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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPTAL TERRITORY

SUPPLEMENTARY EXPLANATORY STATEMENT

GOVERNMENT AMENDMENTS TO THE

PLANNING AND DEVELOPMENT BILL 2006

Circulated by the authority of
Andrew Barr MLA Minister for Planning

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Supplementary Explanatory Statement

This supplementary explanatory statement relates to the amendments to be moved by the Minister for Planning to the Planning and Development Bill 2006 (the Bill) as introduced in the ACT Legislative Assembly.

Overview of the Amendments

The Government amendments make technical and substantive changes to the Bill.

The technical amendments include:

1. Modernising language by removing references to direct “grants” of leases and replacing it with a reference to direct “sales” of leases. This language is also more consistent with other Government proposals arising from its housing affordability strategy.

2. Amendments in terminology that were necessary to make the Bill congruent with the restructured territory plan. For instance, the restructured territory plan refers to "rules" and "criteria" whereas the Bill refers to "code requirements" and "merit criteria".

3. Amendments to ensure it is clear that a prohibition notice may be issued to any "entity". These amendments recognise that an "entity" as defined in the *Legislation Act 2001* includes individuals, corporations, unincorporated associations, and partnerships.

4. Amendments relating to the public consultation period for development approvals and for draft EIS. Pursuant to the amendments, the planning and land authority (the authority) can extend the public consultation period. If it does so, it must give written notice of the extension to the applicant for the development approval. The definition of public consultation period is relocated but remains unchanged.

5. Amendments that are for clarification purposes to ensure the meaning of provisions are clear and to correct minor errors in wording. The Bill’s Dictionary and Schedules are also updated, as appropriate, to reflect the changes made by the Government amendments.

6. Amendments to allow transitional regulations for the *Building Legislation Amendment Act 2007* (the Bill only provided for transitional regulations for the *Planning and Development Act 2007*) and for the processes involved in compliance actions under chapters 11 and 12 of the Bill.

The substantive changes made to the Bill by the Government amendments include:

1. a new commencement clause that specifies that the Bill is to commence operation on 31 March 2008 or when the new territory plan commences, whichever is the latest date. The new territory plan commences in accordance with clause 423(3) of the Bill.

2. The definition of *use* as development –Clause 6 inserts a new definition of *use* of land or a building or structure on the land and this definition is reference in the Dictionary. *Use* is defined as including beginning, continuing or changing a use of land or a building or structure on the land. *Development* in clause 7 includes *use* as defined. These concepts are not new to the Bill but the revised wording ensures consistency of approach to the concept of use and enables other provisions to be simplified. The definition of *use* and its inclusion in the definition of *development* need to be read in conjunction with new clause 132A which exempts specified use from requiring development approval.

3. Amendments to Division 7.2.6 of the Bill which deals with Exempt development and Prohibited development. The new provisions apply to both existing and new leases and amend the Division as follows:
1. new clause 132 clarifies the definition of *exempt development* with a reference to new clause 132A.
2. new clause 132A is inserted. The purpose of 132A is to exempt specified *use* from requiring development approval.
3. clause 132A(8) defines *authorised use* for the purpose of this clause. *Authorised use* includes use authorised by lease, licence, permit under the *Roads and Public Places Act 1937*; a provision of chapter 15 (Transitional); and includes a use authorised by a lease that has expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry; and does not include a use authorised by clause 240 of the Bill (clause 240 authorises "home business" to be conducted on residential leases).
3. new clause 132A sets out the circumstances under which an *authorised use* is exempt or not exempt. *Authorised use* is exempt from requiring development approval provided that there is no earthworks, construction, building, alteration or demolition work of a kind that, of itself, requires development approval. If the relevant work is of a kind that is exempt from requiring development approval (eg a small shed that is exempt from requiring approval under the regulation) then use approval is not required. This point is underlined in clause 132A(7) which explicitly states that use of a building does not require development approval if the construction of the building or structure is exempt from requiring development approval.
4. there is provision that the exemption of new clause132A does not cease because:
A. the relevant use is not continuous (interrupted or abandoned) (refer 132A(4));
B. the relevant lease is subject to a transfer or other dealing or is renewed (refer 132A(4));
C. the relevant lease is surrended for the purposes of achieving a lease variation or renewal (refer 132A(5)(b)).
However, under clause 132A(5) the use approval does cease if:
A. the relevant lease plus the six month grace period for renewal both expire and the lease is not renewed (refer clause 246 of the Bill);
B. the relevant lease is surrendered (other than in connection with a lease variation or renewal) or the lease is terminated;

C. if the use is authorised by a licence or permit under the *Roads and Public Places Act 1937* and the licence/permit ends.
5. new clause 132B continues to provide that exempt development can be undertaken without development approval and that an application for development approval of exempt development cannot be made. This clause is substantially the same as the existing omitted clause 132(1) of the Bill.
6. a new division 7.2.7 on Prohibited development is inserted. The new division:
(i) retains clause 133 of the Bill to the effect that a development application cannot be made for *prohibited development;*
(ii) amends clause134 of the Bill to incorporate the concept of *authorised use*. New clause 134(3) defines *authorised use* as a use authorised by lease, clause 240 of the Bill, a provision of chapter 15 (Transitional); and includes a use authorised by a lease that has expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry;
(iii) amends clause 134 of the Bill to make it clear that a development application for *authorised use* can still be made notwithstanding that the use is *prohibited development* under the territory plan or under clause 133(2) of the Bill. In this case, the use is assessable under the impact track.

New clause 132A plus the definition of *use* are intended to have the following benefits. In summary the provisions will enable:

1. a single administrative system for leases granted prior to and after the commencement of the new planning legislation;
2. the impact of the use or change of use of land on the community to be properly assessed and conditioned before any development approval is granted;
3. protection from inappropriate development on leases at some point in the future;
4. development approvals and lease variations to be granted more quickly because leasing and development assessment systems will be better integrated;
5. in conjunction with revised clause 435 of the Bill, preservation of existing rights to use land so that uses authorised on a lease can continue to operate. For existing and new leases, development approval may be needed with new building work so that the impact of changed use involving building work can be assessed and managed.

4. Amendments which allow the authority to exercise its discretion not to make part of a draft plan variation or background paper publicly available. These amendments seek to address concerns raised by the Scrutiny of Bills Committee and align criteria for non-disclosure of certain draft plan variations to similar criteria for non disclosure of development applications.

5. A provision to ensure there is a planning strategy for the ACT upon commencement of the *Planning and Development Act 2007.* Clause 128 ensures that on commencement of the new planning system, there is a planning strategy for the ACT that is comprised of the ACT Government's current strategic land use planning documents.

6. Amendments to provisions relating to assessment tracks for development applications. The Government amendments enable development tables to specify a minimum assessment track rather than just an assessment track. This is necessary because minimum assessment tracks are included in the proposed restructured territory plan. There will be a hierarchy of assessment tracks from minimum to maximum and a new definition of "minimum assessment track".

It was also necessary to amend the Bill to specify additional circumstances under which the impact track will apply because the Territory may enter into bilateral agreements with the Commonwealth in relation to the assessment of activities that may require approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act).

7. Amendments to the provisions relating to the use by the planning and land authority of public consultants. Under the Bill, the authority may require a proponent to engage a consultant from an approved list of consultants when preparing scoping documentation for an EIS. The Government amendments require the list of consultants to be maintained by the authority (rather than set out in the regulation as provided for in the Bill) and furthermore, allow the authority to specify the criteria that potential consultants must satisfy in order to be included on the list.

8. An amendment to the Bill that places limitations on the authority's discretion to consider a pre-application request for advice on a development application. The authority is required to consider the request and provide advice in all cases unless the authority concludes that the information provided with the request is not sufficient for the authority to provide the advice.

9. Amendments to clarify when development approvals take effect. The Bill provided that the approval of all development applications took effect 20 working days after the notice of the decision. However, the 20 day delay in commencement does not apply to all development approvals where there are representations because not all development approvals are potentially open to third party review in the Administrative Appeals Tribunal (AAT). The purpose of the Government amendments is to clarify when development approvals have a right of review or representation and when development approvals commence. For instance, clause 51 makes it clear that when there is no potential for a development approval to be challenged by third parties in a merit review before the AAT, the development approval commences operation the day after the application is approved. The commencement will be delayed if, and only if, a person who made a representation has a right to seek a merit review before the AAT.

10. Amendments relating to applications for third party review of development approvals in the AAT. The Bill required applications for third party merit review in the AAT to be made within four weeks of the decision to grant a development approval. The Government amendment provides that the four week period runs from the date the third party is notified of the decision to grant the approval. This is considered a fairer process and more consistent with processes in the *Administrative Appeals Tribunal Act 1989* where relevant periods typically run from the date of receiving notice of the decision. The Government amendments also clarify that Ministerial decisions are not reviewable. The previous wording in the Bill indirectly implied that a

right to seek merit review in the AAT of a call-in matter might be possible. This is not the case. A call-in matter is not subject to merit review in the AAT.

11. Amendments to the leasing provisions of the Bill in relation to the circumstances in which undeveloped land can be transferred, including the requirement for lessees to obtain the authority's consent to transfer a lease. The amendments delete Clause 291 of the Bill and amend clause 292 to permit "personal reasons" to be prescribed by regulation and to specify what comprises "financial reasons".

Section 28 of the *City Area Leases Act 1936* (repealed) was carried forward into section 181 of the *Land (Planning and Environment) Act 1991* (Land Act). Section 181 was carried forward into clause 291 of the Bill. The purpose of section 181 was to prevent land speculation in the ACT. Section 181 (now clause 291 of the Bill) restricts borrowing against an undeveloped lease by specifying that the lease (or an interest in that lease) may only be mortgaged if the funds:
1. are to repay money borrowed to purchase the lease or an interest in the lease; or
2. secure money to purchase the lease or an interest in the lease; or
3. enable the lessee to develop the lease.

In effect, the consolidation of other debt into a mortgage over an undeveloped lease or the use of an undeveloped lease as security for another borrowing was prohibited. Evolution of the finance sector and the way people organise their financial affairs has seen a change in the way mortgage lending occurs. There has been a trend towards mortgages that consolidate a variety of debt. Section 181 of the Land Act has not ever been actively enforced and the provision has become outdated, impractical and redundant. As a result, clause 291 of the Bill is no longer considered to be necessary.

Companion amendments to clause 292 of the Bill provide the ability to implement the anti-speculative tenet of clause 291 in a more flexible and practical way that places the onus on lessees to act responsibly when borrowing monies to purchase undeveloped land. Clause 292 limits the circumstances in which undeveloped land can be transferred, including the requirement for lessees to obtain the authority's consent. In giving consent, the authority must be satisfied, amongst other things, that the lessee cannot for personal or financial reasons comply with the building and development provisions. While the amendments to clause 292 will not prevent the consolidation of debt into borrowings secured against an undeveloped lease, they enhance the authority's ability to prevent speculative behaviour through a tighter regulation of the circumstances in which the authority may give consent to the transfer of undeveloped leases. Consent may be denied in circumstances where monies are secured against a lease and then expended in ways that are not connected with the lease, such as expenditure on the purchase of other land, or a luxury car. Monies are spent in connection with the lease if they are linked to personal reasons prescribed by regulation under clause 292. The amendment to clause 292 also provides the authority with the ability to give consideration to major unforeseen events that occur after the purchase of a lease and that have a demonstrated effect on the lessee's ability to comply with the building and development provisions. Examples of a major unforeseen event include a bushfire or a large increase in interest rates.

12. Amendments that provide additional transitional provisions including a transitional public consultation provisions for the territory plan; and transitional provisions for:

(a) draft plan variations submitted to the Minister under the repealed Act (the *Land (Planning and Environment) Act 1991*;

(b) applications for review not finally decided at the time of commencement of the *Planning and Development Act 2007*;

(c) plans of management

(d) outdated references to the repealed *Land (Planning and Environment) Act 1991* to be read as references to the corresponding matters in the new *Planning and Development Act 2007*.

Clause 433A is a further transitional provision that requires the authority (or Minister) to consider any existing lease and development conditions applicable to the land in deciding a development application, if this is required by the territory plan, and the development application is not in the code track.

The amendment, providing an additional minimum 15 working day period for public consultation on the restructured territory plan, allows the public a final period of comment on any revisions made to that document following earlier consultation in 2007 and comments from the independent assessor appointed to review the outcomes from that consultation. This 15 working day period can be extended by regulation.

The nominated period is considered reasonable in light of the extensive consultation to date on the territory plan. This consultation began on 27 May 2005 with the release, for public comment, of the Planning System Reform Strategic Directions Paper and technical papers, which included proposals for the framework of a restructured territory plan, and concluded on 5 August 2005. In December 2005, the Government released its response to public consultation on those documents. On 13 July 2006, the Government released an exposure draft Planning and Development Bill as well as a draft structure of the territory plan for public comment, which concluded on 31 August 2006. In November 2006, focus group workshops were held, involving industry, community councils and other community groups, as well as with members of the general community. The proposed territory plan and key codes were released for public comment on 4 April 2007, for a public consultation ending on 1 June 2007. Subsequently an independent assessor has been appointed to review these consultation outcomes.

13. An amendment that clarifies that market value payment for a lease can be comprised of money and infrastructure or other works, provided that the total value of these items is equivalent to market value. This recognises that leases are occasionally granted where payment is both by way of money and in-kind services or works.

14. An amendment that provides that public servants rather than “a person” may be appointed as an inspector by the authority under the Bill. This amendment was made in response to commentary by the Scrutiny of Bills Committee.

15. An amendment that provides that the direct and indirect costs to the Territory of the conduct of an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

Outline of Provisions

Amendment 1
Clause 2
Page 2, line 4
This amendment substitutes a new commencement clause in the Bill and specifies that the Bill is to commence operation on 31 March 2008 or when the new territory plan commences, whichever is the latest date. The new territory plan commences in accordance with clause 423(3) of the Bill.

Amendment 2
Clause 7, definition of *development,* paragraphs (e) and (f)
Page 4, line 23
This amendment omits paragraphs (e) and (f) of clause 7 of the Bill in order to amend the definition of *development* and with amendment 4 collapses the concepts of changing use and commencing use into simply "use of land". Paragraphs 7 (e) and (f) of the Bill are no longer required because *development* in Clause 7 includes *use* as defined in new clause 7A.

Amendment 3
Clause 7, definition of *development*, paragraphs (g) and (h)
Page 5, line 6
This amendment substitutes new paragraphs (g) and (h) in clause 7 of the Bill which amend the definition of *development* to clarify concepts of subdivision and consolidation of land, and varying a lease. These clauses are able to be simplified because of the new Dictionary definition of *variation* of a lease and ensure consistency of approach to the concept of lease variation.

Amendment 4
Clause 7, definition of *development*, paragraph (i)
Page 5, line 11
This amendment omits clause 7 paragraph (i) of the Bill in order to amend the definition of *development* by deleting the reference to varying a lease to lift its concessional status. This removes duplication because the general reference to varying a lease is now part of the definition of development. The general reference is in the new Dictionary definition of *variation* of a lease.

Amendment 5
Proposed new clause 7(2)
Page 5, line 16
This amendment inserts a new clause 7(2) in the Bill to provide a cross-reference to the definition of *consolidation* in clause 226 of the Bill and a definition of *subdivision* for clause 7. The amendment clarifies that the clause 7 definition of *development* includes subdivision and that subdivision includes subdivision of land under the *Unit Titles Act 2001* but does not include subletting of a lease. It is to be noted that the new definition of *variation* of a lease in the Dictionary includes subdivision other than

subdivision under the *Unit Titles Act 2001*. This is because it is not appropriate for development approval and related mechanisms in connection with lease variations to apply to unit titling as this is dealt with under the *Unit Titles Act 2001*. The construction of multi unit developments (as opposed to unit titling) still requires development approval under the Bill.

Amendment 6
Proposed new clause 7A
Page 5, line 16
This amendment inserts a new definition of *use* land in the Bill, which includes beginning, continuing or changing a use of land (or a building or structure on the land). The new definition ensures consistency of approach in the Bill to the concept of use of land and enables other provisions to be simplified. This clause needs to be read in conjunction with new clause 132A, which exempts some "use" from requiring development approval.

Amendment 7
Proposed new clause 50(2)(ca)
Page 36, line 19
This amendment inserts a new item in clause 50 of the Bill to enable the territory plan to provide for affordable housing. It clarifies the capacity of the territory plan to provide for affordable housing in light of some interstate court decisions that questioned whether affordable housing was included in the broad concept of sustainability.

Amendment 8
Clause 53(1)(a)
Page 37, line 18
This amendment amends clause 53(1)(a) of the Bill to enable development tables to specify a minimum assessment track rather than just an assessment track. It clarifies that the development tables can specify a minimum assessment track as per the proposed restructured territory plan. This makes the Bill congruent with the restructured territory plan and clarifies the operation of the proposed assessment tracks. This amendment needs to be read with amendment 10 that effectively defines *minimum track assessment*.

Amendment 9
Clause 53(1)(b) proposed new note
Page 37, line 21
This amendment inserts an explanatory note in clause 53 (1)(b) of the Bill which aids understanding of the parts of the Bill dealing with exempt development.

Amendment 10
Proposed new clause 53(3)
Page 38, line 9
This amendment amends clause 53(3) of the Bill to confirm the hierarchy of assessment tracks from minimum to maximum. The clause effectively provides a definition of *minimum assessment track*. This definition is necessary to clarify the meaning of amended clause 53(1)(a) (in clause 8 above).

Amendment 11
Clause 54(1)
Page 38, line 11
This amendment amends clause 54 (1) of the Bill by inserting the words “or precinct code that is a concept plan” after the words “general code”. This makes it clear that a precinct code (that is a concept plan) can but does not have to contain rules and criteria.

Amendment 12
Clause 54(1)(a)
Page 38, line 13
This amendment amends clause 54(1)(a) of the Bill to delete the reference to code requirements. The restructured territory plan refers to "rules" instead of "code requirements". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 13
Clause 54(1)(b)
Page 38, line 15
This amendment amends clause 54(1)(b) of the Bill to delete the reference to merit criteria. The restructured territory plan refers to "rules" and "criteria" instead of "code requirements" and "merit criteria". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 14
Clause 54(5)
Page 38, line 25
This amendment amends clause 54(5) of the Bill to substitute a new definition of a *general code*. The amendment simplifies the existing provision and also makes it clear that, if the general code includes "rules" and/or "criteria", these must apply in the assessment of development applications.

Amendment 15
Clause 65(2) and (3)
Page 48, line 1
This amendment substitutes new clauses 65(2) and (3) in the Bill to include criteria for when the planning and land authority may exercise its discretion not to make part of a draft plan variation or background paper publicly available. The amendment seeks to address concerns raised by the Scrutiny of Bills Committee and aligns criteria for non-disclosure of certain draft plan variations to similar criteria for non disclosure of development applications.

Amendment 16
Clause 88(1)(b)
Page 63, line 19
This amendment substitutes a new clause 88(1)(b) in the Bill. The clause requires all technical variations to be subject to public consultation (minimum 15 working days). The concept in the Bill that some types of variations are sufficiently minor as to negate the need for public consultation is removed.

Amendment 17
Clause 93(1)(a)
Page 67, line 4
This amendment amends clause 93(1)(a) of the Bill to make it clear that an estate development plan only has to be consistent with a concept plan if one exists. This is because in some areas of Canberra there are no prior existing concept plans/precinct codes against which an estate development plan can be assessed.

Amendment 18
Clause 111(2)(a)
Page 80, line 14
This amendment amends clause 111(2)(a) of the Bill to replace the reference to “code requirements” with “rules”. The restructured territory plan refers to "rules" instead of "code requirements". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 19
Clause 111(2)(b)
Page 81, line 2
This amendment amends clause 111(2)(b) of the Bill to replace the reference to “code requirements” and “merit criteria” with “rules” and “criteria”. The restructured territory plan refers to “rules” and “criteria” " instead of "code requirements" and "merit criteria". This and related Bill amendments make the Bill congruent with the restructured Territory Plan.

Amendment 20
Clause 111(2)(c)
Page 81, line 9
This amendment amends clause 111(2)(c) of the Bill to replace the reference to “code requirements” and “merit criteria” with “rules” and “criteria”. The restructured territory plan refers to "rules" and "criteria" instead of "code requirements" and "merit criteria". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 21
Proposed new Clause 113(3)
Page 82, line 24
This amendment inserts a new clause 113(3) in clause 113 of the Bill. This is to clarify that the planning and land authority may refuse to accept a development application made in an assessment track other than the assessment track for the development proposal. If the authority assesses a development application made in an assessment track other than the track for the proposal, the authority must refuse the application. Thus, a development application that is made in the wrong track can either be:

(a) not accepted; or
(b) accepted, assessed and refused but cannot be granted.

Amendment 22
Clause 114 heading
Page 83, line 1
This amendment substitutes a new heading for clause 114 of the Bill to ensure the wording in the heading is consistent with clause 114 as revised in accordance with amendments 23 to 27 below.

Amendment 23
Clause 114(1)(b)
Page 83, line 5
This amendment amends clause 114(1)(b) of the Bill by replacing the words “relevant code requirements for the proposal” with ”requirements under each code (the code requirements) that apply to the proposal”. This and other amendments are to confirm that references to requirements of codes are references to the whole text of the code, that is, both “rules” and “criteria”.

Amendment 24
Clause 114(2)
Page 83, line 7
This amendment amends clause 114(2) of the Bill to remove the word “relevant” from the clause. This and other amendments are to confirm that references to requirements of codes are references to the whole text of the code, that is, both “rules” and “criteria”.

Amendment 25
Clause 114(3)
Page 83, line 12
This amendment amends clause 114(3) of the Bill to remove the word “relevant” from the clause. This and other amendments are to confirm that references to requirements of codes are references to the whole text of the code, that is, both “rules” and “criteria”.

Amendment 26
Clause 114(4)
Page 83, line 17
This amendment amends clause 114(4) of the Bill to remove the word “relevant” from the clause. This and other amendments are to confirm that references to requirements of codes are references to the whole text of the code, that is, both “rules” and “criteria”.

Amendment 27
Clause 114(5)
Page 83, line 22
This amendment amends clause 114(5) of the Bill to remove the word “relevant” from the clause. This and other amendments are to confirm that references to requirements of codes are references to the whole text of the code, that is, both “rules” and “criteria”.

Amendment 28
Clause 115(b)
Page 84, line 6
This amendment amends clause 115(b) of the Bill to replace “relevant code requirements” with “relevant rules”. The restructured territory plan refers to "relevant rules" instead of "relevant code requirements". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 29
Clause 115 notes 1 and 2
Page 84, line 7
This amendment amends clause 115 notes 1 and 2 of the Bill to refer to definitions of “rules” and “relevant rules”. This and related Bill amendments make the Bill congruent with the restructured territory plan. A new note 3 provides a cross reference to clause 113(3) which specifies that if a development application is made in the code track, but the development proposal is in another track, the application must be refused.

Amendment 30
Clause 120
Page 87, line 6
This amendment substitutes a new clause 120 in the Bill. Subclause 120(1) clarifies that, if a development proposal is in the merit track, the application for development approval for the proposal must be publicly notified under division 7.3.4. Subclause 120(2) provides more details than in the Bill about limitations on right of review under chapter 13 of the Bill in relation to a decision to approve an application for development approval for a proposal in the merit track. If there is a right of review under chapter 13, the right of review is only in relation to the decision, or part of the decision, to the extent that the proposal is subject to a rule and does not comply with the rule, or no rule applies to the proposal. The substance of clause 30 was in the presentation version of Schedule 1. This amendment brings the provision into the main body of the Bill to give it more prominence.

Amendment 31
Proposed new clause 122(e)
Page 88, line 6
This amendment inserts a new clause in clause 122 of the Bill to specify additional circumstances under which the impact track will apply. The Territory may enter into bilateral agreements with the Commonwealth in relation to the assessment of activities that may require approval under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act). The new clause applies if:
(i) there is such a bilateral agreement;
(ii) a proposed activity requires assessment under the EPBC Act and the *Planning and Development Act 2007*;
(iii) the Commonwealth Minister advises the Territory that assessment under the EPBC Act will not be required because assessment under the *Planning and Development Act 2007* by the Territory will suffice.
The clause requires the Territory assessment of the proposed activity to be under the impact track.

Amendment 32
Division 7.2.6
Page 94, line 7

This amendment amends Division 7.2.6 of the Bill as follows:

1. new clause 132 clarifies the definition of *exempt development* with a reference to new clause 132A.

2. new clause 132A is inserted. The purpose of 132A is to exempt specified *use* from requiring development approval.

3. clause 132A(8) defines *authorised use* for the purpose of this clause. *Authorised use* includes use authorised by lease, licence, permit under the *Roads and Public Places Act 1937*; a provision of chapter 15 (Transitional); and includes a use authorised by a lease that has expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry; and does not include a use authorised by clause 240 of the Bill (clause 240 authorises "home business" to be conducted on residential leases).

4. new clause 132A sets out the circumstances under which an *authorised use* is exempt or not exempt. *Authorised use* is exempt from requiring development approval provided that there is no earthworks, construction, building, alteration or demolition work of a kind that, of itself, requires development approval. If the relevant work is of a kind that is exempt from requiring development approval (eg a small shed that is exempt from requiring approval under the regulation) then use approval is not required. This point is underlined in clause 132A(7) which explicitly states that use of a building does not require development approval if the construction of the building or structure is exempt from requiring development approval.

This provision has, for example, the following effects:

- no approval is required to continue "authorised use" unless work that is not exempt from requiring development approval is carried out on the land;
- when work is done which requires development approval, then development approval is required for the:
    - construction of the work
    - use of any new building or structure and
    - use of the land on which the work is located
- if a second or third building is added some years after getting the first use approvals noted above, and the further building is not exempt from requiring development approval, then development approval is required for both the construction of the additional building as well as the use of the new building.

5. there is provision that the exemption of new clause132A does not cease because:

A. the relevant use is not continuous (interrupted or abandoned) (refer 132A(4));

B. the relevant lease is subject to a transfer or other dealing or is renewed (refer 132A(4));

C. the relevant lease is surrended for the purposes of achieving a lease variation or renewal (refer 132A(5)(b)).

However, under clause 132A(5) the use approval does cease if:

A. the relevant lease plus the six month grace period for renewal both expire and the lease is not renewed (refer clause 246 of the Bill);

B. the relevant lease is surrendered (other than in connection with a lease variation or renewal) or the lease is terminated;

C. if the use is authorised by a licence or permit under the *Roads and Public Places Act 1937* and the licence/permit ends.

6. new clause 132B continues to provide that exempt development can be undertaken without development approval and that an application for development approval of exempt development cannot be made. This clause is substantially the same as the existing omitted clause 132(1) of the Bill.
7. a new division 7.2.7 on Prohibited development is inserted. The new division:
(i) retains clause 133 of the Bill to the effect that a development application cannot be made for *prohibited development*;
(ii) amends clause134 of the Bill to incorporate the concept of *authorised use*. New clause 134(3) defines *authorised use* as a use authorised by lease, clause 240 of the Bill, a provision of chapter 15 (Transitional); and includes a use authorised by a lease that has expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry;
(iii) amends clause 134 of the Bill to make it clear that a development application for *authorised use* can still be made notwithstanding that the use is *prohibited development* under the territory plan or under clause 133(2) of the Bill. In this case, the use is assessable under the impact track.

Amendment 33
Clause 135(1)
Page 97, line 5
This amendment amends clause 135(1) of the Bill to require the authority to consider a development proposal (in providing pre-application advice) only where sufficient information is provided by the applicant. A proponent may apply to the authority for advice on a development proposal as to what track is likely to apply, public notification requirements, etc. The provision amends clause 135(1) to require the authority to consider the request and provide advice in all cases unless the authority concludes that the information provided with the request is not sufficient for the authority to provide the advice. New clause 135(1B) requires the authority to tell the applicant if it has decided to not provide advice due to insufficient information.

Amendment 34
Clause 136(2)(c)
Page 99, line 10
This amendment amends clause 136(2)(c) of the Bill to replace “relevant code requirements” with “relevant rules”. The restructured territory plan refers to “relevant rules" rather than "relevant code requirements". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 35
Clause 136(2)(d)
Page 99, line 13
This amendment amends clause 136(2)(d) of the Bill to replace “relevant code requirements” and “relevant merit criteria” with “relevant rules” and “relevant criteria”. The restructured territory plan refers to "rules" and "criteria" instead of "code requirements" and "merit criteria". This and related Bill amendments make the Bill congruent with the restructured territory plan. Amendment 35 also inserts clause 136(2)(da) in the Bill. It states that the territory plan will stipulate when a statement of environmental effects is necessary.

Amendment 36
Clause 136(2)(e)(i)
Page 99, line 21
This amendment amends clause 136(2)(e)(i) of the Bill to replace “relevant code requirements” and “relevant merit criteria” with “relevant rules” and “relevant criteria”. The restructured territory plan refers to "rules" and "criteria" instead of "code requirements" and "merit criteria". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 37
Clause 136(2)(f)
Page 99, line 24
This amendment amends clause 136(2)(f) of the Bill to confirm that it only applies to nominal rent leases and also does not apply to variations of a nominal rent lease where change of use charge is not payable under clause 269 of the Bill (Variation of nominal rent lease – change of use charge). The requirement in 136(2)(f) for an assessment by an accredited valuer should only apply where the lease variation may incur a change of use charge, that is, to variations of nominal rent leases (other than leases to which clause 269 of the Bill does not apply) .

Amendment 38
Clause 136(2)(g)(iii)
Page 100, line 7
This amendment amends clause 136(2)(g)(iii) of the Bill to replace “direct grant” with “direct sale”. This and related amendments up date language to remove references to direct “grants” of leases and replace it with a reference to direct “sales” of leases, consistent with other Government proposals arising from its housing affordability strategy.

Amendment 39
Clause 136(4) definition of *relevant merit criteria*
Page 101, line 11
This amendment amends clause 136(4) of the Bill to replace “relevant merit criteria” with “relevant criteria”. The restructured territory plan refers to "criteria" instead of "merit criteria". This and related Bill amendments make the Bill congruent with the restructured territory plan

Amendment 40
Clause 137(1)(a)
Page 101, line 20
This amendment substitutes a new clause 137(1)(a) in the Bill. It states that the clause applies (amongst other things) if a requirement under a code that applies to a development proposal is that an entity approves the development or certifies something in relation to the development. There is no substantive change from the Bill and the amendment is for clarification of wording. The subclause makes it clear that this provison applies to situations where the relevant code requires an approval from another agency.

Amendment 41
Clause 153(2), proposed new note
Page 115, line 9
This amendment inserts a new note for clause153(2) of the Bill to provide a cross-reference to the new clause 153A (see clause 44 below) which sets out the meaning of *public consultation period* for development applications. There is no change in substance as the proposed public consultation periods remain the same.

Amendment 42
Proposed new clause 153(3A)
Page 115, line 13
This amendment inserts a new clause 153(3A) in the Bill which provides that, if the authority extends the public consultation period, the authority must give the applicant for the development approval written notice of the extension.

Amendment 43
Clause 153(6)
Page 115, line 24
This amendment omits clause153(6) from the Bill which defines public consultation period as it is replaced by the new clause 153A (see clause 44 following).

Amendment 44
Proposed new clause 153A
Page 115, line 28
This amendment inserts a new clause 153A in the Bill defining *pubic consultation period* for the Bill. The definition of public consultation period is relocated but otherwise is retained unchanged.

Amendment 45
Proposed new clause 158(1A)
Page 119, line 24
A leaseholder may apply to the planning and land authority to have a lease varied to remove the concessional status from the lease. Like all lease variations, this requires a development application and approval. Amendment 45 inserts a new clause 158(1A) in the Bill requiring development applications to be refused in specified circumstances. It specifies that if the Minister determines that removal of the concessional status of a lease is not in the public interest (under revised clause 253, amendment 99) then the relevant development application must, in all cases, be refused. Revised clause 253 (amendment 99) requires the Minister to first decide whether such a lease variation is in the public interest before the development application can be decided. The criteria for determining this are in revised clause 253. Revised clause 400 (amendment 115) provides that this decision is not subject to merit review in the Administrative Appeals Tribunal.

Amendment 46
Proposed new clause 159A
Page 121, line 14
This amendment inserts a new clause 159A in the Bill to remove any doubt that if a proponent applies for a development approval for a use and the application is refused, the proponent’s existing rights to use land or buildings are not affected.

Amendment 47
Clause 160(3)
Page 121, line 25
This amendemnt amends clause 160(3) of the Bill to change development approval from being “approved” to “given”. This is for clarification of wording only.

Amendment 48
Clause 160(4) proposed new examples
Page 123, line 21
Development approval that is assessed under the code track cannot be granted subject to conditions unless the condition is of a type set out in the regulation. Amendment 48 sets out examples of the type of conditions that may be listed in the regulation.

Amendment 49
Clause 164(3)
Page 126, line 24
This amendment amends clause 164(3) of the Bill to update the cross-reference to new clause 153A on ***public consultation period*** to assist with readability.

Amendment 50
Clause 165(1)(c)
Page 127, line 10
This amendment amends clause 165(1)(c) of the Bill to reflect the new definition of *use*. The words “including beginning a new use or changing a use” are superfluous because the new definition of *use* includes beginning, continuing or changing a use of land. In addition, the revised wording makes it clear that the requirement to notify the registrar-general applies to development approvals that solely authorise use and also to development approvals that authorise use and other development.

Amendment 51
Clause 170(1)(b) and (c)
Page 130, line 24
This amendment amends clauses 170(1)(b) and (c) of the Bill to clarify when a development approval takes effect when an applicant for a development approval has no right of review or representation. This clause applies when there is no potential for a development approval to be challenged by third parties in a merit review before the AAT. The clause makes it clear that, in this circumstance, the development approval commences operation the day after the application is approved.

Amendment 52
Clause 171 heading
Page 131, line 10
This amendment amends the heading for clause 171 of the Bill to clarify that this clause applies in the scenario where a single represenatation has been made and there is the potential for third party merit review in the AAT.

Amendment 53
Proposed new clause 171(1)(ba) to (bc)
Page 131, line 16
This amendment inserts new clause 171(1)(ba) to (bc) to clause 171 of the Bill to clarify when a development approval takes effect where a single representation has been made. This clause applies when representations have been made on a development application and there is the potential for a third party to seek merit review in the AAT of the decision to grant the approval. The clause makes it clear that there is a delay to the commencement of the development approval if, and only if, a person who made a representation has a right to seek a merit review before the AAT.

Amendment 54
Clause 172 heading
Page 132, line 4
This amendment amends the heading for clause 172 of the Bill to clarify that this clause applies when there are multiple representations and there is the potential for third party merit review in the AAT.

Amendment 55
Proposed new clause 172(1)(ba) to (bc)
Page 132, line 10
This amendment inserts new clause 172(1)(ba) to (bc) in the Bill to clarify multiple representations must be granted the right from chapter 13. This clause applies when representations have been made on a development application and there is the potential for third party merit review of the granting of the application. The clause makes it clear that there is a delay to the commencement of the development approval if, and only if, there is the potential for third party merit review before the AAT.

Amendment 56
Clause 174(2)(c)(ii)
Page 134, line 16
This amendment substitutes a new subclause 174(2)(c)(ii) in the Bill to ensure that the clause adequately covers the relevant scenarios in relation to commencement of development applications that are granted subject to a condition that a lease variation be made post approval. The amendment incorporates a reference to the AAT application being dismissed or struck out as well as withdrawn.

Amendment 57
Clause 175(2)(c)(ii)
Page 135, line 13
This amendment substitutes a new subclause 175(2)(c)(ii) in the Bill to to ensure that the clause adequately covers the relevant scenarios in relation to commencement of development applications that are granted subject to a condition that a lease variation be made post approval. The amendment incorporates a reference to the AAT application being dismissed or struck out as well as withdrawn.

Amendment 58
Clause 177(2)(b)
Page 136, line 25
This amendment substitutes a new clause 177(2)(b) in the Bill to remove the incorrect reference to the application for reconsideration being withdrawn. This clause can only apply if the application is not withdrawn.

Amendment 59
New clause 178(1)(aa)
Page 137, line 11
This amendment inserts new clause178(1)(aa) in the Bill to clarify a representation must have been made in conjunction with clause 178(1)(c). It clarifies that there is an automatic delay of 20 working days to the commencement of the development approval if, and only if, a person has made a representation. This amendment needs to be read in conjunction with clause 60.

Amendment 60
Clause 178(1)(c)
Page 137, line 18
This amendment amends clause 178(1)(c) of the Bill to clarify the right to apply for representation granted by chapter 13. In conjunction with Clause 59, this is a clarification that there is an automatic delay of 20 working days to the commencement of the development approval if, and only if, there is the potential for a third party merit review before the AAT. There is only potential for such an application if the matter is required to be notified under clause 152 (Major public notification) of the Bill and the substituted decision is not exempt from AAT appeal.

Amendment 61
Clause 179(1)(c)
Page 138, line 3
This amendment amends clause 179(1)(c) of the Bill to omit the words “including beginning a new use or a change of use”. The omitted words are no longer necessary given the new global definition of "use" in new clause 7A.

Amendment 62
Clause 179(3), proposed new note
Page 138, line 26
This amendment inserts a new note in clause 179(3) of the Bill to clarify that a development approval does not end when the building work is completed within the required statutory period. Development approvals are to last indefinitely.

Amendment 63
Clause 180(2)(vi)
Page 139, line 25
This amendment amends clause180(2)(vi) of the Bill to clarify that a development approval does not end simply because the relevant lease is surrendered as an intermediate step in the process of implementing the relevant lease variation or renewal.

Amendment 64
Clause 180(2) proposed new note
Page 140, line 2
This amendment inserts a new note in clause 180(2) of the Bill that clarifies that a development approval does not end when the building work is completed within the required statutory period. Development approvals are to last indefinitely.

Amendment 65
Clause 180(3) proposed new clause
Page 140, line 2
This amendment inserts definitions of *subdivision* and *consolidation*. The new definitions are inserted for clarification purposes.

Amendment 66
Clause 181(1)(a)
Page 140, line 8
This amendment amends clause 181(1)(a) of the Bill to omit the words "including beginning a new use or a change of use". The omitted words are no longer necessary given the new global definition of *use* in new clause 7A.

Amendment 67
Clause 181(2)(d)
Page 140, line 17
This amendment amends clause 181(2)(d) of the Bill to clarify that a development approval does not end simply because the relevant lease is surrendered as an intermediate step in the process of implementing a relevant lease variation or lease renewal.

Amendment 68
Clause 181(2) proposed new note
Page 140, line 21
This amendment inserts a new note in clause 181(2) of the Bill that clarifies that a development approval does not end when the building work is completed within the required statutory period. Development approvals are to last indefinitely.

Amendment 69
Clause 181(3)
Page 140, line 22
This amendment amends clause181(3) of the Bill to clarify when development approvals end. The clause clarifies that when a development approval is granted that covers multiple uses, the requirement for commencement of the use within two years is satisfied if just one of the approved uses is commenced. If there is only 1use allowed under a development approval and the use is not begun within 2 years of approval, the development approval ends at the end of the 2 year period. If more than 1 use is allowed under the development approval and none of the uses have begun within 2 years of approval, the development approval ends at the end of the 2 year period.

Amendment 70
Clause 182(2) proposed new note
Page 142, line 8
This amendment inserts a new note in clause 182(2) of the Bill that clarifies that a development approval does not end when the building work is completed within the required statutory period. Development approvals are to last indefinitely.

Amendment 71
Proposed new clause 182A
Page 142, line 20
This amendment inserts a new clause 182A in the Bill to confirm that a development approval persists indefinitely unless it ends in accordance with circumstances specified in clauses 179 to 182 of the Bill (End of development approvals). This clause is to put the effect of these provisions beyond doubt.

Amendment 72
Clause 185(2)
Page 143, line 25
This amendment substitutes a new clause 185(2) in the Bill to provide that the clause does not apply to the refusal of a development application to which division 9.4.2 (Varying concessional leases to remove concessional status) applies if the Minister decides that considering the application is not in the public interest, as well as a refusal of an application in the code track. Thus, the reconsideration process cannot be used to reassess the refusal of a development application if that refusal was required because of a decision by the Minister under clause 253 of the Bill (Criteria for application to vary concessional lease) that the removal of the concessional status from the lease is not in the public interest. This amendment should be read in conjunction with amendments 45, 99 and 115.

Amendment 73
Proposed new clause 187(2A)
Page 145, line 20
This amendment inserts a new clause 187(2A) in the Bill to clarify that the planning and land authority may only reconsider an original decision to the extent that the development proposal approved or refused in the original decision, or part of the original decision, is subject to a rule and does not comply with the rule, or is not subject to a rule. This is consistent with the approach to AAT review in revised clause 120 (amendment 30).

Amendment 74
Clause 197(1)(a)
Page 154, line 3
This amendment amends clause 197(1)(a) of the Bill by omitting "continuing". The omitted word is no longer necessary given the new global definition of *use* in new section 7A.

Amendment 75
Clause 198(1)
Page 154, line 11
This amendment amends clause 198(1) of the Bill with minor clarification of wording. Some clarification of wording was needed because of the new global definition of *use* in new section 7A. There is no substantive change.

Amendment 76
Clause 205
Page 160, line 9
This amendment amends clause 205 of the Bill to clarify that the approval referred to is a development approval and to ensure consistency of language.

Amendment 77
Clause 207(3)
Page 161, line 8
This amendment amends clause 207(3) of the Bill to define a consultant as a person not prescribed by regulation but kept on a list by the authority. The authority may require a proponent to engage a consultant - who meets criteria in the regulation as to qualifications, experience etc - when preparing scoping documentation. The criteria is set out in the regulation made under clauses 207 and 417 of the Bill.

Amendment 78
Clause 211(2) and (3)
Page 163, line 1
This amendment omits clauses 211(2) and (3) of the Bill for public consultation period for draft Environmental Impact Statements (EIS). These sections are replaced by new section 211A (see amendment 79 following).

Amendment 79
Proposed new clause 211A
Page 163, line 7
This amendment inserts a new clause 211A in the Bill that defines *public consultation period* for draft EIS. This is a relocation of a provision and there is no change in substance.

Amendment 80
Proposed new clause 212(2A) and (2B)
Page 163, line 12
This amendment inserts new clauses 212 (2A) and (2B) in the Bill that allows the authority to extend the public consultation period for draft EIS and specifies the notification requirements. If the authority extends the public consultation period pursuant to new clause 211A, the authority must give written notice of this to the proponent of the development proposal.

Amendment 81
Clause 214(1) proposed new note
Page 164, line 15
This amendment inserts a new note in clause 214(1) of the Bill that refers to the fact that the public consultation period for draft EIS may be extended under clause 212(2A). This is a cross reference note to facilitate reading of the Bill.

Amendment 82
Clause 214(4)
Page 165, line 1
This amendment omits clause 214(4) from the Bill which limits the definition of *public consultation period* for a draft EIS to the clause. The new clause 211A removes the need for this clause.

Amendment 83
Proposed new clause 225A
Page 171, line 16
This amendment inserts a new clause 225A in the Bill about the recovery of inquiry panel costs. It provides that the direct and indirect costs to the Territory of the conduct of an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

Amendment 84
Clause 226 definition of *nominal rent lease*
Page 173, line 7
This amendment omits the definition of *nominal rent lease* from clause 226. *Nominal rent lease* is now defined in the Dictionary, because use of the term is not limited to chapter 9.

Amendment 85
Clause 227, definition of *concessional lease*, proposed new subclause (1)(c)(iiia)
Page 175, line 8
This amendment inserts that a concessional lease does not include a lease granted to the Territory. This provision is needed because leases are granted to the Territory for less than market value and would otherwise come within the definition of concessional lease, which is not intended.

Amendment 86
Clause 228
Page 176, line 1
This amendment deletes clause 228 from the Bill. This is a technical amendment. The intent of the section has been dealt with in other parts of Chapter 9.

Amendment 87
Clause 231(1)(d)
Page 177, line 15
This amendment amends clause 231(1)(d) of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 88
Clause 233 heading
Page 178, line 12
This amendment amends the heading of clause 233 of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 89
Clause 233(2)
Page 179, line 4
This amendment amends clause 233(2) of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 90
Clause 234 heading
Page 179, line 17
This amendment amends the heading of clause 234 of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 91
Clause 235 heading
Page 180, line 1
This amendment amends the heading of clause 235 of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 92
Clause 235(1)
Page 180, line 3
This amendment amends clause 235(1) of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 93
Clause 236 heading
Page 180, line 23
This amendment amends the heading of clause 236 of the Bill by substituting the words “direct grant” with the words “direct sale”. This and related amendments modernise language and reflect the Government’s housing affordability strategy.

Amendment 94
Clause 239(2)(a)
Page 181, line 20
This amendment amends clause 239(2)(a) of the Bill to amend the language of the provision to refer to a rental lease because that is a term used in the Bill and defined in clause 226 of the Bill (Definitions – ch9). Subclause (1) of clause 239 does not apply to a rental lease that is granted for the full market rental value of the lease.

Amendment 95
Proposed new clause 239(3) and (4)
Page 181, line 27
This amendment amends clause 239 of the Bill by inserting new subclauses (3) and (4). New subclause (3) states that an entity pays an amount that is not less than market value if the total of the monetary component and the works component is not less than the market value. The clause clarifies that market value payment for a lease can be comprised of money and infrastructure or other works, provided that the total value of these items is equivalent to market value. This recognises that leases are occasionally granted where payment is both by way of money and in-kind services or works. New subclause (4) states that the validity of a lease granted by the authority is not affected by a failure to comply with this clause.

Amendment 96
Clause 240(2) and (3)
Page 182, line 9
This amendment amends clause 240(2) and (3) of the Bill to specify that land may also be used for a home business, as defined in new subclause (3), if the lease is a residential lease. Residential leases can be used for "home business" even if this is not a purpose authorised in the lease. New subclause 240(3) defines "home business" as a profession, trade or other occupation carried on on the relevant land that is subject to a residential lease, by a resident of the land. This definition is aligned with the current definition of "home business" in the territory plan and restructured territory plan. The Bill refers to concepts of "home business" and "home occupation", the meaning of which is defined in regulation. Both can be undertaken on a residential lease notwithstanding that the use is not authorised by the lease. "Home occupation" does not require a development approval but "home business" does. The amendments to clause 240 achieve the same result but in a more transparent manner. “Home business" is now defined in the Bill rather than the regulation. The concept of "home occupation" is to be replaced by an exemption regulation that exempts low impact "home business" from requiring development approval. Other types of “home business” will require a development approval.

Amendment 97
Proposed new clause 245A
Page 186, line 21
This amendment inserts a new clause 245A in the Bill to specify that the Territory must not transfer a lease if the Territory is the registered proprietor of the lease. This is to prohibit the transfer of leases where the Territory is the registered proprietor of the lease. This prohibition is to underline current practice, which is to issue such leases with a condition that they not be transferred.

Amendment 98
Clause 252
Page 192, line 16
This amendment amends clause 252 of the Bill to clarify that Division 9.4.2 (Varying concessional leases to remove concessional status) applies if the application to vary a concessional lease includes a proposal to remove its concessional status. The purpose of the amendment is to ensure the meaning of the clause is clear.

Amendment 99
Clause 253
Page 193, line 1
This amendment substitutes a new clause 253 in the Bill. It makes a new provision that the authority or Minister must not decide a development application to vary a lease to remove its concessional status unless the Minister decides whether it is in the public interest to do so. New subclause 253(2) sets out what the Minister must consider in deciding whether it is in the public interest to consider the application. The Minister must give notice of the decision to the planning and land authority. The decision of the Minister as to public interest is not subject to merit review in the Administrative Appeals Tribunal (see amendment 115). This amendment should be read in conjunction with amendments 45, 72 and 115.

Amendment 100
Clause 258(2)(b)
Page 196, line 20
This amendment amends clause 258(2)(b) of the Bill to insert the words “eligible person” at line 20 after the words “lessee”. This corrects a minor error in wording.

Amendment 101
Clause 263
Page 201, line 5
This amendment deletes clause 263 of the Bill. This clause is replaced by the new definition of *variation* of a lease in the Dictionary.

Amendment 102
Proposed new clause 269(3)
Page 204, line 25
This amendment inserts a new clause 269(3) in the Bill to specify that the clause does not apply to a variation of a nominal rent lease if the only effect of the variation would be to alter a common boundary between 2 or more adjoining leases; and the land in each adjoining lease is leased for the same purpose; and none of the adjoining leases is a rural lease. These are minor variations that do not significantly affect the aggregate value of the leases involved. As such, it is not appropriate for a change of use charge to apply.

Amendment 103
Clause 291
Page 220, line 18
This amendment deletes clause 291 of the Bill because consent to mortgage a lease prior to obtaining a certificate of compliance is no longer required. Section 28 of the *City Area Leases Act 1936* (repealed) was carried forward into section 181 of the *Land (Planning and Environment) Act 1991*. Section 181 was carried forward into clause 291 of the Bill. The purpose of section 181 was to prevent land speculation in the ACT. Section 181 (now clause 291 of the Bill) restricts borrowing against an undeveloped lease by specifying that the lease (or an interest in that lease) may only be mortgaged if the funds:
1. are to repay money borrowed to purchase the lease or an interest in the lease; or
2. secure money to purchase the lease or an interest in the lease; or

3. enable the lessee to develop the lease.
In effect, the consolidation of other debt into a mortgage over an undeveloped lease or the use of an undeveloped lease as security for another borrowing was prohibited. Evolution of the finance sector and the way people organise their financial affairs has seen a change in the way mortgage lending occurs. There has been a trend towards mortgages that consolidate a variety of debt. Section 181 has not been actively enforced for many years and the provision has become outdated, impractical and redundant.

Amendments 104, 105 and 106
Clause 292 (2)(b)(i)
Clause 292(2) Proposed new examples
Proposed new Clause 292(2A)
Page 222, line 12
Page 222, line 19
Page 222, line 19
As a companion amendment to the deletion of clause 291, the anti-speculative tenet of clause 292 of the Bill will be strengthened by amendments which make the inappropriate use of funds borrowed for the purpose of developing land a key decision factor when consent to transfer undeveloped land is being considered. Amendments 104 to 106 amend clause 292 to permit “personal reasons” to be prescribed by regulation and to specify what comprises “financial reasons”. These amendments will not prevent debt consolidation where funding is secured against an undeveloped lease. However, it will mean that where the funding is used for purposes other than developing the land and a lessee is consequently unable to comply with the building and development provisions of the lease, an application for consent to transfer is unlikely to receive favourable consideration. In such circumstances, the lessee will be required to surrender the lease and may be entitled to receive a refund under the provisions of the Bill. Consent to transfer may be denied in circumstances where monies are secured against a lease and then expended in ways that are not connected with the lease, such as expenditure on the purchase of other land, or a luxury car. Monies are spent in connection with the lease if they are linked to personal reasons prescribed by regulation under clause 292. The amendment to clause 292 also provides the authority with the ability to give consideration to major unforeseen events that occur after the purchase of a lease and that have a demonstrated effect on the lessee's ability to comply with the building and development provision.

Amendment 107
Clause 312
Page 236, line 3
This amendment substitutes a new clause 312 in the Bill that clarifies the meaning of *proponent* and includes a new definition of *technical variation* (of a plan of management). This type of variation includes:

- correction of a minor error in a geographical description of a boundary;
- updates of references to Territory laws;
- updates of references to an administrative unit or other Territory entity.

Under revised clause 315 (amendment 108) and new clause 324A (amendment 109), a technical variation can be made by a disallowable instrument and, unlike standard variations, do not require public consultation.

Amendment 108
Clause 315
Page 237, line 8
This amendment substitutes a new clause 315 in the Bill to clarify that the clause applies to variation of plans of management other than technical variations. Clause 315 requires the process for the preparation and implementation of draft variations to plans of management to be the same as the process for preparation of original plans of management (including public consultation etc). The revised clause 315 provides that this requirement does not apply to "technical variations" (see amendment 107) to plans of management.

Amendment 109
Proposed new clause 324A
Page 242, line 22
This amendment inserts a new clause 324A to specify how a technical variation of a plan of management may be made, when a technical variation commences and how it is publicly notified. The steps include:

- making by the custodian of the land or the conservator of flora and fauna, with the agreement of the custodian;
- making by disallowable instrument;
- commencement the day after the sixth sitting day following presentation to the Legislative Assembly;
- notification of the variation in a daily newspaper within five working days of commencement.

Amendment 110
Clause 370(3)(b)
Page 274, line 5
This amendment amends clause 370(3)(b) of the Bill to clarify that the authority may give a prohibition notice to an entity by which or on behalf of which the activity was, is being or is to be conducted, or is likely to be conducted. This and related amendments recognise that a prohibition notice may be issued to any "entity". "Entity" as defined in the *Legislation Act 2001* includes individuals, corporations, unincorporated associations, and partnerships.

Amendment 111
Clause 370(4)(b) and (c)
Page 274, line 11
This amendment amends clauses 370 (4)(b) and (c) of the Bill to clarify that the prohibition notice must state each entity to which it is directed and that the notice takes effect when it is given to the entity. This and related amendments recognise that a prohibition notice may be issued to any "entity". "Entity" as defined in the *Legislation Act 2001 i*ncludes individuals, corporations, unincorporated associations, and partnerships.

Amendment 112
Clause 370(4)(f)(i) and (ii)
Page 274, line 18
This amendment amends clause 370 (4)(f)(i) and (ii) of the Bill to clarify that the prohibition notice must state that the activity must not be carried on by the entity or must be carried on in accordance with the notice. This and related amendments recognise that a prohibition notice may be issued to any "entity". "Entity" as defined in the *Legislation Act 2001* includes individuals, corporations, unincorporated associations, and partnerships.

Amendment 113
Clause 370(5)
Page 274, line 26
This amendment amends clause 370 (5) of the Bill to clarify that the prohibition notice takes effect when it is given to an entity to which it is directed. This and related amendments recognise that a prohibition notice may be issued to any "entity". "Entity" as defined in the *Legislation Act 2001* includes individuals, corporations, unincorporated associations, and partnerships.

Amendment 114
Clause 380
Page 282, line 2
This amendment substitutes a new clause 380 in the Bill to specify that the authority may appoint a public servant rather than a person as an inspector. The authority can appoint inspectors but the appointee must be a public servant. The existing provision was considered to be possibly too open ended in the relevant report of the Legislative Assembly Standing Committee on Legal Affairs.

Amendment 115
Clause 400
Definition of *reviewable decision*
Page 298, line 18
This and related amendments apply to development applications to vary a lease to remove its concessional status. Amendment 115 substitutes a new definition of *reviewable decision* to clarify that a reviewable decision does not include a decision by the Minister under new clause 253 (amendment 99) as to whether a development application is in the public interest or a decision by the authority or Minister to refuse a development application under clause 158 of the Bill (Deciding development applications) because the Minister decides under new clause 253 that considering the application is not in the public interest. This amendment should be read in conjunction with amendments 45, 72 and 99.

Amendment 116
Clause 402(2) and (3)
Page 299, line 12
This amendment substitutes new clauses 402(2) and (3) in the Bill to specify that an application for review must be made within 4 weeks of notification of either a clause 171 or clause 172 of the Bill decision (When development approvals take effect-single representation/multiple representations). The Bill required applications for third party merit review in the AAT to be made within four weeks of the decision to grant a

development approval. This clause amends this approach to make the four week period run from the date the third party is notified of the decision to grant the approval. This is considered a fairer process and more consistent with processes in the *Administrative Appeals Tribunal Act 1989* where relevant periods typically run from the date of receiving notice of the decision.

Amendment 117
Clause 403(2)
Page 299, line 22
This amendment inserts a new note to clause 403 and omits clause 403(2) from the Bill. The omission of clause 403(2) and the new note clarifies that Ministerial decisions are not reviewable. The previous wording indirectly implied that a right to seek merit review in the AAT of a call-in matter might be possible. This is not the case. A call-in matter is not subject to merit review in the AAT.

Amendment 118
Clause 405(5) definition of *relevant document,* proposed new paragraph (aa)
Page 303, line 1
This amendment inserts a new paragraph, clause 405(5)(aa), in clause 405(5) of the Bill to specify that a draft plan variation is a relevant document when assessing public information and security. A draft plan variation is added to the list of documents that may be withheld from publication for national security reasons.

Amendment 119
Proposed new clause 407A
Page 305, line 15
This amendment inserts a new clause 407A in the Bill to clarify that the planning and land authority or an official is not prevented (estopped) from taking compliance action under chapters 11 and 12 of the Bill simply because a development approval, certificate of compliance or certificate of occupancy under the *Building Act 2004* has been issued in connection with the matter.

Amendment 120
Proposed new Clause 414A
Page 309, line 5
This new provision is a general transitional provision. The provision requires any outdated reference to:

- the repealed *Land (Planning and Environment) Act 1991* (the repealed Act)
- regulations made under the repealed Act
- things done under the repealed Act

to be read as references to the corresponding matters in the new *Planning and Development Act 2007* (assuming there is a corresponding matter).

Amendment 121
Clause 417(2)(c)
Page 310, line 5
This amendment substitutes a new clause 417(2)(c) in the Bill which provides that a regulation may make provision for the keeping of a list of consultants. The intention is for the regulation to include criteria that consultants must satisfy to be included in the list of consultants kept by the authority. Under clause 207 the authority may require a

proponent, when preparing a draft scoping document (prior to preparing an environmental impact statement) to engage the services of a consultant who meets the relevant criteria. This amendment departs from the Bill which provided for the list itself rather than the criteria for inclusion to be in the regulation. The revised approach is considered to be more flexible and more transparent.

Amendment 122
Proposed new clause 417(2)(g)
Page 310, line 8
This amendment inserts new clause 417(2)(g) in the Bill to allow for regulations for controlled activities and enforcement. This new clause permits regulations to be made in connection with the processes involved in compliance actions under chapters 11 and 12.

Amendment 123
Clause 420(1)
Page 312, line 3
This amendment amends clause 420(1) of the Bill to allow transitional regulations for the *Building Legislation Amendment Act 2007*. The capacity to make regulations to deal with unforeseen transitional difficulties now applies to the *Building Legislation Amendment Act 2007* as well as the *Planning and Development Act 2007.*

Amendment 124
Clause 422
Page 312, line 14
This amendment amends clause 422 to omit clause 433A (Transitional-application for development approval if lease and development condition under repealed Act) and clause 457 (Plans of management), in chapter 15, from the general expiry date for the chapter, of 2 years after commencement day. This is because these clauses need to continue to operate beyond the 2 year period and have their own peculiar expiry dates within each provision.

Amendment 125
Clause 423(1)
Page 313, line 4
This amendment amends clause 423(1) of the Bill to specify that the territory plan referred to in this clause is the plan made for the purposes of clause 45 of the Bill (Territory plan). This clause makes it clear that the territory plan referred to in clause 423 of the Bill (Transitional-Territory plan) is the draft territory plan that is proposed to be made as the new territory plan.

Amendment 126
Proposed new clause 424(1)(e)
Page 314, line 6
This amendment inserts a new clause 424(1)(e) in the Bill which specifies the transitional public consultation conditions for the territory plan. This new clause strengthens the existing requirements for preparation of the initial territory plan. The clause requires the authority to publish and consult on the draft territory plan after the commencement of this clause. The minimum period for public consultation is 15

working days. This requirement is in addition to the requirements in existing clause 424(1) of the Bill (Transitional-public consultation on territory plan).

Amendment 127
Proposed new clauses 428A and 428B
Page 319, line 7
This amendment inserts new clauses 428A and 428B in the Bill that provide additional transitional provisions for draft plan variations submitted to the Minister under the repealed Act that are part complete at the time of commencement of the *Planning and Development Act 2007*. These new clauses cover additional scenarios not already addressed. Provisions such as these are intended to ensure that work done on draft variations prior to commencement is not wasted.

Amendment 128
Proposed new part 15.2A
Page 319, line 7
This amendment inserts a new part 15.2A in the Bill to provide that, upon commencement of the *Planning and Development Act 2007*, the planning strategy for the ACT will be the Canberra Spatial Plan and Sustainable Transport Plan. The clause ensures that, on commencement of the new planning system, there is a planning strategy for the ACT that is comprised of the ACT Government's current strategic land use planning documents.

Amendment 129
Clause 430(2)
Page 320, line 15
This amendment inserts after the words "repealed Act" the words "(including the territory plan and any other instruments under the repealed Act)" in clause 430(2) of the Bill. The note clarifies that the repealed Act, the territory plan, and other instruments made under the repealed Act, continue to apply to development applications made before the *Planning and Development Act 2007* takes effect.

Amendment 130
Proposed new clause 430A
Page 320, line 18
This amendment inserts a new clause 430A in the Bill to provide transitional provisions for applications for review not finally decided. This transitional clause applies to development applications made prior to the commencement of the *Planning and Development Act 2007* and which are still undecided at the time of commencement of the Act. The new clause makes it clear that such applications must be decided in accordance with the repealed Act and the former territory plan (and any other relevant subordinate instruments made under the repealed Act).

Amendment 131
Clause 431
Page 320, line 19
This amendment omits clause 431 from the Bill.The clause is no longer necessary given new clause 134 (see amendment 32), in particular clause 134(3)(a)(iii).

Amendment 132
Proposed new Clause 433A
Page 323, line 12
This amendment inserts new clause 433A, which provides for existing lease and development conditions to be considered when assessing some development applications. New section 433A requires the planning and land authority (or the Minister, if the Minister has exercised the power to "call in") to consider the requirements of any existing lease and development conditions applicable to the relevant land if:

- this is required by the territory plan; and
- the development application is not in the code track.

This requirement applies for a period of five years post commencement of the *Planning and Development Act 2007*.
It is to be noted that there is no intention to make new lease and development conditions after the commencement of the *Planning and Development Act 2007*. This function will be taken over by other instruments of the new territory plan such as concept plans and estate development plans.

Amendment 133
Clause 435(4)
Page 325, line 7
The transitional clause 435 of the Bill (Existing rights to use land etc not affected) provides that existing rights to use land are not affected by anything in the Bill (subject to below). However, an approval for use of land may be required if (after commencement of the *Planning and Development Act 2007*) earthworks, building work, alteration, demolition or construction work is carried out on the land and such work is not exempt from requiring development approval. This is the intended effect of revised 435(4) in conjunction with new clause 132A(2) and 132A(3) (see amendment 32). This means that the undertaking of construction/building/earthworks has the same implications for both new and existing leases.

Amendment 134
Clause 436
Page 325, line 8
This amendment omits clause 436 (Effect of s435 etc) from the Bill. This clause is made obsolete by new clause 132A, in particular, 132A(1), 132A(4) and 132A(5) (see amendment 32).

Amendment 135
Clause 437
Page 326, line 20
This amendment omits clause 437 (Transitional – existing rights to use land if use involves construction etc) from the Bill. This clause is made obsolete by new clause 132A, in particular, 132A(2) and 132A(3) (see amendment 32).

Amendment 136
Clause 438
Page 327, line 9
This amendment omits clause 438 (Transitional – use of lease) from the Bill. This clause is made obsolete by clause 435(1)(b)(i) of the Bill in conjunction with new clause 132A, in particular, 132A(8)(iv) (see amendment 32).

Amendment 137
Proposed new clause 457
Page 338, line 22
This amendment inserts a new clause 457 in the Bill which is a transitional provision to preserve existing plans of management.

Amendment 138
Schedule 1, item 3, column 2, paragraphs (a) and (b)
Page 340
This amendment substitutes new paragraphs (a) and (b) in Schedule 1, item 3, column 2 of the Bill. The restructured territory plan refers to "rules" instead of "code requirements". This and related Bill amendments make the Bill congruent with the restructured territory plan.

Amendment 139
Schedule 1, item 4, column 2,
Page 340
This amendment substitutes a new item 4, column 2 in Schedule 1 of the Bill. The amendment removes the reference to the requirement that the AAT only consider those matters of the development application that either:

(a) do not comply with a relevant “rule”; or
(b) are not subject to a relevant rule.

This requirement is now in revised clause 120 (amendment 30).

Amendment 140
Schedule 1, item 12, column 4
Page 345
This amendment substitutes a new column 4 in Schedule 1, item 12, of the Bill to clarify who may make a representation.

Amendment 141
Schedule 1, item 15, column 2
Page 346
This amendment substitutes “direct grant” with “direct sale” in Schedule 1, item 15, column 2 of the Bill. This amendment is consistent with other changes to the Bill to refer to direct sales rather than to direct grants.

Amendment 142
Schedule 1, item 19, column 2
Page 347
This amendment substitutes a new column 2 in Schedule 1, item 19, of the Bill pertaining to the decision made about concessional lease status. This amendment clarifies that the lessee can appeal a decision by the planning and land authority

under clause 249 of the Bill (applicant initiated decisions) or clause 250 of the Bill (authority initiated decisions) that a lease is a concessional lease.

Amendment 143
Schedule 2, item 1, column 2, paragraph (a)
Page 355
This amendment inserts a new item 1 column 2, paragraph (a) in Schedule 2 to clarify that the controlled activity is failing to comply with a provision of a lease. There is no change in the substance from the provision in the Bill.

Amendment 144
Schedule 2, item 3, column 2
Page 355
This amendment substitutes a new item 3, column 2 in Schedule 2 to clarify that the controlled activity includes undertaking a development for which development approval is required without approval as well as undertaking the development other than in accordance with the development approval. This clarifies the meaning of the existing provision.

Amendment 145
Schedule 3, proposed new item 10
Page 357
This amendment adds a new item 10 pertaining to heritage areas to Schedule 3 of the Bill. The amendment adds management objectives for heritage areas.

Amendment 146
Schedule 4, part 4.3, item 5
Page 365
This amendment substitutes a new item 5 pertaining to water use in Schedule 4 of the Bill. This clause updates references in the Schedule of development proposals requiring an EIS to reflect references in the restructured territory plan.

Amendment 147
Dictionary, definition of *code requirements*
Page 368, line 13
This amendment omits the definition of *code requirements* from the Bill's Dictionary consistent with the change in terminology from "code requirements" to "rules".

Amendment 148
Dictionary, proposed new definition of *criteria*
Page 369, line 14
This amendment inserts a new definition of *criteria* from the Bill's Dictionary consistent with the change in terminology from "merit criteria" to "criteria".

Amendment 149
Dictionary, proposed new definition of *exempt development*
Page 371, line 29
This amendment inserts a new definition of *exempt development* in the Bill's Dictionary which refers to the new clause 132 inserted by amendment 32.

Amendment 150
Dictionary, definition of *merit criteria*
Page 373, line 23
This amendment omits the definition of *merit criteria* from the Bill's Dictionary consistent with the change in terminology from "merit criteria" to "criteria".

Amendment 151
Dictionary, definition of *nominal rent lease*
Page 374, line 6
This amendment substitutes a new definition of *nominal rent lease* in the Bill's Dictionary because use of the term is not only limited to chapter 9, where the term was originally defined.

Amendment 152
Dictionary, definition of *prohibited*, paragraph (a)
Page 375, line 2
This amendment inserts a proposed new definition of *prohibited* in the Bill's Dictionary.

Amendment 153
Dictionary, proposed new definition of *prohibition notice*
Page 375, line 5
This amendment inserts a proposed new definition of *prohibition notice* in the Bill's Dictionary. It is a cross reference to clause 370(1) of the Bill and clarifies the meaning of prohibition notice.

Amendment 154
Dictionary, proposed new definition of *public consultation period*
Page 375, line 17
This amendment inserts a proposed new definition of *public consultation period* in the Bill's Dictionary. This is to be consistent with other amendments to the Bill in relation to public consultation period.

Amendment 155
Dictionary, definition of *relevant code requirements*
Page 376, line 11
This amendment omits the definition of *relevant code requirements* in the Bill's Dictionary consistent with the change in terminology from from "code requirements" to "relevant rules".

Amendment 156
Dictionary, proposed new definition of *relevant rules*
Page 376, line 14
This amendment inserts a new definition of *relevant rules* in the Bill's Dictionary consistent with the change in terminology from "relevant code requirements" to "relevant rules".

Amendment 157
Dictionary, proposed new definition of *rules*
Page 376, line 25
This amendment inserts a new definition of *rules* in the Bill's Dictionary consistent with the change in terminology from "code requirements" to "rules".

Amendment 158
Dictionary, proposed new definition of *structure*
Page 377, line 14
This amendment inserts a proposed new definition of *structure* in the Bill's Dictionary.The definition provides additional information as to what types of things can constitute structures.

Amendment 159
Dictionary, proposed new definition of *use*
Page 378, line 5
This amendment inserts the proposed new definition of *use* in the Bill's Dictionary. This amendment reflects changes to the definition of *development*. In summary, new clause 7Adefines use of land or building/structure on the land as including:

(1) beginning a new use of land, building or structure
(2) continuing a use of land, building or structure
(3) changing a use of land, building or structure.

Amendment 160
Dictionary, definition of *variation*
Page 378, line 6
This amendment inserts a definition of *variation* of a lease and a plan of management in the Bill's Dictionary. This definition applies to the whole Act and ensures consistency of approach.