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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2012 (No. 2)

SL2012-19

EXPLANATORY STATEMENT

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This explanatory statement relates to the *Planning and Development Amendment Regulation 2012 (No 2)*.

Background

In 2010 the *Planning and Development (Environmental Impact Statements) Amendment Bill 2010* (the EIS bill) amended the *Planning and Development Act 2007* (the Act) as a result of decisions taken by the ACT Government in November 2009 and February 2010. This followed a joint review by the Government's Economic Stimulus Taskforce and ACT Planning and Land Authority (ACTPLA) of the operation of schedule 4 of the Act. Schedule 4 sets out the types of development activities and associated thresholds which are the 'triggers' for an EIS.

A central purpose of the EIS bill was to enable projects which were unlikely to have a significant environmental impact to be assessed in the merit track rather than the impact track. This helped reduce costs of delivering, in a timely manner, important land release projects and associated infrastructure to the Canberra community.

The EIS bill delivered this outcome in part through amendment to schedule 4 of the Act. Schedule 4 sets out the activities, areas and processes i.e. the *triggers* to define if a development proposal requires an EIS.

The EIS bill refined these triggers to ensure that only proposals, likely to have a significant environmental impact, were assessed in the impact track and required an EIS. Conversely, a number of triggers were removed or adjusted meaning that proposals that had been required to be assessed in the impact track could now be assessed in the merit track.

The resulting amendments, made through the EIS bill balanced the need to achieve sustainable development for the ACT while at the same time keeping in place strong protections for the natural environment.

Overview

The amending regulation prescribes an amount under the Act, schedule 4, part 4.2, item 2, column 2, paragraph (c) (i) (A). This provision provides that a regulation may prescribe an amount for the purposes of the schedule.

This means that a regulation can prescribe how much capacity an electricity generating station may be capable of supplying before the need for impact track, including an environmental impact statement (EIS), assessment is triggered. The amending regulation prescribes two amounts:

- more than 10MW if the source of energy to generate the electricity is gas or a combination of gas and another source.

- more than 20MW if the source of energy is renewable *i.e.* wind, solar, hydro, biomass or geothermal.

In this way the proposed law is responding to the Government's clear commitment to encourage the use of renewable and environmentally friendly resources for the generation of electricity and provides a second but lesser degree of support for the use of gas as an energy source over other non-renewable and less environmentally friendly energy sources such as brown coal.

The 10MW threshold for gas based electricity generators responds to the ACT Sustainable Energy Policy 2011-2020, which recognises that cogeneration and trigeneration technologies are an important potential contributor to the Territory's greenhouse gas reduction objectives and in reducing costs to energy users in the Territory.

A more than 10MW threshold has been set so as to not impose unreasonable costs on the developers of these technologies at the small-scale, while recognising that the community has an interest in ensuring that any medium to utility-scale deployment of gas generation technologies in the Territory are subject to a comprehensive assessment of their environmental impacts (including consultation with the community).

The 20MW threshold for renewable energy sources is consistent with the Government's clear commitment to the promotion of renewable energy sources. In particular the more than 20MW threshold will help to ensure that the objectives of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (the Electricity Feed-in Act) are not impeded. These objectives are to:

(a) promote the establishment of large-scale facilities for the generation of electricity from a range of renewable energy sources in the Australian capital region;
(b) promote the development of the renewable energy generation industry in the ACT and Australia consistent with the development of a national electricity market;
(c) reduce the ACT's contribution to greenhouse gas emissions and help achieve targets to reduce the ACT's greenhouse gas emissions; and
(d) address the need for urgent action to be taken to reduce reliance on non-renewable energy sources while minimising the cost to electricity consumers.

The net effect of the amendment proposed is that a development proposal for an electricity generating station, capable of supplying anywhere between 1 and 20 MW of electricity, will be assessed in the merit track.

Because the issue of whether or not a development proposal should be subject to an EIS is an important community and planning issue it is appropriate to explain the history of previous thresholds.

The *Planning and Development Act 2007* (the P&D Act) put in place a new framework for the consideration of environmental impacts of a development proposal and listed in schedule 4 those activities that required an EIS. The thresholds were overly complex and difficult to understand. In particular part 4.2, item 2 identified the activity of electricity generation as:

> "proposal for electricity generation works or distribution corridor, including a proposal including all or any of the following:
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> (a) transmission line corridor construction, or realignment works, outside an existing corridor that are intended to carry transmission lines with a voltage of 132kV or more;
> (b) a hydroelectric facility that requires a new dam, weir or inter-valley transfer of water and that will generate 1 megawatt or more of electrical power;
> (c) a wind farm that will consist of 5 or more turbines or will generate 5 megawatts or more of electrical power;
> (d) an electricity generating station that will supply 30 megawatts or more of electrical power;
> (e) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the receiving water

The *Planning and Development (Environmental Impact Statements) Amendment Act 2010* (the EIS Act) (effective 1 February 2011) put in place the current framework by amending the schedule. The framework reflects extensive consultations and negotiations between the ACT Greens MLAs and other ACT government directorates and drew on the expertise and operational experience of the Environmental and Sustainable Development Directorate (known formerly as ACT Planning and Land Authority) and reflects the latest environmental planning and assessment principles.

The amendments simplified the identification of the activity of *electricity generation* and provided the capacity to prescribe thresholds that could deliver policy outcomes such as electricity generation using renewable energy e.g. solar, as well as being able to prescribe the threshold for a proposal in a particular location or of a particular kind or of a particular nature. Where no threshold is prescribed the framework provides a default (4MW) threshold.

Development applications in the merit track must attach an assessment against the relevant rules and relevant criteria in the Territory Plan and other matters as required under s139 including, if required, a formal assessment of environmental effects. For example, this is required for merit assessments under the Non-Urban Zones Development Code in the Territory Plan, which applies to development in the rural, broad-acre, river corridor, mountains, and bushland, hills, ridges and buffer zones.

The amendment, proposed by the regulation, does not impact on other items in the schedule. In this way a proposal would need to not trigger any other item in the schedule to be assessed (or remain) in the merit track. If the proposal does trigger one of the other items in the schedule the proposal will be assessed in the impact track irrespective of how much capacity the proposal is for. In this way other environmental triggers are protected.

A regulatory impact statement (available on the ACT Legislation Register) has been prepared for the amending regulation and explores the options considered and the benefits of the amending regulation.

The EIS Act anticipated that a regulation could prescribe an amount for the purposes of item 2, column 2, paragraph (c) (i) (A). The capacity of the Act to provide this type of capacity has been agreed to by the ACT Legislative Assembly and scrutinised by the Standing Committee on Justice and Community Safety (performing the duties of a scrutiny of bills and subordinate legislation committee) has considered the EIS Bill. The Committee did not identify any issues with the capacity for a regulation to prescribe things, for example thresholds.

Outline of Provisions

Part 1 Preliminary

Clause 1 — Name of regulation
Names the regulation as the *Planning and Development Amendment Regulation 2012 (No 2).*

Clause 2 — Commencement
Provides that the regulation commences on the day after its notification.

Clause 3 — Legislation amended
Provides that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 — New part 3.1AA
Clause 4 inserts a new part 3.1AA, section 19 Development proposals requiring EIS – electricity generating stations – Act, sch 4, pt4.2, item 2, col 2, par (c) (i) (A).

The amending regulation prescribes two amounts:

- more than 10MW if the source of energy to generate the electricity is gas or a combination of gas and another source; and
- more than 20MW if the source of energy is renewable i.e. wind, solar, hydro, biomass or geothermal.

The amending regulation uses a two tier threshold to respond to the ACT Governments *Sustainable Energy Policy: Energy for a sustainable city 2011-2020*. It does this by providing a greater incentive to proposals that use environmentally friendly energy sources e.g. wind, solar etc and a lesser incentive for proposals that use gas (or a combination of gas and another energy source). No incentive is provided for a proposal that uses coal as the energy source (meaning these proposals will need to complete an EIS).

A proposal that meets one of the prescribed limits will be assessed in the merit track unless the proposal meets another trigger in the schedule. If so, the proposal will be assessed in the impact track unless the Minister exempts it under section 211 of the Act. In this way environmental issues are protected.