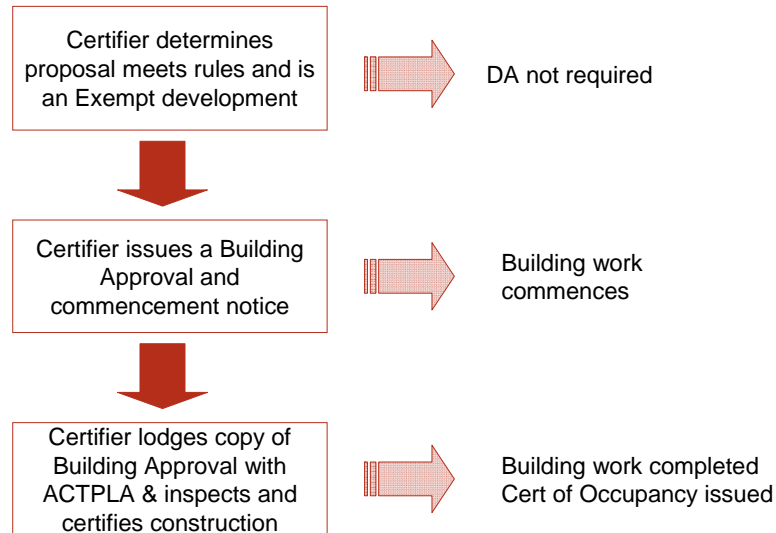
- small pergolas;
- carports;
- fences;
- walls;
- swimming pools; and
- a single house in a new housing estate, provided it meets all the rules of the relevant Code (it will still require building approval).

 This is not a complete list of all exempt developments. A complete list can be found in the *Planning and Development Regulation 2008*, Schedule 1.

## Exempt developments continued

**Process**

The following diagram outlines the process undertaken for exempt proposals that require building approval.

**Certifier's role in exempt developments**

In the past, certifiers' responsibilities were confined to building work. Certifiers were required to check that an application for building approval reflected proposed building work that:

- did not require development approval; or
- was consistent with the terms of the relevant development approval.

From March 31, 2008, under the *Building Act*, building certifiers are responsible for:

- verifying that exempt developments meet the development exemption criteria and therefore do not require a DA; and
- approving proposed site work that is not necessarily building work, for example driveways and damage to or removal of trees.

👉 Certifiers remain prohibited from issuing a building approval where a DA is required.



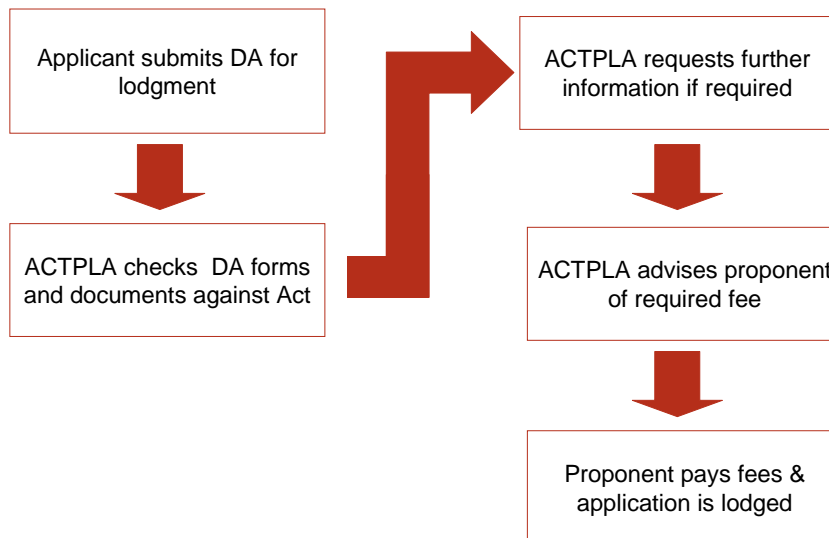
# Lodging development applications

## Lodging DAs

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### Lodgement process

The following diagram outlines the new DA lodgement process.



### Lodgement requirements

When lodging a DA from March 31, 2008, please note these important requirements:

- the new DA lodgement form must be used;
- the applicant is responsible for identifying the track and completing the DA lodgement form prior to lodgment;
- all plans and documentation must be provided on CD and meet the following requirements
  - each document must be saved as a PDF and named in accordance with the naming convention as detailed on the ACTPLA website,
  - all plans must be rotated to landscape, and
  - all plans are to be clear and concise and consistent with Australian Standard 1100.301 - 1985 and Australian Standard 1100.301 supplementary as updated from time to time;
- where specified on the relevant DA lodgement form, some plans and documentation must be provided in printed form as well as on CD;
- if the DA is for a development undertaken without required development approval, a plan of development prepared by a registered surveyor must be submitted with it and the plan must set out the dimensions of the development; and
- on-the-spot lodgement checks are no longer available – ACTPLA will aim to complete lodgement checks within 24-48 hours.

## Lodging DAs continued

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### Lodging DAs under the incorrect track

The following table outlines what happens to DAs lodged under the incorrect track.

If ...	then...
a DA is lodged under the incorrect track	it may be rejected at lodgement if the discrepancy is able to be determined at that time
a DA is lodged and accepted under the incorrect track	it will be refused during assessment and returned to the applicant and there will be no refund or transfer of fees available

# Code track

## Code track developments


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### About code track developments

A code track DA is assessed against the rules in the applicable Assessment Code.

Examples:

- single dwelling not on new residential land; and
- house extension.

 This is not a complete list of all possible code track developments.

For further information see:

- *Planning and Development Act 2007*, Part 7.1 and Part 7.2.2

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### Development approval

A code track DA must be approved if the proposal:

- is in the code track; and
- complies with all the relevant rules.

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### Public notification

There is no requirement to publicly notify a code track DA.

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### Entity referrals

There are no mandatory entity referrals for code track DAs.

If a code track DA requires approval from an entity (for example ActewAGL or Department of Territory and Municipal Services), the approval must be:

- obtained prior to the lodgement of the DA; and
- submitted as a supporting document.

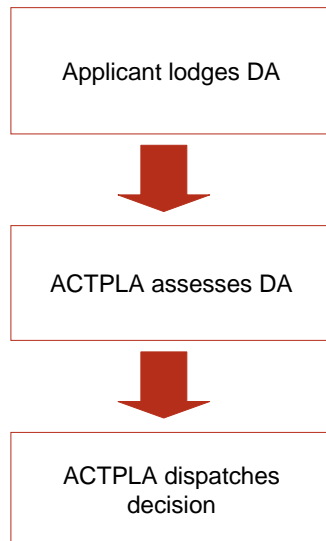
## Code track developments continued

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### Development assessment process

The following diagram outlines the development assessment process for code track DAs.

👉 Further information requests will not be made by ACTPLA during code track DA assessments.



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### Assessment timeframes

The statutory time period for making a decision on a code track DA is 20 working days after the day the application is lodged. A DA is not considered lodged until full payment of fees is made.

# Merit track

## Merit track developments


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### About merit track developments

A merit track DA is assessed against the rules or criteria in the applicable Assessment Code.

Examples:

- development in a residential zone;
- indoor recreation facility in a commercial zone;
- apartment in a commercial zone; and
- multi-unit residential in a residential zone.

 This is not a complete list of all possible merit track developments.

For further information see:

- *Planning and Development Act 2007*, Part 7.1 and Part 7.2.3

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### What is considered during assessment

The following is a summary of what a decision-maker must consider when assessing a merit track DA:

- the relevant Code of the Territory Plan;
- objectives for the zone;
- suitability of the land for the development;
- all representations;
- entity advice;
- a plan of management for any public land; and
- probable impact of the development, including environmental impact.

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### When a merit track cannot be approved

A merit track DA *must not* be approved if the proposal is inconsistent with:

- the relevant Code of the Territory Plan;
- any land management agreement for the land if it is in a rural lease;
- the related advice of the Conservator of Flora and Fauna if the proposal will affect a registered tree or declared site; or
- any advice given by an entity, unless the decision-maker is satisfied that any applicable guidelines and any realistic alternative to the proposed development have been considered and the decision is consistent with the objects of the Territory Plan.

## Merit track developments continued

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### Public notification

Merit track DAs must be publicly notified.

There are two categories of public notification:

- minor – letters sent to adjoining neighbours (with 10 working days in which to make a representation); and
- major – sign placed on the property, notice placed in a newspaper and letters sent to the adjoining neighbours (with 15 working days in which to make a representation).

The *Planning and Development Act* regulations determine whether a DA undergoes major or minor notification.

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### Representations

A representation is a comment or objection on a DA received during the public notification period.

The following apply to merit track representations:

- anyone can make a representation about a DA that has been publicly notified;
  - a representation must be made during the public notification period to be considered;
  - ACTPLA will no longer consider representations made outside the statutory notification period; and
  - representations form part of the public register and are made available to the applicant, unless exemption has been granted.
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### Entity referrals

Entity advice may be supplied with the DA at the time it is lodged, or plans or other information as required by the entity may be submitted with the DA for ACTPLA to refer to the entity.

If entity advice is provided in writing at the time the DA is lodged:

- it must have been given less than six months before the lodgement date; and
- the application does not need to be referred if ACTPLA is satisfied that the applicant has adequately consulted with the entity.

If approval from an entity is sought during the assessment process, the entity must provide ACTPLA with a response within 15 working days from the date the application was referred. If advice is not received within this timeframe, the entity is taken to have supported the application.

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## Merit track developments continued

### Further information requests

ACTPLA may ask an applicant for further information that is essential to assess a DA at any time.

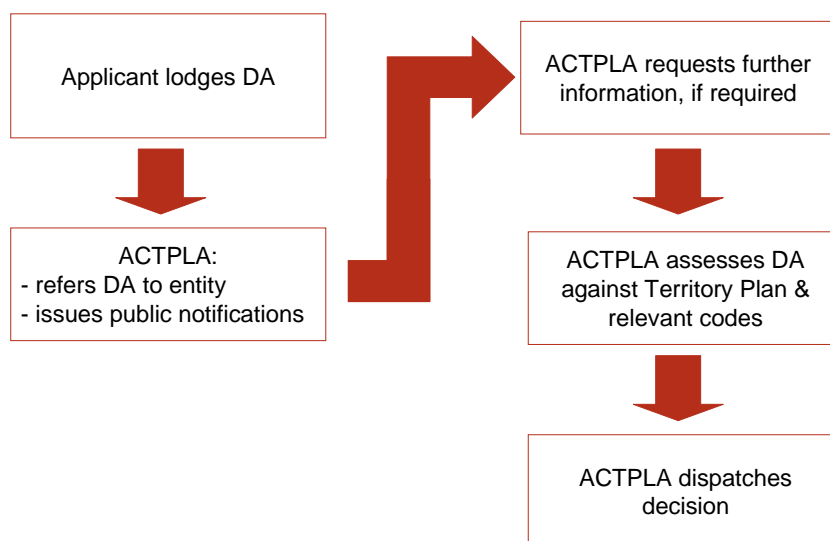
The request must:

- be in writing; and
- advise the applicant by when the information must be provided – 20 working days unless otherwise prescribed.

If ACTPLA requests further information within 10 working days from the lodgement date, the deadline for making a decision on the DA can be extended by the number of days it takes the applicant to provide the information.

### Development assessment process

The following diagram outlines the development assessment process for merit track DAs.



### Assessment timeframes

The statutory time period for making a decision on a merit track DA is:

- 30 working days after the lodgement date if *no* representations are made; or
- 45 working days after the lodgement date if representations are made.

A DA is not considered lodged until full payment of fees is made.



# Impact track

## Impact track developments

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### About impact track developments

Impact development applications:

- are considered against the Territory Plan and an EIS (unless exempted by the Minister); and
- undergo the broadest level of assessment compared to other tracks.

Examples:

- constructing a major dam;
- constructing a major road, light rail line or other linear transport corridor; and
- clearing a significant area of native vegetation.

 This is not a complete list of all possible impact track developments.

For further information see:

- *Planning and Development Act 2007*, Part 7.1 and Part 7.2.4

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### What is an impact track DA

A DA is considered an impact track development proposal if:

- it meets the criteria in the relevant impact track development table of the Territory Plan;
- it is of a kind mentioned in Schedule 4 of the *Planning and Development Act 2007*;
- the Minister makes a declaration under section 124 of the *Planning and Development Act 2007* in relation to the proposal; or
- it is considered one under relevant legislation, such as the *Environment Protection and Biodiversity Conservation Act 1999 (C'wlth)*.

## Impact track developments continued

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### What is considered during assessment

The following is a summary of what a decision-maker must consider when assessing an impact track DA:

- the relevant Code of the Territory Plan;
- objectives for the zone;
- suitability of the land for the development;
- all representations;
- entity advice;
- a plan of management for any public land;
- probable impact of the development, including environmental impact;
- completed EIS for the proposal; and
- conclusions of any inquiry about an EIS for the proposal (see Chapter 8 of the *Planning and Development Act 2007*).

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### When an impact track cannot be approved

An impact track DA *must not* be approved:

- unless an EIS has been completed, or this requirement has been exempted by the Minister; or
- if the proposal is inconsistent with:
  - the Statement of Strategic Directions of the Territory Plan;
  - any land management agreement for the land if it is in a rural lease;
  - the related advice of the Conservator of Flora and Fauna if the proposal will affect a registered tree or declared site; or
  - any advice given by an entity, unless the decision-maker is satisfied that any applicable guidelines and any realistic alternative to the proposed development have been considered and the decision is consistent with the objects of the Territory Plan.

## Impact track developments continued

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**Public notification** Impact track DAs must be publicly notified and will always undergo the major notification process – a sign placed on the property, noticed placed in a newspaper and letters sent to the adjoining neighbours (with 15 working days in which to make a representation).

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**Representations** A representation is a comment or objection on a DA received during the public notification period.

The following rules apply:

- anyone can make a representation about a DA that has been publicly notified;
  - a representation must be made during the public notification period to be considered;
  - ACTPLA will no longer consider representations made outside the statutory notification period; and
  - representations form part of the public register and are made available to the applicant, unless exemption has been granted.
- 

**Entity referrals** Entity advice may be supplied with the DA at the time it is lodged, or plans or other information as required by the entity may be submitted with the DA for ACTPLA to refer to the entity.

If entity advice is provided in writing at the time the DA is lodged:

- it must have been given less than six months before the lodgement date; and
- the application does not need to be referred if ACTPLA is satisfied that the applicant has adequately consulted with the entity.

If approval from an entity is sought during the assessment process, the entity must provide ACTPLA with a response within 15 working days from the date the application was referred. If advice is not received within this timeframe, the entity is taken to have supported the application.

## Impact track developments continued

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### Further information requests

ACTPLA may ask an applicant for further information that is essential to assess a DA at any time.

The request must:

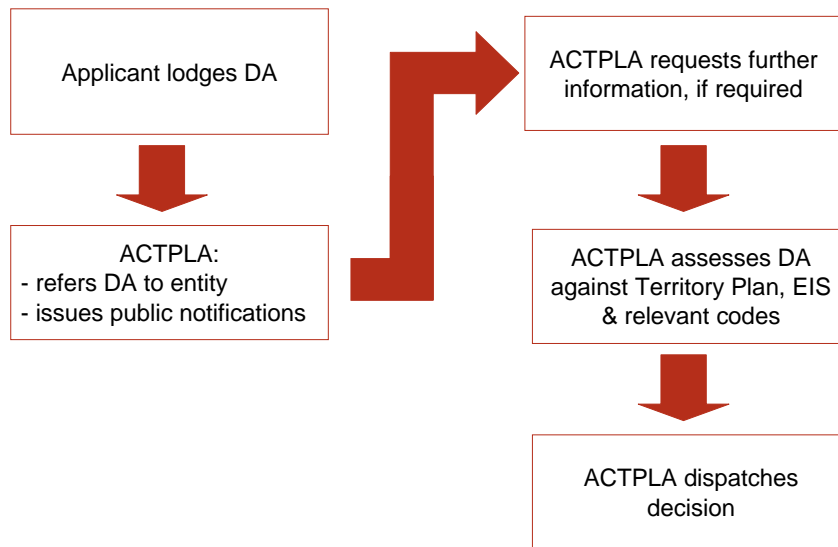
- be in writing; and
- advise the applicant by when the information must be provided – 20 working days unless otherwise prescribed.

If ACTPLA requests further information within 10 days from the lodgement date, the deadline for making a decision on the DA can be extended by the number of days it takes the applicant to provide the information.

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### Development assessment process

The following diagram outlines the development assessment process for impact track DAs.



### Assessment timeframes

The statutory time period for making a decision on an impact track development DA is:

- 30 working days after the lodgement date if no representations are made; or
- 45 working days after the lodgement date if representations are made.

A DA is not considered lodged until full payment of fees is made.

## Environmental Impact Statements

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### Environmental Impact Statements

Environmental Impact Statements (EIS):

- have replaced Preliminary Assessments and Public Environment Reports; and
  - are now the sole method of environmental impact assessment.
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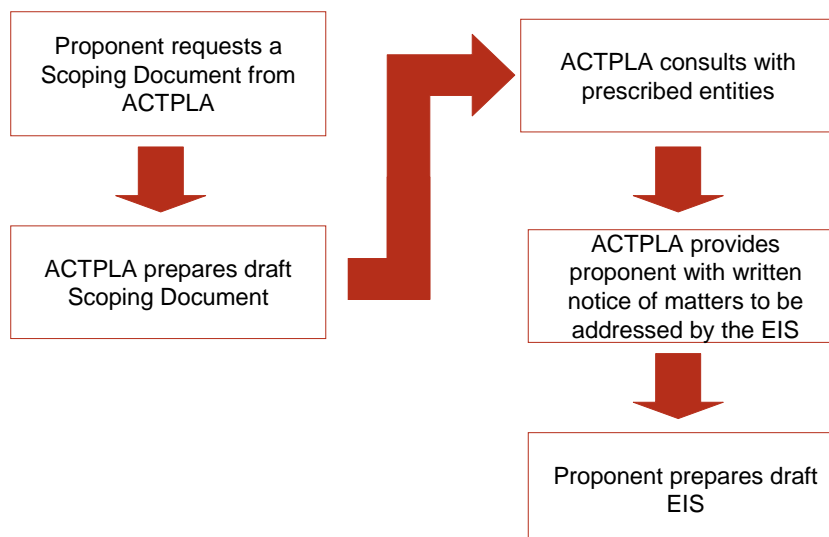
### Minister's role in EIS

The Minister for Planning can:

- request an EIS in relation to a development;
  - initiate an EIS where there are potential significant
    - public health impacts associated with a development proposal, or
    - environmental impacts associated with activities requiring an environmental authorisation and those activities are not the subject of a DA; and
  - decide whether to establish a panel to conduct an inquiry about the EIS.
- 

### EIS scoping process

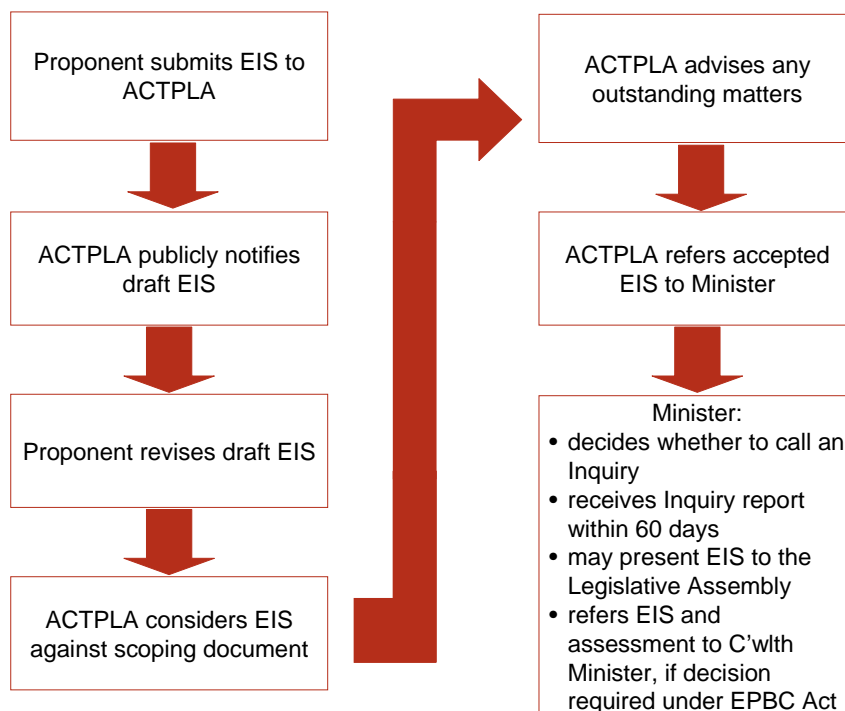
The following diagram outlines the EIS scoping process.



## Environmental Impact Statements continued

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**EIS submission process** The following diagram outlines the EIS submission process.



# Reconsiderations, appeals and amendments

## Code track

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### Reconsiderations and AAT reviews

Where a code track DA has been approved subject to conditions (i.e. not refused), applicants:

- can apply for reconsideration within 20 working days of being told about decision setting out the grounds for reconsideration; and
- can apply for AAT review if the application was approved subject to a condition.

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### Amendments

An amendment to an approved code track DA will only be accepted if the:

- development applied for after the amendment will be substantially the same as the development applied for originally; and
- the assessment track for the application will not change if the application is amended.

## Merit and impact tracks

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### Reconsiderations

Where a merit or impact track DA or amendment has been approved subject to conditions or refused, applicants can apply for reconsideration.

The reconsideration application must:

- be lodged no later than *20 working days* after being told about the decision; and
- set out the grounds for reconsideration.

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### AAT reviews by applicants

#### Merit

Where a merit track DA has been approved subject to conditions or refused, applicants can only apply for AAT review in relation to the part of the decision where:

- the proposal is subject to a rule and does not comply with the rule; or
- no rule applies to the proposal.

#### Impact

Where an impact track DA has been approved subject to conditions or refused, applicants can apply for AAT review.

## Merit and impact tracks continued

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### AAT reviews by third parties

AAT reviews by third parties are:

- *not available* for applications that went through minor public notification;
- *available* for those merit or impact track DAs that went through the major notification process, unless exempt by regulation.

Third party appellants must:

- lodge appeals no later than four weeks after the day the reviewable decision was made; and
- establish that
  - the DA decision is considered reviewable,
  - they made a representation on the DA during the public notification period or have a reasonable reason for not doing so, and
  - they could suffer material detriment if the development approval were to be granted.

↳ Material detriment means the development would have an adverse impact on the person's use or enjoyment of their land and not because of increased competition with business interests.

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### Amendments

An amendment to a merit or impact track DA will only be accepted if the:

- development applied for after the amendment will be substantially the same as the development applied for originally; and
- the assessment track for the application will not change if the application is amended.

# Pre-application advice under section 138 of the Planning and Development Act 2007

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## When pre-application advice can be provided

ACTPLA must consider a development proposal and provide pre-application advice if requested by the proponent.

However, ACTPLA does not have to consider the development proposal if satisfied that there is insufficient information to allow ACTPLA to provide adequate advice.

For further information see:

- *Planning and Development Act 2007*, Part 7.3.1

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## Requirements

The following requirements apply to pre-application advice:

- the proponent of the proposal must request pre-application advice in writing;
- pre-application advice must be provided in writing;
- advice expires six months after it is given; and
- a fee will be charged.

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## What is provided in pre-application advice

After considering the proposed development, ACTPLA must provide, in writing, the following advice:

- the assessment track that is likely to apply to the proposal;
- whether the proposal is likely to be exempt or prohibited;
- whether the DA will be referred to an entity;
- whether public notification will be required for the DA;
- whether the development proposed is consistent with existing lease conditions applying to the land where the development is proposed to take place; and
- generally, what further information may be required.

## Merit and impact tracks continued

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### **Pre-application advice and development assessment**

ACTPLA may not act consistently with advice provided if:

- the environmental circumstances surrounding the development proposal change;
- the development proposal under assessment is different from the proposal for which the advice was given;
- when the proponent asked for advice, the request did not include relevant information;
- the Territory Plan changes after the advice is given and before the assessment takes place; or
- the advice given was inconsistent with the Territory Plan because of an error.

# Leasing and public register

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## Changes to leasing

The majority of leasing activities undertaken by ACTPLA will not change under the planning system reforms.

However, there is one major change relating to concessional leases. The *Planning and Development Act 2007*:

- allows a lessee to request clarification of the concessional status of a Crown lease;
- states that the Authority:
  - has 15 working days to determine whether the lease is concessional or not, and
  - must notify the lessee and any interested parties of the decision;
- states that a DA will be required to deconcessionalise a lease and a much more rigorous assessment process will apply
  - the Minister must decide whether it is in the public interest to consider the DA, and
  - DA timeframes will apply;
- allows the decision to be appealed; and
- states that the Authority must lodge an Instrument with the Registrar General's Office identifying the lease as concessional if
  - no appeal is received, or
  - if the lease is determined as concessional after the outcome of the appeal.

👉 This new process includes rental concessional leases where previously lessees only had to apply to payout the land rent to deconcessionalise the lease.

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## Changes to the public register

The public register has been updated as part of planning system reform.

It now:

- defines what information the register must contain;
- defines all documents that are available or not available for public inspection; and
- exempts residential floor plans from being included in the public register.



# Transitional arrangements

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## What is included

The *Planning and Development Act 2007* has included a section to clarify the transitional arrangements for a number of matters including:

- DAs; and
- appeals.

For further information see:

- *Planning and Development Act 2007*, Part 15.4
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## Development applications awaiting approval

The previous Act – the *Land (Planning and Environment) Act 1991* – including the Territory Plan applies to all DAs:

- lodged prior to March 31, 2008; and
- where a decision had not been made by ACTPLA prior to March 31, 2008.

If the DA is approved, it will be done so under the previous Act.

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## Approved development applications

The previous Act – the *Land (Planning and Environment) Act 1991* – applies to all DAs approved prior to March 31, 2008.

Where an approval has been granted:

- it continues until the time it would have ended under the previous Act; and
- may be extended under the previous Act if the application for extension is made before the approval expires and prior to six months after the commencement of the new Act.

Where an extension had been granted but not started, it will end on the date to which it was extended.

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## Lease and development conditions

When ACTPLA assesses a DA to which lease and developments conditions apply, the application must be considered against the requirements of the lease and development conditions where the Territory Plan requires it, in addition to any relevant code.

This applies for five years, until March 20, 2013.

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### Appeals

The previous Act – the *Land (Planning and Environment) Act 1991* – applies to all appeals to the AAT for review of decision:

- made under the repealed Act; and
- where the application for review had not been decided by the AAT.

The previous Act will be applied when deciding the outcome of the appeal.