



Australian Capital Territory

Planning and Development (Efficiencies) Amendment Act 2016

A2016-21

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
Part 2	Planning and Development Act 2007
4	Ministerial directions to authority Section 14 (1) (b) 3
5	Meaning of <i>associated document</i> —pt 3.6 New section 30 (1) (ca) 3

J2014-646

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
6	How territory plan is varied under pt 5.3	
	Section 57 (1), except notes	3
7	Section 57 (8), note 2	4
8	Section 60	4
9	Public consultation—notification	
	Section 63 (1) (a)	4
10	Section 63 (1), new note	5
11	New section 63 (8)	5
12	Definitions—pt 5.4	
	Section 86, definition of <i>code variation</i>	6
13	Sections 87 and 88	6
14	Making technical amendments	
	Section 89 (1), note	8
15	Limited consultation	
	Section 90 (2) (c)	8
16	Section 90 (2) (d)	8
17	Section 90 (4)	9
18	Section 90 (6) (a)	9
19	New section 90 (7)	9
20	New sections 90A and 90B	10
21	Part 5.5 heading	11
22	Technical amendments—future urban areas	
	Section 95	11
23	Rezoning—boundary changes	
	Section 96A	12
24	Relationship between development proposals and development applications	
	Section 113 (5)	12
25	Section 122	12
26	Section 127	13
27	Impact track—when development approval must not be given	
	Section 128 (1) (a), notes	14
28	Section 128 (1), note 4	14
29	Impact track—time for decision on application	
	Section 131 (1) (a) and (b)	14

Contents

	Page
30	Section 131 (2) 15
31	New section 131 (3) 15
32	Section 136 16
33	Applications for development approval in relation to use for otherwise prohibited development Section 137 (2) 17
34	New sections 137AA to 137AD 17
35	Form of development applications Section 139 (2) (g) (ii) and notes 23
36	Section 139 (8), new definitions 24
37	New division 7.3.2A 24
38	New section 151A 30
39	What is <i>publicly notifies</i> for ch 7? Section 152 (1), new note 30
40	Representations about development applications Section 156 (2), new note 31
41	Section 156 (6) (b), except note 31
42	Deciding development applications New section 162 (1A) 31
43	Section 162 (3) 32
44	Section 162 (6), new definition of <i>completed concurrent process</i> 32
45	Offence to undertake prohibited development Section 200 (6) (b) 33
46	Part 8.1 heading 33
47	Definitions—ch 8 Section 206, definitions 35
48	When is an EIS <i>completed</i> ? Section 209 (1) (b) 35
49	Division 8.2.1 heading 36
50	When is a completed EIS required? Section 210 36
51	Meaning of <i>EIS exemption</i> Section 211, definition of <i>EIS exemption</i> , new note 36
52	Meaning of <i>recent study</i> —pt 8.2 Section 211A, definition of <i>recent study</i> , new note 36

Contents

	Page	
53	EIS exemption application New section 211B (3) (aa)	36
54	EIS exemption application—public submissions Section 211D (1) (b), new note	37
55	Scoping of EIS Section 212 (1) and note	37
56	Contents of scoping document New section 213 (1A)	38
57	Term of scoping document Section 215	38
58	Preparing draft EIS Section 216 (2)	38
59	Public notification of draft EIS Section 217, new note	39
60	Section 218	39
61	Representations about draft EIS Section 219 (1), new note	40
62	Publication of representations about draft EIS Section 220 (2) (b), except notes	40
63	Revising draft EIS Section 221 (2)	40
64	New section 221 (4)	40
65	Authority consideration of EIS Section 222 (1)	41
66	EIS given to authority out of time Section 223 (1)	41
67	Chance to address unaddressed matters Section 224 (1) (b)	41
68	Section 224A	42
69	Restriction on direct sale by authority New section 240 (1) (h)	42
70	Section 240 (4), new definitions	43
71	New chapter 22	43
72	Dictionary, definition of <i>code variation</i>	44
73	Dictionary, new definitions	44

Contents

		Page
74	Dictionary, definition of <i>draft EIS</i>	44
75	Dictionary, definition of <i>prohibited</i> , paragraph (a)	45
76	Dictionary, definition of <i>representation</i> , paragraph (b)	45
Part 3	Planning and Development Regulation 2008	
77	New section 25A	46



Australian Capital Territory

Planning and Development (Efficiencies) Amendment Act 2016

A2016-21

An Act to amend the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development (Efficiencies) Amendment Act 2016*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*.

Part 2 Planning and Development Act 2007

4 Ministerial directions to authority Section 14 (1) (b)

omit

revise

substitute

vary

5 Meaning of *associated document*—pt 3.6 New section 30 (1) (ca)

after the note, insert

(ca) for a concurrent development application—each concurrent document;

6 How territory plan is varied under pt 5.3 Section 57 (1), except notes

substitute

- (1) A variation of the [territory plan](#) (other than a special variation or technical amendment) begins when the planning and land authority prepares a draft plan variation—
- (a) on its own initiative (see s 60 (a)); or
 - (b) in accordance with a direction by the Minister under section 14 (1) (b) (see s 60 (b)).

7 Section 57 (8), note 2

omit

s 95

substitute

s 90C

8 Section 60

substitute

60 Preparation of draft plan variations

A document (a *draft plan variation*) to vary the [territory plan](#)—

- (a) may be prepared by the planning and land authority on the authority's own initiative; or
- (b) must be prepared by the planning and land authority if the Minister gives a direction under section 14 (1) (b) (Ministerial directions to authority).

**9 Public consultation—notification
Section 63 (1) (a)**

omit

a stated period of not less than 30 working days (the *consultation period*)

substitute

the consultation period

10 Section 63 (1), new note

insert

Note If a development application is made under s 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared)—

- (a) the development application must be notified on the day the consultation notice for the draft plan variation that gives effect to the anticipated variation is notified under this section (see s 137AA (5)); and
- (b) the development application and the consultation notice for the draft plan variation must be publicly notified for the concurrent consultation period (see s 147AB (2)); and
- (c) comments about the draft plan variation must be made in the concurrent consultation period and at the same time as the person makes a representation about the development application (see s 147AC (2)).

11 New section 63 (8)

insert

(8) In this section:

consultation period means—

- (a) if a development application is made under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared) and the draft plan variation gives effect to the anticipated variation—the concurrent consultation period; or

Note ***Concurrent consultation period***—see s 147AA.

- (b) in any other case—a stated period of not less than 30 working days.

12 Definitions—pt 5.4
Section 86, definition of *code variation*

substitute

code variation—see section 87 (2) (a).

13 Sections 87 and 88

substitute

87 What are *technical amendments* of territory plan and is consultation needed?

- (1) Each of the following **territory plan** variations is a ***technical amendment*** for which no consultation is needed before it is made under section 89:
- (a) a variation (an ***error variation***) that—
 - (i) would not adversely affect anyone’s rights if approved; and
 - (ii) has as its only object the correction of a formal error in the plan;
 - (b) a variation to change the boundary of a zone or overlay under section 90A (Rezoning—boundary changes);
 - (c) a variation, other than one to which subsection (2) (d) applies, in relation to an estate development plan under section 96 (Effect of approval of estate development plan);
 - (d) a variation required to bring the **territory plan** into line with the national capital plan;

- (e) a variation to omit something that is obsolete or redundant in the [territory plan](#).

Examples—obsolete or redundant things

- 1 a structure plan that is no longer relevant because all the land that the structure plan applies to ceases to be in a future urban area
- 2 a provision of the [territory plan](#) that has become redundant because of the enactment of a law that applies in the Territory

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) Each of the following [territory plan](#) variations is a ***technical amendment*** for which only limited consultation is needed under section 90:

- (a) a variation (a ***code variation***) that—
- (i) would only change a code; and
 - (ii) is consistent with the policy purpose and policy framework of the code; and
 - (iii) is not an error variation;

- (b) a variation to change the boundary of a zone under section 90B (Rezoning—development encroaching on adjoining territory land);

- (c) a variation in relation to a future urban area under section 90C (Technical amendments—future urban areas);

Note A variation to rezone land that is not in a future urban area is not a technical amendment.

- (d) a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94 (3) (g);

- (e) a variation to clarify the language in the [territory plan](#) if it does not change the substance of the plan;
- (f) a variation to relocate a provision within the [territory plan](#) if the substance of the provision is not changed.

Example

relocating an area-specific policy from a development code to a precinct code

**14 Making technical amendments
Section 89 (1), note**

omit

Section 88

substitute

Section 87 (2)

**15 Limited consultation
Section 90 (2) (c)**

omit

how and when

substitute

the consultation period and how

16 Section 90 (2) (d)

omit

period under paragraph (c) ends

substitute

end of the consultation period

17 Section 90 (4)

omit

18 Section 90 (6) (a)

after

made

insert

in the consultation period and

19 New section 90 (7)

insert

(7) In this section:

consultation period means a stated period of not less than—

- (a) 20 working days; or
- (b) for a proposed technical amendment under section 90B—the concurrent consultation period.

Note ***Concurrent consultation period***—see s 147AA.

20 New sections 90A and 90B

in part 5.4, insert

90A Rezoning—boundary changes

- (1) This section applies to a zone or overlay in relation to land if the land adjoins unleased territory land or land for which the Territory is the registered proprietor (the *adjoining territory land*).
- (2) The planning and land authority may vary the [territory plan](#) under section 89 (Making technical amendments) to change the boundary of the zone or overlay to encroach onto the adjoining territory land if the change is consistent with—
 - (a) the apparent intent of the original boundary line; and
 - (b) the objective for the zone.
- (3) The planning and land authority may vary the [territory plan](#) under section 89 to change the boundary of an overlay to encroach onto the adjoining territory land if—
 - (a) the authority is advised to do so by—
 - (i) the conservator of flora and fauna; or
 - (ii) the custodian of the land for the overlay; and
 - (b) the conditions in subsection (2) (a) and (b) are satisfied.
- (4) In this section:

overlay means an overlay identified in the [territory plan](#).

Note An overlay is a map that identifies particular land, such as public land, to which certain rules apply.

90B Rezoning—development encroaching on adjoining territory land

- (1) The planning and land authority may vary the [territory plan](#) under section 89 (Making technical amendments) to change the boundary of a zone consistent with a development proposal under section 137AC (Declaration for development encroaching on adjoining territory land if development prohibited) if the authority makes a declaration that the proposal satisfies the criteria in section 137AC (2).

Note Under s 137AC and s 137AD, a person may apply for development approval of a development proposal that encroaches on adjoining territory land if the development would otherwise be prohibited on the land. However, development approval must not be given until the plan variation has commenced under section 89 (see s 162 (1A)).

- (2) However, the planning and land authority must not vary the [territory plan](#) under section 89 to change the boundary of the zone if the adjoining territory land is designated as a future urban area under the [territory plan](#).
- (3) In this section:
adjoining territory land—see section 137AC (1) (a).

21 Part 5.5 heading

substitute

Part 5.5 Plan variations—structure and concept plans and estate development plans**22 Technical amendments—future urban areas
Section 95**

relocate to part 5.4 as section 90C

**23 Rezoning—boundary changes
Section 96A**

omit

**24 Relationship between development proposals and
development applications
Section 113 (5)**

after

section 123

insert

(c), (d) and (e)

25 Section 122

substitute

122 Merit track—time for decision on application

- (1) A development application for a development proposal in the merit track must be decided under section 162 (Deciding development applications) not later than—
- (a) 10 working days after the day—
 - (i) for a concurrent development application—the concurrent process is completed;
 - (ii) for an application for development approval of a development proposal made under section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared)—the draft plan variation has commenced under section 83 or section 84;
or

- (b) if paragraph (a) does not apply—
 - (i) if no representation is made in relation to the proposal—30 working days after the day the application is made to the planning and land authority; or
 - (ii) in any other case—45 working days after the day the application is made to the authority.
- (2) In this section:
completed concurrent process—see section 162 (6).

26 Section 127*substitute***127 Impact track—development applications**

- (1) A development application for a development proposal in the impact track must include a completed EIS if—
 - (a) the proponent of the development proposal has previously lodged a development application in relation to the development proposal (the *previous application*); and
 - (b) the previous application was made less than 2 years before the development application; and
 - (c) the planning and land authority rejected the EIS in relation to the previous application under section 224A (Rejection of unsatisfactory EIS).
- (2) If subsection (1) does not apply, a development application for a development proposal in the impact track must include—
 - (a) a completed EIS; or
 - (b) a draft EIS.

- (3) However, neither a completed EIS nor a draft EIS is required for a development application for a development proposal in the impact track if—
- (a) an EIS exemption is in force for the proposal; or
 - (b) an EIS exemption application for the proposal accompanies the development application.

Note While a proponent may lodge a draft EIS or an EIS exemption application with a development application, development approval must not be given unless there is either a completed EIS or an EIS exemption for the development application (see s 128 (1) (a)).

27 Impact track—when development approval must not be given
Section 128 (1) (a), notes

substitute

Note If a draft EIS or an EIS exemption application is lodged with a concurrent development application, development approval may only be given if the concurrent process is completed (see s 162 (1A)).

28 Section 128 (1), note 4

omit

29 Impact track—time for decision on application
Section 131 (1) (a) and (b)

substitute

- (a) 10 working days after the day—
- (i) for a concurrent development application—the concurrent process is completed;

- (ii) for an application for development approval of a development proposal made under section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared)—the draft plan variation has commenced under section 83 or section 84; or
- (b) if paragraph (a) does not apply—
 - (i) if no representation is made in relation to the proposal—30 working days after the day the application is made to the planning and land authority; or
 - (ii) in any other case—45 working days after the day the application is made to the authority.

30 Section 131 (2)

omit

subsection (1) (a) and (b)

substitute

subsection (1) (b) (i) and (ii)

31 New section 131 (3)

insert

- (3) In this section:

completed concurrent process—see section 162 (6).

32 Section 136

substitute

136 Certain development in future urban area prohibited

A development by an entity other than the Territory or a territory authority in a future urban area is prohibited unless the structure plan for the area states otherwise.

136A Development applications for prohibited development

The planning and land authority may only accept an application for approval of a proposal for a prohibited development if the application is made under—

- (a) section 137 (Applications for development approval in relation to use for otherwise prohibited development); or
- (b) section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared); or
- (c) section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared); or
- (d) section 137AD (Applications for development encroaching on adjoining territory land if development prohibited).

Note 1 It is an offence to undertake prohibited development (see s 200).

Note 2 However, if development is authorised by a development approval and subsequently becomes prohibited, the development can continue (see s 201).

Note 3 Also, development that is lawful when it begins continues to be lawful (see s 203 and s 204).

**33 Applications for development approval in relation to use for otherwise prohibited development
Section 137 (2)**

substitute

- (2) A person may apply to the planning and land authority for development approval of the development proposal.
- (2A) If an application is made under subsection (2)—
- (a) the use is taken not to be a prohibited development; and
 - (b) the impact track applies to the proposal.

34 New sections 137AA to 137AD

in division 7.2.7, insert

137AA Applications in anticipation of territory plan variation—made before draft plan variation prepared

- (1) A person may apply for approval of a development proposal for a prohibited development in anticipation of a variation to the [territory plan](#) (the *anticipated variation*) that would have the effect of allowing the proposed development.

Note A development application made under this section is a concurrent development application (see s 147AA) and div 7.3.2A (Concurrent development applications) applies to it.

- (2) A development application cannot be made under this section if a consultation notice for a draft plan variation that gives effect to the anticipated variation is notified under section 63.

Note If a consultation notice for a draft plan variation giving effect to the anticipated variation is notified under s 63, a development application may be made under s 137AB after the day the consultation notice is notified as if the draft plan variation were in force.

- (3) The development application must state—
- (a) why the development is prohibited or is inconsistent with the [territory plan](#), including by identifying the relevant provision of the [territory plan](#); and
 - (b) that the application is made in anticipation of a variation to the [territory plan](#) under this section.
- (4) The planning and land authority or Minister is taken to have refused the development application if a consultation notice for a draft plan variation that gives effect to the anticipated variation is not notified under section 63 within 6 months after the development application is made.
- (5) A development application made under this section must be publicly notified on the day the consultation notice for the draft plan variation that gives effect to the anticipated variation is notified under section 63.

Note 1 The development application and the draft plan variation must be publicly notified for the concurrent consultation period (see s 147AB (2)).

Note 2 Comments about a draft plan variation that gives effect to the anticipated variation must be made in the concurrent consultation period and at the same time as the person makes a representation about the development application (see s 147AC (2)).

Note 3 A development application made under this section may only be decided if the draft plan variation that gives effect to the anticipated variation has commenced under s 83 or s 84 (see s 162 (1A)).

- (6) Despite section 50 (Effect of territory plan)—
- (a) chapter 7, chapter 8 and chapter 9 apply to the development application as if the draft plan variation that gives effect to the anticipated variation were in force; and
 - (b) the planning and land authority must assess the application as if the draft plan variation that gives effect to the anticipated variation were in force.
- (7) In this section:
- prohibited development* includes a development that is inconsistent with the [territory plan](#).

137AB Applications in anticipation of territory plan variation—made after draft plan variation prepared

- (1) This section applies if the planning and land authority notifies a consultation notice for a draft plan variation under section 63.
- (2) A person may apply for approval of a development proposal after the day the consultation notice is notified as if the draft plan variation were in force.
- (3) The development application must—
 - (a) identify the draft plan variation; and
 - (b) state that the application is made as if the draft plan variation were in force.
- (4) Despite section 50 (Effect of territory plan)—
 - (a) chapter 7, chapter 8 and chapter 9 apply to the development application as if the draft plan variation were in force; and
 - (b) the planning and land authority must assess the application as if the draft plan variation were in force; and

- (c) the planning and land authority must, in publicly notifying the development application under division 7.3.4 (Public notification of development applications and representations)—
 - (i) identify the draft plan variation; and
 - (ii) state that the application is made in accordance with the draft plan variation.
- (5) The planning and land authority or Minister is taken to have refused the development application if the draft plan variation, or a provision relating to the development application, is—
 - (a) withdrawn; or
 - (b) rejected; or
 - (c) revised in a way that no longer permits the proposed development.

Note A development application made under this section may only be decided if the draft plan variation has commenced under s 83 or s 84 (see s 162 (1A)).

137AC Declaration for development encroaching on adjoining territory land if development prohibited

- (1) This section applies to a development proposal in relation to a use of land, or a building or structure on the land, if—
 - (a) the land, or the building or structure on the land, adjoins unleased territory land or land for which the Territory is the registered proprietor (the *adjoining territory land*); and
 - (b) the use would encroach no further onto, over or under the adjoining territory land than the distance prescribed by regulation (the *encroachment*); and
 - (c) the use of the land, or the building or structure on the land, is a prohibited development on the adjoining territory land.

- (2) A person may apply to the planning and land authority for a declaration that the development proposal satisfies the following criteria:
- (a) the encroachment is a minor part of the development;
 - (b) carrying out the proposal in relation to the adjoining territory land would enable a more logical and appropriate development than if there was no encroachment;
 - (c) the proposed use of the land would—
 - (i) not detract from the amenity of the surrounding area; and
 - (ii) promote better land management; and
 - (iii) not unreasonably restrict public access to other land;
 - (d) the authority is not prohibited from granting by direct sale a lease over the encroachment.

Note 1 If a form is approved under s 425 for this provision, the form must be used.

Note 2 A fee may be determined under s 424 for this provision.

- (3) The application must include—
- (a) if the adjoining territory land is unleased land—written consent by the custodian for the land to the encroachment; and
 - (b) a copy of any written information provided to the custodian, with each page—
 - (i) signed by the custodian; and
 - (ii) numbered by stating the page number and the total number of pages provided.

- (4) Not later than 10 working days after the day the person applies to the planning and land authority for a declaration under subsection (2), the authority must—

- (a) make the declaration; or
- (b) refuse to make the declaration.

Note The requirement to make a decision under s (4) does not lapse if the 10-day time limit is not met (see [Legislation Act](#), s 152).

- (5) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

137AD Applications for development encroaching on adjoining territory land if development prohibited

- (1) If the planning and land authority has made a declaration under section 137AC in relation to a development proposal—

- (a) the person who applied for the declaration may apply to the planning and land authority for development approval of the development proposal; and
- (b) the use is taken not to be a prohibited development on the adjoining territory land.

- (2) Despite section 50 (Effect of territory plan)—

- (a) chapter 7, chapter 8 and chapter 9 apply to the application as if the [territory plan](#) were varied under section 90B (Rezoning—development encroaching on adjoining territory land) to change the boundary of the land consistent with a proposal under section 137AC; and

- (b) the planning and land authority must assess the application as if the [territory plan](#) were varied under section 90B.

Note 1 A development application made under this section may only be decided if the [territory plan](#) has been varied under s 90B (see s 162 (1A)).

Note 2 The planning and land authority must not grant a lease over an encroachment on adjoining territory land by direct sale unless the [territory plan](#) has been varied under s 90B (see s 240 (1) (h)).

- (3) In this section:

adjoining territory land—see section 137AC (1) (a).

35 Form of development applications Section 139 (2) (g) (ii) and notes

substitute

- (ii) the completed EIS or draft EIS for the proposal, unless an EIS exemption is in force, or there is an EIS exemption application, for the development proposal; and
- (ga) for a concurrent development application other than an application under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared)—be accompanied by each concurrent document; and
- (gb) if the application is for approval of a development which encroaches on adjoining territory land under section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—be accompanied by the declaration under section 137AC (3); and

36 Section 139 (8), new definitions

insert

adjoining territory land—see section 137AC (1) (a).

encroachment—see section 137AC (1) (b).

37 New division 7.3.2A

insert

Division 7.3.2A Concurrent development applications

147AA Definitions

(1) In this Act:

concurrent consultation period, for a concurrent development application, means a stated period of not less than 35 working days plus any concurrent extension period.

concurrent development application means an application for development approval—

- (a) made under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared); or
- (b) that is accompanied by 1 or more concurrent documents.

concurrent document, in relation to a concurrent development application, means—

- (a) if the application is made under section 137AA—the draft plan variation that gives effect to the anticipated [territory plan variation](#); or

- (b) if the application is made under section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—the proposed technical amendment; or
 - (c) if a draft EIS is lodged with the application—the draft EIS; or
 - (d) if an application for an EIS exemption is lodged with the development application—the EIS exemption application.
- (2) In this section:

concurrent extension period, in relation to a concurrent development application, means—

- (a) if the application is made under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared)—the period of any extension under section 63 (2); or
- (b) if a draft EIS is lodged with the application—the period of any extension under section 211D (2); or
- (c) if an application for an EIS exemption is lodged with the development application—the period of any extension under section 219 (3).

147AB Public notification of concurrent documents

- (1) This section applies if—
- (a) a development application is a concurrent development application; and
 - (b) a concurrent document in relation to the application must be publicly notified under this Act.

- (2) The concurrent document must be publicly notified together with the concurrent development application for the concurrent consultation period.

Note A development application is **publicly notified** under div 7.3.4.

- (3) A notice under subsection (2) must—
- (a) state that the concurrent development application—
 - (i) is a concurrent development application; and
 - (ii) cannot be finalised until the concurrent process is complete; and
 - (b) state the concurrent consultation period for the concurrent development application; and
 - (c) state that if the concurrent document relating to the application is refused, rejected or withdrawn, the application is taken to have been refused; and
 - (d) include an electronic link to each concurrent document for the concurrent development application on the authority website.

- (4) In this section:

completed concurrent process—see section 162 (6).

publicly notified, for a concurrent document, means—

- (a) for a draft plan variation that gives effect to an anticipated **territory plan** variation under section 137AA—notification of the consultation notice for the draft plan variation under section 63 (3); or
- (b) for a proposed technical amendment under section 90B—public notice under section 90 (2); or

- (c) for an EIS exemption application—notification of the consultation notice for the EIS exemption application under section 211C; or
- (d) for a draft EIS—notification of the draft EIS under section 217.

147AC Representations about concurrent documents

- (1) This section applies if—
 - (a) a development application is a concurrent development application; and
 - (b) a written representation about a concurrent document relating to the application may be made under this Act.
- (2) A person may only make a written representation about—
 - (a) the concurrent development application and each concurrent document in the concurrent consultation period; and
 - (b) the concurrent document at the same time as the person makes a representation about the concurrent development application.
- (3) Subsection (4) applies if—
 - (a) a person makes a written representation about a concurrent document at the same time as the person makes a representation about a concurrent development application; and
 - (b) the representation must be published under this Act.
- (4) The planning and land authority must—
 - (a) include an electronic link to each concurrent document for the concurrent development application on the authority website; and

- (b) either—
 - (i) publish the representations together on the authority website; or
 - (ii) include an electronic link to the representations on the authority website.
- (5) In this section:
representation, about a concurrent document, means—
 - (a) for a draft plan variation that gives effect to an anticipated [territory plan](#) variation under section 137AA—a comment about the variation under section 63; or
 - (b) for a proposed technical amendment under section 90B—a comment about the amendment under section 90; or
 - (c) for an EIS exemption application—a submission about the application under section 211C; or
 - (d) for a draft EIS—a representation about the draft EIS under section 219.

147AD Refusal, rejection or withdrawal of concurrent documents

- (1) This section applies if—
 - (a) a development application is a concurrent development application; and
 - (b) a concurrent document relating to the application—
 - (i) is refused, rejected or withdrawn; or
 - (ii) is taken to have been refused, rejected or withdrawn; or

- (iii) for a draft plan variation that gives effect to an anticipated **territory plan** variation under section 137AA—
 - (A) the draft plan variation is revised in a way that no longer permits the proposed development; or
 - (B) if a provision of the draft plan variation relates to the concurrent development application—subparagraph (i), (ii) or (iii) (A) applies to the provision.
- (2) The planning and land authority or Minister is taken to have refused the concurrent development application.
 - Note* For a development application made under s 137AA, the planning and land authority or Minister is taken to have refused the development application if a consultation notice for a draft plan variation that gives effect to the anticipated variation is not notified under s 63 within 6 months after the development application is made (see s 137AA (3)).
- (3) Any other concurrent document is taken to have been withdrawn.
- (4) For subsection (1) (b), if the concurrent document is a draft plan variation that gives effect to an anticipated **territory plan** variation under section 137AA, a reference also includes refusal or rejection of a provision of the draft plan variation if the provision relates to the concurrent development application.
- (5) The planning and land authority must give the applicant for the concurrent development application notice of the effect of this section.

38 New section 151A

in division 7.3.3, insert

151A Effect of advice by referral entity for concurrent documents

- (1) This section applies if—
 - (a) an entity gives advice in relation to a development application in accordance with section 149; and
 - (b) the development application is a concurrent development application.
- (2) The advice must not be inconsistent with any previous advice given by the entity in relation to a concurrent document for the concurrent development application unless—
 - (a) further information in relation to the proposed development comes to the entity's attention; and
 - (b) the entity did not have the further information when the entity gave the previous advice; and
 - (c) the further information is relevant to the previous advice the entity gave; and
 - (d) the entity would have given different advice if the entity had the further information before giving the previous advice.

**39 What is *publicly notifies* for ch 7?
Section 152 (1), new note**

insert

Note 3 If a draft EIS or an EIS exemption application is lodged with a concurrent development application, the planning and land authority must publicly notify the concurrent documents with the development application under s 147AB.

**40 Representations about development applications
Section 156 (2), new note**

insert

Note 2 For a concurrent development application, a representation about the development application or a concurrent document must be made in the concurrent consultation period (see s 147AC (2)).

41 Section 156 (6) (b), except note

substitute

- (b) if the development application is accompanied by a completed EIS—must not relate to the adequacy of the EIS.

**42 Deciding development applications
New section 162 (1A)**

insert

- (1A) However, the planning and land authority or Minister may only decide the application if—
- (a) for a concurrent development application—the concurrent process is completed; or

Note Under s 147AA, a **concurrent development application** means an application for development approval that is made under s 137AA, or that is accompanied by 1 or more of the following:

- (a) if the application is made under s 137AA—the draft plan variation that gives effect to the anticipated [territory plan](#) variation;
- (b) if the application is made under s 137AD—the proposed technical amendment;
- (c) if a draft EIS is lodged with the application—the draft EIS;
- (d) if an application for an EIS exemption is lodged with the development application—the EIS exemption application.

- (b) for a development application made under section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared)—the draft plan variation has commenced under section 83 or section 84.

43 Section 162 (3)

omit

However

substitute

Also

44 Section 162 (6), new definition of *completed concurrent process*

insert

completed concurrent process—a ***concurrent process is completed*** if a concurrent development application is lodged and—

- (a) if the application is made under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared)—the draft plan variation has commenced under section 83 or section 84; or

Note For a development application made under s 137AA, the planning and land authority or Minister is taken to have refused the application if a consultation notice for a draft plan variation that gives effect to the anticipated variation is not notified under s 63 within 6 months after the development application is made (see s 137AA (3)).

- (b) if the application is made under section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—the plan variation has commenced under section 89; or

- (c) if the application is lodged with—
- (i) a draft EIS—the EIS has been completed; or
 - (ii) an EIS exemption application for the development proposal for the application—the EIS exemption has been granted under section 211H.

**45 Offence to undertake prohibited development
Section 200 (6) (b)**

omit

subsection 137 (2) (a)

substitute

section 137 (2)

46 Part 8.1 heading

substitute

Part 8.1 Overview and interpretation— ch 8

205A Overview of EIS process under ch 8

- (1) If this Act requires an environmental impact statement in relation to a development proposal, a development application for the proposal must include a completed EIS or a draft EIS, unless an EIS exemption is in force, or there is an EIS exemption application, for the proposal (see s 127).
- (2) If the proponent of the development proposal applies to the Minister for an EIS exemption (see s 211B), the Minister may grant, or refuse to grant, the exemption (see s 211H).

- (3) If the proponent does not apply for an EIS exemption, or the proponent does apply but the Minister refuses to grant the exemption, the proponent must apply to the planning and land authority for an EIS scoping document (see s 212).
- (4) If the proponent applies to the planning and land authority under section 212, the authority must prepare the scoping document and give the scoping document to the proponent (see s 212 to s 215).
- (5) If the planning and land authority gives a scoping document to the proponent, the proponent must prepare a draft EIS (see s 216).
- (6) The planning and land authority must publicly notify the draft EIS (see s 217 and s 218), and anyone may make a representation about the draft EIS (see s 219) (for a draft EIS that is lodged with a concurrent development application, see also s 147AB and s 147AC).
- (7) The proponent must revise the draft EIS and give the revised EIS to the planning and land authority (see s 221).
- (8) The planning and land authority must consider the EIS (see s 222) and—
 - (a) accept the EIS (see s 222 (2)); or
 - (b) give the proponent an opportunity to revise the EIS (see s 224); or
 - (c) reject the EIS (see s 223 and s 224A).
- (9) If the planning and land authority accepts the EIS, the authority must—
 - (a) give the EIS to the Minister (see s 225); and
 - (b) prepare an EIS assessment report (see s 225A).

- (10) If the planning and land authority gives an EIS to the Minister, the Minister may—
- (a) if the Minister decides not to present to the Legislative Assembly under section 227 nor establish an inquiry panel under part 8.3—give the authority a notice of no action on the EIS (see s 226); or
 - (b) present the EIS to the Legislative Assembly (see s 227).
- (11) An EIS expires 5 years after the day it is completed (see s 227A).

47 **Definitions—ch 8**
Section 206, definitions

omit the definitions of

draft EIS

EIS

environmental impact statement

inquiry

48 **When is an EIS completed?**
Section 209 (1) (b)

omit

has not decided

substitute

decides not

49 Division 8.2.1 heading

substitute

Division 8.2.1 EIS exemptions

**50 When is a completed EIS required?
Section 210**

omit

**51 Meaning of *EIS exemption*
Section 211, definition of *EIS exemption*, new note**

insert

Note An EIS exemption may be given if a recent study has already addressed the expected environmental impact of a development proposal (see s 211B).

**52 Meaning of *recent study*—pt 8.2
Section 211A, definition of *recent study*, new note**

insert

Note An EIS exemption may be given if a recent study has already addressed the expected environmental impact of a development proposal (see s 211B).

**53 EIS exemption application
New section 211B (3) (aa)**

insert

(aa) include information about the development proposal; and

**54 EIS exemption application—public submissions
Section 211D (1) (b), new note**

insert

Note If an EIS exemption application is lodged with a concurrent development application, a submission about the EIS exemption application must be made in the concurrent consultation period and at the same time as the person makes a representation about the development application (see s 147AC (2)).

**55 Scoping of EIS
Section 212 (1) and note**

substitute

- (1) A proponent of a development proposal must apply to the planning and land authority under this section if—
- (a) an EIS, whether completed or draft, is required for the proposal; and
 - (b) the proponent has—
 - (i) not applied for an EIS exemption for the proposal; or
 - (ii) applied for an EIS exemption for the proposal, but the Minister has refused to grant the EIS exemption under section 211H.

Note 1 A development application for a development proposal in the impact track must include either a completed EIS or a draft EIS, unless there is an EIS exemption, or an EIS exemption application, for the proposal (see s 127).

Note 2 If a form is approved under s 425 for this provision, the form must be used.

**56 Contents of scoping document
New section 213 (1A)**

insert

- (1A) The proponent must give the draft EIS to the planning and land authority by the end of—
- (a) the period of 18 months starting on the day the authority gives the scoping document for the development proposal to the applicant under section 214; or
 - (b) if the scoping document states that a shorter period applies—the shorter period.

**57 Term of scoping document
Section 215**

omit

**58 Preparing draft EIS
Section 216 (2)**

substitute

- (2) The proponent must, by the end of the period stated in the scoping document for the development proposal—
- (a) prepare a document that addresses each matter raised in the scoping document (a *draft EIS*); and
 - (b) give the draft EIS to the planning and land authority for public notification.

**59 Public notification of draft EIS
Section 217, new note**

insert

Note 2 If a draft EIS is lodged with a concurrent development application, the draft EIS must be publicly notified together with the concurrent development application within the concurrent consultation period (see s 147AB (2)).

60 Section 218

substitute

218 Meaning of *public consultation period* for draft EIS

In this Act:

public consultation period, for a draft EIS, means—

- (a) if the draft EIS is lodged with a concurrent development application—the concurrent consultation period; or

Note ***Concurrent consultation period***—see s 147AA.

- (b) in any other case—

- (i) the period, not less than 20 working days, when representations may be made on the draft EIS under section 217 (a) (ii); or
- (ii) if the period is extended under section 219 (3)—the period as extended.

**61 Representations about draft EIS
Section 219 (1), new note**

insert

Note If a draft EIS is lodged with a concurrent development application, a representation about the draft EIS must be made in the concurrent consultation period and at the same time as the person makes a representation about the development application (see s 147AC (2)).

**62 Publication of representations about draft EIS
Section 220 (2) (b), except notes**

substitute

- (b) give a copy of the representation to the proponent of the development proposal as soon as practicable after the public consultation period for the draft EIS ends.

**63 Revising draft EIS
Section 221 (2)**

substitute

- (2) The planning and land authority must give the proponent written notice of the revision period.
- (2A) The proponent of the development proposal must revise the draft EIS and give the revised EIS to the planning and land authority within the revision period.

64 New section 221 (4)

insert

- (4) In this section:

revision period, for a draft EIS publicly notified under section 217, means a period of at least 30 days, but not more than 18 months, after the day the public consultation period for the draft EIS has ended.

**65 Authority consideration of EIS
Section 222 (1)**

substitute

- (1) This section applies if the proponent of a development application gives the planning and land authority—
- (a) an EIS under section 221 within the time required by section 221 (2); or
 - (b) an EIS in accordance with a notice under section 224 (2).

**66 EIS given to authority out of time
Section 223 (1)**

substitute

- (1) This section applies if the proponent of a development proposal gives the planning and land authority an EIS under section 221 more than 18 months after the scoping document for the proposal is given to the proponent under section 214.

**67 Chance to address unaddressed matters
Section 224 (1) (b)**

substitute

- (b) the authority has not, under this section, given the proponent of the development proposal—
- (i) for a draft EIS that is lodged with a concurrent development application—a written notice; or
 - (ii) in any other case—a second written notice.

68 Section 224A

substitute

224A Rejection of unsatisfactory EIS

- (1) This section applies if the planning and land authority gives the proponent of a development proposal 1 of the following under section 224 (2):
 - (a) for a draft EIS that is lodged with a concurrent development application—a written notice;
 - (b) in any other case—a second written notice.
- (2) The planning and land authority must reject an EIS if—
 - (a) the proponent does not respond within the time stated in the notice; or
 - (b) the proponent responds within the time stated in the notice but the authority remains unsatisfied in relation to a matter mentioned in section 222 (2) (a).

Note If the rejected draft EIS was lodged with a concurrent development application, the development application is taken to have been refused (see s 147AD).

**69 Restriction on direct sale by authority
New section 240 (1) (h)**

before the note, insert

- (h) for a lease over an encroachment on adjoining territory land under section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—the [territory plan](#) has been varied in accordance with section 90B (Rezoning—development encroaching on adjoining territory land).

70 Section 240 (4), new definitions

insert

adjoining territory land—see section 137AC (1) (a).

encroachment—see section 137AC (1) (b).

71 New chapter 22

insert

Chapter 22 Transitional—Planning and Development (Efficiencies) Amendment Act 2016

491 Existing concurrent documents

For section 147AA (1), a *concurrent document* does not include—

- (a) a draft EIS given to the planning and land authority under section 216 before the day the *Planning and Development (Efficiencies) Amendment Act 2016* commences; or
- (b) an application for an EIS exemption made under section 211B before the day the *Planning and Development (Efficiencies) Amendment Act 2016* commences.

492 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Planning and Development (Efficiencies) Amendment Act 2016*.

- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

493 Expiry—ch 22

This chapter expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

72 Dictionary, definition of *code variation*

substitute

code variation, for part 5.4 (Plan variations—technical amendments)—see section 87 (2) (a).

73 Dictionary, new definitions

insert

concurrent consultation period, for a concurrent development application—see section 147AA.

concurrent development application—see section 147AA.

concurrent document, in relation to a concurrent development application—see section 147AA.

74 Dictionary, definition of *draft EIS*

substitute

draft EIS—see section 216 (2) (a).

75 Dictionary, definition of *prohibited*, paragraph (a)

omit

section 136 (2)

substitute

section 136

76 Dictionary, definition of *representation*, paragraph (b)

before

for chapter 8

insert

about a draft EIS,

Part 3 Planning and Development Regulation 2008

77 New section 25A

insert

25A Prescribed encroachment for development encroaching on adjoining territory land—Act, s 137AC (1) (b)

A distance of 20m is prescribed.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2016.

2 Notification

Notified under the [Legislation Act](#) on 14 April 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Planning and Development (Efficiencies) Amendment Bill 2016, which was passed by the Legislative Assembly on 7 April 2016.

Clerk of the Legislative Assembly

© Australian Capital Territory 2016