2016

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT (EFFICIENCIES) AMENDMENT BILL 2016

EXPLANATORY STATEMENT

Mr Mick Gentleman, MLA

Minister for Planning and Land Management

EXPLANATORY STATEMENT

Introduction

This explanatory statement relates to the *Planning and Development (Efficiencies) Amendment Bill 2016* as presented by Mr Mick Gentleman MLA in the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision: this is a task for the courts.

Background

The *Planning and Development Act 2007* (the Act) commenced in 2007 and is the principal piece of planning legislation for the Australian Capital Territory (the ACT). The Act sets out, amongst other things, how land can be used, how environmental matters are managed, and how development proposals are assessed.

The planning and land authority (the authority) has monitored the operation of the Act since its inception and has identified opportunities for process efficiencies in the area of draft territory plan variations, environmental matters and development assessment. The bill implements the identified efficiencies by allowing certain planning processes to occur concurrently.

Presently, the Act treats each of the planning processes as an individual process that is dealt with in isolation of other planning processes. However, it often occurs that the processes are related. For example, there could be a development application and environmental assessment required for that proposal or a development proposal may come about because of an amendment to the territory plan.

The Act also requires similar administrative steps for each of the planning processes. For example, public notification is one of the administrative requirements for each of the processes. At present, public notification of each process occurs separately even though they may all relate to the same end development proposal.

Bringing together common administrative processes provides an opportunity for a reduction in red tape and to improve efficiency. There are further benefits that are broader than pure administrative efficiency. Bringing together the notification requirements of a number of processes as a single notification will give the community a holistic package of planning information to consider and comment on. There is also potential for the proponent of a proposal to reduce costs which can be passed on to the end consumer.

From an assessment prospective, the capacity to have all the planning information about the proposal at the same time will mean assessment officers can also consider the development application in a holistic manner. For example, the planning and land authority could consider, as a package, a proposed variation to the Territory Plan, information on the environmental impacts of the proposal and the actual proposed development.

Another challenge of the Act is the inability of the planning and land authority to accept a development application if the proposal is prohibited. It has become evident that this inability is resulting in the authority not being able to accept applications that may have real merit and result in good planning outcomes. The bill rectifies this situation by allowing the authority to accept applications that include prohibited development in limited circumstances. The general prohibition on prohibited development remains unchanged and importantly the bill does not allow prohibited development to be approved.

Delegation of legislative power
The Bill does not delegate any legislative power to any other person or body.

Overview of Bill
The bill seeks to make amendments to improve the efficiency of three keys planning processes:

1. territory plan variations – technical and full;
2. environmental assessment; and
3. development application assessment.

The proposed amendments provide an opportunity for a proponent to elect to bring together these independent planning processes into one stream-lined concurrent process.

The bill achieves this through amendments to chapter 5 *Territory plan*, chapter 7 *Development approvals* and chapter 8 *Environmental impact statements and inquiries*.

The amendments to chapter 7 will improve efficiency in planning processes. Presently, chapter 7 does not allow the authority to accept a development application (DA) for prohibited development; or if the development requires an environmental impact statement (EIS) a completed EIS. This means that the DA must wait for a considerable period until the territory plan is varied or the EIS is completed.

The bill changes this by allowing a DA to be accepted, ahead of a territory plan variation or completion of an EIS, in limited circumstances. However, the DA cannot be decided until the territory plan variation commences or the EIS is completed. If either the territory plan or draft EIS is rejected, refused or withdrawn, the DA must be withdrawn (the planning and land authority or Minister cannot decide the DA).

The efficiency achieved is that the development approval process can be progressing at the same time, rather than separately, as the process of varying the territory plan or completing the EIS.

From the proponent's point of view the option of concurrent lodgement comes with some risk. The proponent risks the development application being rejected on the basis that the EIS or draft territory plan variation is rejected, refused or withdrawn. For this reason, the concurrent process is optional rather than mandatory.

Concurrent development applications - generally

The bill inserts a new division '7.3.2A *Concurrent development applications*' at chapter 7. A concurrent development application (DA) is an application that is notified at the same time as a draft territory plan variation (DTPV) and/or a draft environmental impact statement (EIS). A DTPV and draft EIS can never be a concurrent process alone: the DA forms the starting point for all concurrent processes.

New s147AA (see clause 37) contains definitions for 'concurrent consultation period', 'concurrent development application', 'concurrent document', 'concurrent extension period' and 'completed concurrent process'. The definitions are integral to the operation of the division and reduce the complexity of the provisions.

Through the use of these definitions, certain planning processes requiring public notification, consultation and representations are linked. While linking processes, the amendments do not change existing processes except in relation to consultation periods and the time for deciding the DA. A longer consultation period is provided to the norm and the decision on the DA is delayed until the concurrent processes are completed.

If a DA is running concurrently with a draft territory plan variation (DTPV), the DA will be assessed against the territory plan as if it has been varied in accordance with the proposed variation.

Concurrent development applications will have a longer public consultation period of a period not less than 35 working days which allows sufficient time for the community to comment on the additional accompanying concurrent document/s i.e. the DTPV and/or the draft EIS as well as the DA. A period longer than 35 working days can be provided to reflect the complexity of the proposal.

The bill does not change entity referrals, publication of submissions or appeal rights: if a requirement exists now the requirement remains unchanged.

Concurrent development applications and territory plan variations

Full draft variations of the territory plan

The bill enables a development application to be made and assessed against a proposed draft territory plan variation. This allows the development application to progress at the same time as the relevant territory plan variation is progressed. There is considerable time saving and efficiency in permitting these two processes to proceed in tandem rather than in a linear, sequential manner.

The amendments made by the bill apply in the situation where a development application cannot be granted under the existing territory plan but could possibly be granted if a proposed territory plan variation was approved. The provisions permit a proponent to lodge a development application on the basis of a proposed territory plan variation rather than on the basis of the existing territory plan.

The amendments allow a proposal to be assessed on its merits in the context of the needs of the ACT community at that time. The DA continues through the usual public notification, agency referral and assessment stages prescribed by the Act. The DA can only be approved if the territory plan is varied in a way that would allow the proposal.

New technical variation of the territory plan

A new process is also introduced by the bill to allow a technical variation of the territory plan in certain circumstances. A proponent can apply to have a declaration made by the authority that an encroachment on to unleased territory land or land leased by the Territory would, if approved, deliver a good planning outcome.

Criteria for making the declaration are embodied in the bill (see clause 34, new section 137AC) and a declaration is a notifiable instrument ensuring that the decision is transparent to the community.

If a declaration is made, the territory plan can be varied through a technical variation. However, if a declaration is made, the technical amendment has a longer consultation period than the usual technical amendment (TA). This is because the effect of the declaration is a possible zone change. The consultation period is a period not less than 35 working days (which is longer than the normal 30 working days for a full draft territory plan variation (DTPV) or the 20 working days for other TAs that require limited consultation). This longer period is warranted as the community will receive both the TA as well as the DA to consider and make comment on.

Concurrent DA and EIS process

The bill includes another new efficiency option for possible use by a proponent of a development proposal. The bill permits a development application to be lodged with a draft EIS as opposed to a completed EIS.

This option applies to the assessment of development applications in the impact assessment track. Such development applications would ordinarily require the completion of an environmental impact statement (EIS) before the application can be lodged. The bill permits the proponent to complete the required EIS in tandem with the assessment of the development application itself.

Under this option, the public consultation on the draft EIS occurs at the same time as the public notification of the relevant development application. As well as saving time, the concurrent process permits the public to consider the draft EIS in the context of the actual development application. This gives the public a better understanding of the overall proposal.

The bill also reduces red tape by amending the Act to allow the authority to specify in the scoping document for an EIS, the time in which a draft EIS must be provided. The default time period is 18 months but clause 56 provides that the authority can specify a shorter time period.

The purpose of the amendment is to allow the authority to consider the complexity of the proposal, in an environmental context, and the timing of certain elements of the assessment e.g. if a particular study of a species is required that study may only be done at a particular point in the year. Other amendments, for instance, clause 60, tie the EIS process to the DA process if a DA and draft EIS are lodged concurrently.

Concurrent consultation period

A new concurrent consultation period is defined by the bill as period of not less than 35 working days. This is generally longer than the period stipulated by the Act for the various individual processes but shorter than the combined consultation periods for each process. For example, a merit development application by itself is open for consultation for 15 working days and a draft territory plan variation is open for 30 working days.

These two planning processes can be conducted as a concurrent process. If a concurrent process is run the DA and the other concurrent document will be notified for a period of not less than 35 working days. This means that instead of two consultation periods, that normally happen months apart, there is one longer consultation period that allows greater time for the community to review and comment on the package of planning document.

The consolidated consultation also provides the proponent with time saving achieved by the concurrent process but also in having a consolidated set of comments to respond.

Other minor amendments

Other various minor amendments are made to the Act by the bill. For instance, clause 4 omits the word ‘revise’ and substitutes it for ‘vary’ for consistency of language. Other amendments have no policy impact, for instance, clause 13 re-orders and consolidates existing sections 87 and 88 making it easier to determine what TAs require limited consultation.

Human Rights

The bill has been assessed against the *Human Rights Act 2004* and no issues identified. The bill does not limit any human rights. On the contrary, the bill creates an incentive for proponents to enter into a concurrent process that provides a benefit to the community and themselves while maintaining all the existing checks and balances for planning assessment processes.

Outline of provisions

Part 1 – Preliminary

Clause 1 — Name of Act
This clause names the Act as the *Planning and Development (Efficiencies) Amendment Act 2016*.

Clause 2 — Commencement
This clause provides that the Act commences on the day after its notification day.

Clause 3 — Legislation amended
This clause states that the Act amends the *Planning and Development Act 2007.* The clause contains a Note to provide that other legislation has also been amended by the Act. The other legislation being amended is the *Planning and Development Regulation 2008*.

Clause 4 — Ministerial directions to authority
Section 14 (1) (b)
This is a technical amendment and ensures consistency of language.

The amendment omits the word 'revise' at section 14 (1) (b) and replaces it with 'vary'. Throughout the Act, the territory plan is referred to as being varied rather than revised.

Clause 5 — Meaning of *associated document* – pt 3.6
New section 30 (1) (ca)
This clause is consequential to amendments made by the bill and includes that a concurrent document is an associated document for the Act. There are requirements under the Act if a document is an associated document (refer section 28 of the Act).

Clause 6 — How territory plan is varied under pt 5.3
Section 57 (1), except notes
This is a technical amendment and is for clarification purposes. The substance of the section remains unchanged.

Clause 7 — Section 57 (8), note 2
This is a consequential amendment. Clause 22 of the bill relocates s95 to division 5.4.2 as section 90C which means the reference to s95 in the note in section 57(8) has to be changed to s90C.

Clause 8 — Section 60
Section 60 Preparation of draft plan variations
This is a technical amendment and is for clarification purposes. Amended section 60 clarifies that the authority may prepare a territory plan variation and must prepare a territory plan variation if directed by the Minister.

Clause 9 — Public consultation – notification Section 63(1) (a)
The clause omits the existing consultation requirements and replaces it with the 'consultation period'. Clause 11 inserts a new sub-section (8) to provide the meaning of 'consultation period'.

Clause 10 — Section 63(1) new note
The clause inserts a new Note at section 63 (1) to direct the reader to section 137AA. New section 137AA is inserted by the bill (see clause 34) to allow a development application to be made before a draft territory plan is notified under s63. The development application and the draft territory plan variation must be publicly notified at the same time.

Clause 11 —new section 63(8)
The clause inserts a new sub-section (8) to provide the meaning of 'consultation period' for the section. The consultation period for an application under new section 137AA is the 'concurrent consultation period'. The concurrent consultation period is defined at new section 147AA (see clause 37). The concurrent consultation period is a period of not less than 35 working days. In any other case the consultation period is a period not less than 30 working days.

The effect of the provision is to provide a longer minimum consultation period if a development application, made under section 137AA, is notified at the same time as a draft territory plan variation.

Clause 12 — Definitions – pt 5.4
Section 86, definition of *code variation*
This clause substitutes the reference to section 87 (2) (a) to instead refer to amendments made to section 87 and 88 by clause 13 of the bill.

The definition is unchanged.

Clause 13 — Sections 87 and 88
This amendment substitutes a new section 87 for existing sections 87 and 88 for clarification purposes.

It substitutes a new section 87 that makes it easier to ascertain which technical amendments of the territory plan require no consultation before being made and those that require limited consultation under section 90. There is no change in substance.

The amendment means that there is no longer a section 88 in the Act.

Clause 14 — Making technical amendments
Section 89 (1), note
This clause omits section 88 and substitutes section 87(2) as a consequence of amendments made by clause 13 of the bill.

Clause 15 — Limited consultation
Section 90 (2) (c)

This clause is for clarification purposes and substitutes the words ‘how and when’ in section 90(2) (c) with the words ‘the consultation period and how’.

The amendment is consequential to the amendments at clause 37, that inserts new division 7.3.2A Concurrent development applications, and clause 34, that inserts new sections 137AA and 137AB. Together the effect of the amendments is to give effect to concurrent processing of development applications with another planning process.

Clause 34 provides that a development application can be accepted if the application is anticipation of a draft territory plan variation. Clause 37 inserts four new definitions: concurrent consultation period, concurrent development application, concurrent document and concurrent extension period.

The amendment at section 90 ensures that a technical amendment, that is related to a development application that has a declaration under new section 137AC (see clause 34) is notified for the concurrent consultation period i.e. not less than 35 working days.

Clause 16 — Section 90 (2) (d)

This clause is for clarification purposes and substitutes the words ‘period under paragraph (c) ends’ in section 90(2)(d) with the words ‘end of the consultation period’.

Clause 17 — Section 90 (4)

The clause omits section 90(4) because it is no longer required as a consequence of the amendment made by clause 16 above.

Clause 18 — Section 90 (6)

This clause clarifies that the comments are those made in the consultation period and in accordance with the section 90(2) notice.

Clause 19 — New section 90 (7)

This a consequential amendment as a result of amendments made by the bill.

New section 90(7) inserts a definition of consultation period because of the insertion of ‘the consultation period’ by clause 9. The meaning of consultation period is 20 working days or for a proposed technical amendment under section 90B the concurrent consultation period.

Concurrent consultation period is inserted by clause 37. The concurrent consultation period is a period not less than 35 working days.

Clause 20 — New sections 90A and 90B
This clause inserts new sections 90A and 90B in part 5.4.

These sections provide for the authority to change the boundary of a zone or overlay in the territory plan by technical amendment in the following circumstances:

1. the boundary of a zone can be changed if the change is consistent with the apparent intent of the original boundary line and the objective for the zone. The boundary proposed to be changed has to be aligned with unleased land or land leased to the ACT.

2. the boundary of an overlay can be changed by the authority if advised to do so by the conservator or custodian and the change is consistent with the apparent intent of the original boundary line and the objective of the zone. The boundary proposed to be changed has to be aligned with unleased land or land leased to the ACT.

3. the boundary of a zone can be changed consistent with a development proposal if the authority makes a declaration under new section 137AC about the proposal i.e. the authority considers the encroachment is minor and promotes a good planning outcome.

A person can only apply for a declaration in relation to an encroachment of no more than 20 metres (refer to schedule 1, item [1.1]) on to adjoining unleased land or land leased by the ACT where the use proposed on the adjoining land is prohibited.

The process is:

1. a person has a development proposal

2. the proposal involves encroaching on to adjoining land where the proposed use is prohibited

3. the proponent applies for a declaration from the authority that the encroachment is minor and promotes a good planning outcome

4. the application for a declaration is approved or refused.

If the declaration is granted, the proponent can lodge the DA even though it includes a proposal for a prohibited use on the adjoining land (s137AC and 137AD). The territory plan can be amended by a technical amendment to allow the use on the adjoining land (refer new section 90B). The DA cannot be approved until the territory plan has been amended.

This approach is similar to that used in other planning jurisdictions.

The DA and technical amendment process are concurrent processes under new section 137AD.

Section 90A Rezoning – boundary changes

New section 90A is in part, previous section 96A. Similarly to previous section 96A, section 90A (2) allows the planning and land authority to vary the territory plan as a technical amendment to change the boundary of a zone or overlay to encroach on adjoining land if the change is consistent with the apparent intent of the original boundary and the objective of the zone.

Section 90A (3) provides a new power for the authority to vary the territory plan as a technical amendment to change the boundary of an overlay to encroach onto adjoining land if advised to do so by the conservator of flora and fauna, or the custodian of the land; and the change is consistent with the apparent intent of the original boundary and the objective of the zone.

Neither technical amendment can be made, however, if the boundary proposed to be changed is aligned with the boundary of existing leasehold except if it is land leased by the Australian Capital Territory.

New section 90A (4) provides the meaning of overlay. Overlay means an overlay identified in the territory plan.

Section 90B Rezoning – development encroaching on adjoining land

New section 90B provides that the authority may vary the territory plan as a technical amendment to change the boundary of a zone consistent with a development proposal under section 137AD. Section 137AD is inserted in the Act by clause 37 of the bill.

New section 90B operates as follows:

1. a person has a development proposal that involves an encroachment on to unleased land or land leased to the Australian Capital Territory where the use is prohibited. Presently under the Act, a proponent cannot apply for development approval in these circumstances;

3. Under new s137AC, the proponent can apply for a declaration from the authority that the encroachment is minor and promotes a good planning outcome;

4. If the declaration is granted, the proponent can lodge the DA pursuant to new s137AD(1) even though it relates to a prohibited use;

5. The authority can vary the territory plan by technical amendment to change the boundary of the zone under new s90B.

5. The authority has to decide the DA as if the territory plan has been varied under s90B (s137AD (2) (b))

6. the DA cannot be decided until the territory plan has been varied by technical amendment (refer 42 – new section 162 (1A)). The DA and

technical amendment processes are a concurrent process under s147AA (1).

There is one proviso provided by section 90B (2): the authority must not vary the territory plan as a technical amendment or change the boundary of a zone if the site is designated as a future urban area.

New sub-section (3) provides the definition to '*adjoining territory land*'. Adjoining territory land is defined at new section 137AC (1) (a) (see clause 34).

Clause 21 — Part 5.5 heading

Part 5.5 Plan variations – structure and concept plans and estate development plans

This clause substitutes a new heading to part 5.5 that removes the reference to rezoning. This is consequential to the amendment at clause 23 of the bill which omits section 96A which refers to rezoning.

As there is no longer a section in the part about rezoning, the reference needs to be removed from the heading.

Clause 22 — Technical amendments – future urban areas
Section 95

The function of this clause is to advise that section 95 has been relocated to division 5.4.2 as section 90C.

Clause 23 — Rezoning – boundary changes
Section 96A

This clause omits section 96A. It is a consequential amendment. The provisions of existing s96A now appear in new section 90A inserted by clause 20 of the bill.

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

This clause clarifies that subsection 123(5) is subject only to paragraphs (c), (d), and (e) of section 123.

This clause clarifies that subsection (4) of section 113 is subject to paragraphs (c), (d) and (e) of section 123 and not the whole of section 123. Subsection (4) provides that if an assessment rack applies to a proposal, that track must be followed in assessing the development application.

The amendment made by the bill to insert specific subsections of s123 ensures certainty around the ability of a Minister to declare that the impact track applies to a proposal (s123(c) and (d)) and that the impact track applies if the Commonwealth advises that a bilateral agreement allows the proposal to be assessed under the Planning and Development Act (s123 (e)).

Clause 25 Section 122
This clause substitutes a new section 122 to take into account the situation where a development application in the merit track is a concurrent development application or made after a draft territory plan variation has been prepared.

It states that the application must be decided 10 working days after the concurrent process is completed or for an application made in anticipation of a territory plan variation, the variation has commenced. Otherwise the time frames for deciding development applications in the merit track remain the same.

Clause 44 inserts a new subsection 162 (6) to provide the meaning of 'completed concurrent process'.

Clause 26 — Section 127
The clause substitutes a new section 127. The clause also incorporates existing section 210 within section 127 with amendments to reflect the concurrent processes.

New section 127 clarifies that a completed EIS must be included with an impact track development application if a previous application for the proposal has been made less than 2 years previously and the EIS was rejected under section 224A.

Previously, a development application in the impact track required a completed EIS or an EIS exemption to be lodged at the same time. Because of the bill, a draft EIS may in certain circumstances be provided with the development application.

The new s127 clarifies that a draft EIS cannot be lodged in the circumstances set out in section 127(1).

New section 127 (2) and (3) articulates the same requirements that existed at section 210 but with amendments to reflect the new concurrent processes.

These amendments bring together in one place the circumstances for an impact track development application and environmental assessment.

Clause 27 — Impact track – when development approval must not be given
Section 128 (1) (a), notes
This is a consequential amendment that substitutes a new note that refers to the concurrent process provided by new section 162 (1A) at clause 42.

Clause 28 — Section 128(1), note 4
This clause omits note 4 as it is no longer needed.

Clause 29 — Impact track – time for decision on application
Section 131 (a) and (b)
This clause is a consequential amendment.

This clause substitutes a new section 131(1)(a) to take account of the situation where a development application in the impact track is a concurrent development application or made after a draft territory plan variation has been prepared.

The DA must be decided 10 working days after the day a concurrent process is completed or the draft plan variation has commenced. Otherwise the time frames for deciding development applications in the impact track remain the same.

Section 131 presently provides the prescribed time period for an impact track development application is 30 working days where no representation have been made or 45 working days if a representation was made. These prescribed time periods are not sufficient to allow the draft territory plan variation or concurrent process to be completed. Without the amendment to section 131, the DA would have to be refused under the Act.

The amendment at s131 has the effect of allowing the final decision to approve the concurrent development application to wait for the other concurrent processes to be completed.

Clause 30 —section 131
Clause 30 is a consequential amendment to the amendments made by clause 29 of the bill.

Clause 31— new section 131(3)
This clause is consequential to the amendments made to section 131 by clause 29. Because a reference to 'the concurrent process is completed' is included in s131, a definition of this term is provided by new section 131(3).

The provision directs the reader to new section 162 (6) (see clause 44) for the meaning of 'completed concurrent process'.

Clause 32 — Section 136
This clause is amends existing section 136 for clarity. The bill separates existing section 136(2) out and makes it section 136. There is no change to the substance of the sub-section.

The clause also inserts a new section 136A to include references to new section 137, 137AA, 137AB, and 137AD (see clause 37).

The clause then inserts new section136A which takes account of the concurrent processes that are inserted by the bill.

New section 136A allows the authority to accept an application for prohibited development under limited circumstances. The limited circumstances are a development application made under:

1. section 137 – applications for approval in relation to use for otherwise prohibited development

2. section 137AA and s137AB - applications made in anticipation of territory plan variations.

3. section 137AD – applications for development encroaching on adjoining territory land

Section 162 provides that the DA must be decided within the prescribed time period. Section 162 (6) refers to Part 7.2 Assessment tracks for development applications. The time for deciding an impact track development application is prescribed at section 131.

Section 131 is amended by clause 29. The effect of the amendment is to extend the prescribed time period to allow a concurrent process to be completed.

Clause 42 inserts new sub-section 162 (1A) to provide that the decision cannot be made until the concurrent process is completed.

Together, the amendments ensure that while being able to accept an application for a development proposal for a use that is prohibited, the authority or Minister cannot approve (or refuse) the DA ahead of the concurrent process being completed.

Clause 33 — Applications for development approval in relation to use for otherwise prohibited development

Section 137 (2)

This clause is a consequential amendment and substitutes a new section 137(2) that removes the reference to section 136 because of amendments made to s136 by clause 32.

Clause 34 — New section 137AA to 137AD

This clause inserts new sections 137AA to 137AD in division 7.2.7 of the Act.

New sections 137AA and 137AB provide the two ways for the planning and land authority to accept a development application in anticipation of a variation to the territory plan: before the variation is publicly notified or after it is publicly notified.

New section 137AA provides that a proponent can lodge a development application in anticipation of a draft territory plan variation (that has not been notified). New section 137AB provides that a proponent can lodge a development application the day after the draft territory plan variation has been notified under section 63 of the Act.

New section137AA (1) permits a person to apply for approval of a development proposal, for prohibited development in anticipation of a variation to the territory plan that would remove the prohibition or amend the rule.

The development application and the draft territory plan variation would be completed as a concurrent process - the development application is a concurrent development application and the draft territory plan variation is a concurrent document. Clause 37 inserts provisions for how concurrent processes are completed.

News subsection (2) states that a DA cannot be made under this section if a consultation notice about a draft territory plan variation has been notified.

New sub-section (3) provides that the proponent of the proposal must indentify how the proposal is inconsistent with the territory plan and state that the application is made in anticipation of a draft territory plan variation.

The intent of the provision is to provide that a proponent can discuss the proposed development with the planning and land authority and if the authority considers that the proposal has merit, the application could be lodged. The application is reliant on the territory plan being varied. As with any draft territory plan variation there is no certainty until the Minister approves the variation and the variation is not rejected, in full or part, by the ACT Legislative Assembly.

The proponent has to determine if the risk of the territory plan not being varied is warranted given the costs of preparing a development application and the fees involved in lodging the application. Nothing in the bill displaces the normal territory plan variation processes under the Act.

New sub-section (4) provides that if the relevant draft plan variation is not notified under section 63 within 6 months the authority or minister is taken to have refused the development application.

New sub-section (5) provides that although the development application is a concurrent development application, the requirements under chapter 7, 8 and 9 apply to the application. This means that the application is assessed as it would be under chapter 7 including entity referrals, notifications etc.

If the development proposal triggers schedule 4 of the Act, the proponent must do those things at chapter 8 i.e. prepare a draft environmental impact statement. If the proposal triggers chapter 9 the proponent must do those things that are relevant e.g. seek a variation of the lease if the proposed use is prohibited by the lease or if a grant of a lease is required for an encroachment on land, that the grant can be made by direct sale.

New section 137AB (1) and (2) permit a person to apply for approval of a development proposal for prohibited development, when a relevant draft territory plan variation has been notified under section 63. Unlike an application under new section 137AA, an application under s137AB is not necessarily a concurrent development application. This means that the usual notification time frames under the Act apply to the DA.

However, if the DA is in the impact track and triggers schedule 4 of the Act, the DA can become a concurrent DA in relation to the provision of the EIS. If schedule 4 is triggered, the application must include either a completed environment impact statement (EIS) or draft EIS or an application under section 211 to use a prior study or an approval to use a prior study (s211H exemption).

If a completed EIS is provided or approval to use a prior study has been given, the DA would progress as any other DA does. However, if a draft EIS or s211 application is included with the DA, the draft EIS or s211 application is a concurrent document and must be notified with the DA. In other words, there is a concurrent process in relation to the DA and the draft EIS or the DA and s211 application and the provisions relating to concurrent processes apply to this part of the process.

New section 137AB provides less risk to the proponent than section 137AA does because the proponent knows the scope of the proposed variation, the community thoughts about the variation and the overall commitment of Government to the variation. While this information does not guarantee that the territory plan will be varied as proposed, there is greater certainty for a proponent than when the draft plan variation has not been notified.

New sub-section (2) provides that a DA may be made after the day the consultation notice is notified. The provision does not stipulate when in the consultation period (or after the consultation has finished) that an application must be made i.e. the application can be made during or after the consultation period or at any time before the draft territory plan commences under section 83 or 84.

New sub-section (3) provides that the development application must identify the draft territory plan variation to which it is related and state that the application is made as if the variation were in force. This ensures that the authority knows what draft territory plan variation the application is made against and that the proponent acknowledges that the application will be assessed as if the variation was in force.

New sub-section (4) provides that even though the development application is reliant on a draft territory plan variation, the requirements under chapter 7, 8 and 9 of the Act apply to the application. This means that the application is assessed as it would be under chapter 7 including entity referrals, notifications etc. If the development proposal triggers schedule 4 of the Act, the proponent must do those things at chapter 8 i.e. prepare a draft environmental impact statement. If the proposal triggers chapter 9, the proponent must do those things that are relevant e.g. seek a variation of the lease if the proposed use is prohibited by the lease or if a grant of a lease is required for an encroachment on land, that the grant can be made by direct sale.

Subsection (4) also provides that when publicly notifying the development application, the notice must identify the draft territory plan variation that the application is made against and that the application is made in accordance with the proposed variation.

New sub-section 137AB (5) provides that the authority or Minister to taken to have refused the development application if the draft territory plan or a provision relating to the development application, is withdrawn, rejected or revised in a way that no longer permits the proposed development.

Sections 137AC and 137AD

New section 137AC permits a person to apply for a declaration from the planning and land authority that a proposed encroachment, into unleased land or land leased by the Territory, is minor and would promote a good planning outcome.

If a declaration is made, the person who applied for the declaration can apply for development approval of a proposal even though it involves prohibited development (s137AD (1)). A declaration is a notifiable instrument.

New sub-section (1) provides that the section applies in the following circumstances:

1. there is a development proposal in relation to a use of land, building or structure on land that adjoins unleased territory land or land for which the Territory is the registered proprietor

2. the use encroaches no further onto the adjoining land than the distance prescribed by regulation. The prescribed distance is 20 metres (refer schedule 1, [1.1] New section 25A)

3. the use is prohibited development on the adjoining land.

New sub-section (2) provides that the person may apply to the planning and land authority for a declaration. Sub (2) also provides the criteria for the assessment of an application. The criteria are:

1. the encroachment is minor

2. carrying out the proposal is logical and appropriate

3. the proposed use will not detract from the amenity of the surrounding area and promote better land management and not unreasonably restrict public access to the land

The aim of these sections is to reduce red tape and improve planning efficiencies. At present, a full draft territory plan variation process has to be completed before a development application can be lodged with the authority, even though the encroachment on to the adjoining land is only minor.

This clause and clause 20 new section 90B streamlines the process by permitting the DA to be lodged and the territory plan to be amended by technical amendment rather than a full territory plan variation. While a full variation is no longer required, there are numerous safeguards to the new process - the encroachment must be minor (a maximum of 20 metres is prescribed by regulation) and the authority can only make a declaration if the criteria set out in the Act are met – i.e. carrying out the proposal is logical and appropriate and promotes better land management.

Also, unlike other technical amendments that require limited consultation, a technical amendment that is related to a declaration under new section 137AC must be notified for the concurrent consultation period i.e. a period not less than 35 working days, rather than the usual 20 working days (see new section 147AA and 147AB at clause 37 of the bill).

In effect, this clause and clause 20 provide for better planning outcomes by sensibly removing minor encroachment matters from the more onerous and time consuming process of completing a full territory plan variation.

Clause 35 — Form of development applications
Section 139 (2) (g) (ii)

This clause substitutes a new section 139(2) (g) (ii) in the Act and is consequential to the amendments made by the bill that introduce the concurrent development application process (see clause 37).

It provides that a draft environmental impact statement can accompany a development application, that each concurrent document must accompany a concurrent development application and that an application for approval of development that encroaches on adjoining land must be accompanied by a declaration under section 137AC(3).

Clause 36 — Section 139 (8), new definitions

This clause is consequential to the amendments made by clause 34 and inserts definitions of new terms inserted by that clause of *adjoining territory land* (see s137AC (1) (a) and encroachment (see s137AC (1) (b)).

Clause 37 — New division 7.3.2A

This clause inserts new division 7.3.2A.The division inserts the framework to allow concurrent notification of planning applications and related processes and the assessment of those processes concurrently. New section 147AA inserts four definitions for the operation of the division.

The following sections (new s147AB, 147ACand 147AD) clarify public notification and representation requirements for concurrent documents and refusal, rejection or withdrawal of concurrent documents.

Section 147AA

This clause includes definitions for the new division. Together the definitions have the effect of reducing the complexity of the provisions ensuring that users can easily understand requirements.

The principal definition is for a *concurrent development application*. A concurrent development application means either an application for development approval under new section 137AA or a development application that is accompanied by 1 or more concurrent documents.

A concurrent document is defined as:

1. the proposed draft plan variation for a development application under new section 137AA;

2. the proposed technical amendment of the territory plan for a development application under new section 137AD;

3. a draft environmental impact study; or

4. an application under section 211 to use a prior environmental study.

This means that a development application can be lodged together with 1 or more of the above documents. Therefore, it meets the definition of a concurrent development application and the rules about concurrent applications inserted by new division 7.3.2A of the bill apply.

This clause also defines concurrent consultation period and concurrent extension period which sets out consultation requirements for a concurrent development application. Concurrent applications will have a consultation period of not less than 35 working days. An extension is possible in accordance with new s147AA (2).

The provisions do not otherwise change the current legislative or administrative processes for the concurrent development application or a concurrent document: notification, comments or representations, entity referrals, and appeal rights all remain the same.

New section 151A (see clause 38) inserts information about the effect of advice by a referral entity for concurrent documents.

Section 147AB Public notification of concurrent document

New section 147AB sets out the public notification requirements of concurrent documents. A concurrent document must be publicly notified together with the concurrent development application for the concurrent consultation period (a period that is not less than 35 working days - refer s147AA).

A concurrent DA has a longer consultation period than a non-concurrent DA so the community can comment on the concurrent document/s as well as the DA. Representations can be made about the concurrent DA and the concurrent document at the same time. This saves time and reduces red tape but ensures the community still has sufficient time to comment on the development proposal and concurrent documents.

There is also an advantage for the community in that they can review the DA in the context of the concurrent document which will enable a clearer picture of what the proposal entails and its pros and cons.

Section 147AB (4) sets out what the consultation notice must include.

A concurrent document is publicly notified by:

1. Notification of the consultation notice for the draft territory plan variation under section 63(3);

2. Notice of a technical amendment of the territory plan under section 90(2);

3. Notification of the consultation notice for the EIS exemption application under s211C;

4. Notification of the draft EIS under s217.

Section 147AC Representations about concurrent document
New section 147AC sets out procedures relating to representations made about concurrent documents if the DA is a concurrent development application as defined by new section 147AA.

A person may only make a written representation about the concurrent DA and each concurrent document in the concurrent consultation period (a period not less than 35 working days – s147AA). Comments can be made at the same time (preferred) but can be made separately: as long as the comments are made during the concurrent consultation period. Community members that make comments separately on a concurrent DA and a concurrent document need to ensure that they identify the appropriate concurrent DA and concurrent document when submitting the comments.

Subsection 4 requires the authority to include an electronic link to each concurrent document on the authority website and either publish the representation or include an electronic link to the representation on the authority website.

Subsection 5 clarifies the meaning of representation for each concurrent document. For a draft territory plan variation, it is a comment about the variation under section 63; for a proposed technical amendment of the territory plan, it is a comment under section 90; for an EIS exemption application, it is a submission under section 211C; and for a draft EIS, it is a representation under section 219.

The concurrent process does not change any rights or requirements to be notified, opportunity to comment or appeal rights: if a right or requirement exists now it is continued. A key amendment made by the bill is the provision that provides that a concurrent development application cannot be approved until the concurrent process is completed. This ensures that a DA cannot be approved if it remains inconsistent with the territory plan or, if applicable, until the environmental impacts have been assessed.

The bill also ensures that if the development proposal is likely to have a significant adverse environmental impact on a protected matter that the concurrent development application is referred to the conservator of flora and fauna (refer

existing section 147A). The concurrent DA cannot be approved until the conservator has considered the DA.

Section 147AD Refusal, rejection or withdrawal of concurrent document
New section 147AD provides that a concurrent development application is taken to be refused if a concurrent document relating to a concurrent DA is refused, rejected or withdrawn. The authority must give the concurrent DA applicant notice of the effect of this section.

This provision is necessary to ensure a concurrent DA can be removed from consideration if the concurrent document relied upon in the DA is not completed.

Clause 38 — New section 151A
Section 151A Effect of advice by referral entity for concurrent development application
This clause inserts a new section 151A in division 7.3.3 which ensures entity advice on a concurrent DA remains consistent unless particular criteria are met.

The section requires that advice given by a referral entity in relation to a concurrent document for a concurrent DA must not be inconsistent with any previous advice given by the entity on the concurrent document unless:

1. further information in relation to the proposal comes to the entity's attention;

2. the entity did not have the information when the previous advice was given;

3. the further information is relevant to the previous advice; and

4. the entity would have given different advice if the entity had the further information.

Clause 39 — What is *publicly notifies* for ch 7?
Section 152 (1), new note 3
This is a consequential amendment and inserts a new note which includes a reference to the concurrent development application process.

Clause 40 — Representations about development applications
Section 156 (2), new note
This is a consequential amendment and inserts a new note which includes a reference to the concurrent development application process.

Clause 41— Section 156 (6) (b) excluding note
This clause substitutes a new section 156(6) (b) that clarifies that comments about a DA must not relate to the adequacy of a completed EIS as distinct from a draft EIS which can be commented on when it is a concurrent document for a concurrent DA.

Clause 42 — Deciding development applications
New section 162 (1A)

This clause inserts new section 162(1A). New section 162 (1A) provides that the planning authority or Minister can only decide a concurrent development application if the concurrent process is completed.

The clause also inserts a new Note to provide the meaning of completed concurrent process for each of the planning processes that can be part of a concurrent process.

New section 162(6) (see clause 44) inserts a definition of *completed concurrent process*.

Clause 43 — Section 162 (3)

This clause omits the word 'However' and inserts the word 'Also' in section 162(3) as a result of amendments made by clause 42 of the bill.

Clause 44 — Section 162 (6)

This clause inserts the meaning of completed concurrent process for section 162. This is important because the Minister or authority cannot decide a concurrent development application until the concurrent process is completed (see clause 42). A concurrent process is completed when the:

1. the draft territory plan variation has commenced under s83 or s84; or the technical amendment of the territory plan has commenced under s89;

2. the environmental impact study has been completed; or

3. approval to use a prior environmental study has been granted under s211H.

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

This is a consequential amendment. The clause omits the reference to section 137 (2) (a) and substitutes it with a reference to 137(2).

Clause 46 — Part 8.1 heading
Part 8.1 Overview and interpretation – ch8
Section 205A Overview of EIS process under ch 8

This clause substitutes a new heading and section 205A in the Act which provides an overview of the EIS processes under chapter 8. This is for clarification purposes and does not change the policy outcomes.

Clause 47 — Definitions – ch 8
Section 206, definitions

Clause 47 omits the definitions for draft EIS, EIS, environmental impact statement and inquiry. This is because these definitions are in the Dictionary of the Act.

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

Clause 48 omits the words "has not decided" and replaces them with the words "decides not to". The amendment clarifies the wording in the sub-section while not changing its effect.

Clause 49 — Division 8.2.1 heading

This clause replaces the existing heading "When is an EIS required" of the division with a new heading "EIS exemptions".

The new heading better reflects the division and responds to amendments made throughout the division by the bill.

Clause 50 — When is a completed EIS required?
Section 210

Clause 50 omits existing section 210 because of amendments by clause 26.

Clause 26 incorporates existing section 210 within existing section 127. As amended by the Bill section 127 now incorporates s210 as amended to reflect concurrent processes.

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

This clause inserts a new note at s211. Section 211 provides a definition for EIS exemption.

The new note is included to clarify that an EIS exemption does not mean environmental matters in relation to the DA are not addressed. It clarifies that an exemption means that a previous study has sufficiently addressed any environmental issues.

There has been a common misconception that if an 'exemption' under section 211B is granted then the proposal does not have to address environmental matters. The note clarifies that this is not the position.

The new note directs the reader to section 211B and provides that an exemption may be given if a recent study has already addressed the expected environmental impacts of a development proposal.

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

This clause inserts a new note at s211A. Section 211A provides a definition of r*ecent study*. A recent study is a study that is not more than 5 years old.

Similar to clause 51, the new note is included to clarify that an EIS exemption does not mean environmental matters in relation to the DA are not addressed. It clarifies that an exemption means that a previous study has sufficiently addressed any environmental issues.

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

This clause inserts a new requirement that an application under section s211B (3) must include information about the development proposal. Without information about the development proposal it is difficult to establish if the environmental impact of a proposal has been sufficiently addressed in a recent study.

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

This clause inserts a new note at section 211D (1) (b) to direct the reader to section 147AC. New section 147AC, inserted by clause 37, provides that if an EIS exemption application is made under s211B and the application accompanies a development application then a representation on the exemption application must be made during the concurrent consultation period - a period of not less than 35 working days (see s147AA).

This is because an application under s211 and a development application that are lodged together meet the definitions of *concurrent document* and *concurrent development application* (see s147AA).

Under s147AB, the concurrent DA and concurrent document (the exemption application) must be notified together and representations for both must be made during the concurrent consultation period (see s147AC (2)).

Clause 55 — Scoping of EIS
Section 212 (1), including note

This clause is consequential and substitutes existing section 212 (1) and note with a new section 212 (1) and note. The clause amends the existing section 212(1) (a) and the note to include a reference to a draft EIS because of the concurrent processes introduced by the bill.

The clause provides that a proponent of a development proposal must apply to the authority if an EIS, whether completed or draft, is required for the proposal and the proponent has not applied for an EIS exemption or an exemption application has been refused.

Clause 56 — Contents of scoping document
New section 213 (1A) and (1B)

This clause inserts new subsection (1A) (a) and (b).

The amendment provides that the default time period to provide a draft EIS is 18 months. However, the planning and land authority may prescribe a shorter time period when it is appropriate.

For example, if the scoping document is not complex and does not require any studies that are time sensitive, the authority may limit the time to provide the draft EIS to a period shorter than 18 months.

Clause 57 — Term of scoping document
Section 215

This clause is consequential and omits existing section 215. Existing section 215 provides that the scoping document expires 18 months after the day it is notified.

Section 215 is redundant because of amendments made at clause 56.

Clause 58 — Preparing draft EIS
Section 216 (2)

This clause is consequential and substitutes existing section 216 (2) with a new s216 (2).

Clause 56 inserts a capacity for the authority to specify in the scoping document a period of shorter than 18 months when it is appropriate to do so. The default time period remains 18 months (as it is now).

Clause 59 — Public notification of draft EIS Section 217, new note

This clause inserts a new note at section 217. This is a consequential amendment and inserts a new note which includes a reference to the concurrent development application process.

The new note directs the reader to s147AB (2). New s147AB, inserted by 37, provides that a concurrent document must be publicly notified at the same time as the concurrent development application that it relates to and for the concurrent consultation period. *Concurrent development application*, *concurrent document* and *concurrent consultation period* are defined at new section 147AA.

Clause 60 — Section 218
Section 218

This clause substitutes existing section 218 with a new section 218.

New section 218 is amended to include the new concurrent application process inserted by the bill (see clause 37 new s147AA). It provides that if a draft EIS accompanies a concurrent development application (see s147AA) then the public consultation period is the concurrent consultation period (new s147AA).

The draft EIS and concurrent DA must be notified at the same time (new s147AB) and for the concurrent consultation period. The concurrent consultation period must be not less than 35 working days (see clause 37 – new s147AA).

If the draft EIS is not lodged with a concurrent development then the consultation period is not less than 20 working days (as it is now). The existing ability to extend this period under s219 (3) remains.

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

This clause is consequential and inserts a new note at s219 (1). The new note directs the reader to new section 147AC (see clause 37).

New section 147AC (5) provides that if the draft EIS is a concurrent document then a representation on the draft EIS must be made during the concurrent consultation period. Concurrent consultation period is defined at new section 147AA (a period not less than 35 working days).

The consultation period for a draft EIS that is not a concurrent document (the draft EIS is not a concurrent document if it does not accompany a development application) is at least 20 working days.

Clause 62 — Publication of representations about draft EIS
Section 220 (2) (b), excluding notes

This clause substitutes existing subsection 220 (2) (b) with a new subsection (2) (b).

The clause inserts a time period that a representation on a draft EIS must be provided to the proponent. The time period is 10 working days.

Prescribing a time period means the authority has a timeframe for the provision of the representations to the proponent. This ensures that the proponent has the representations in a timely manner and can revise the draft EIS to respond to the representations.

Clause 63 — Revising draft EIS
Section 221 (2)

This clause substitutes existing subsection 221 (2) with a new subsection (2) and (2A).

New subsection (2) inserts a time period (the revision period) for the proponent to revise the draft EIS after the consultation period has closed and after representations have been provided to the proponent. Clause 63 inserts a new definition for *revision period*.

Clause 64 — New section 221(4)

This clause inserts a new subsection (4). New subsection (4) inserts a definition for revision period.

Revision period is defined as at least 30 days but not more than 18 months after the day the public consultation period for the draft EIS has ended. The effect of the provision is that the proponent must revise the draft EIS with the notified time period.

Clause 65 — Authority consideration of EIS
Section 222 (1)

This clause is consequential and substitutes existing subsection 222 (1) with a new subsection 221 (1).

New subsection (1) provides that the section applies if the proponent of a development application gives the authority an EIS under s221 within the time required by section 221 (2) or in accordance with a notice under section 224 (2).

Clause 63 inserts a capacity for the planning and land authority to specify the time required to provide a revised draft EIS.

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

This clause is consequential and substitutes existing section 223 (1) with a new sub-section (1).

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

This clause substitutes existing section 224 (1) (b) with a new subsection (1) (b).

The clause picks up the concurrent process as it relates to a draft EIS. Under the amendments made by clause 37 of the bill, if a proponent lodges a development application with a draft EIS then it is a concurrent development application and the draft EIS is a concurrent document. The application and draft EIS must be notified together for the concurrent consultation period.

The main benefit of a concurrent process is a stream-lining of the planning processes. Therefore, the bill provides that a proponent only has one opportunity to further revise a draft EIS if the first revised draft EIS is not accepted by the authority. A revised draft EIS that is not part of a concurrent process has two opportunities to further revise the draft EIS.

The section is otherwise unchanged.

Clause 68 — Section 224A
Section 224A Rejection of unsatisfactory EIS

This clause substitutes existing section 224A with a new section 224A.

The clause picks up the concurrent process as it relates to a draft EIS. Under the amendments made by clause 37 of the bill, if a proponent lodges a development application with a draft EIS then it is a concurrent development application and the draft EIS is a concurrent document. The application and draft EIS must be notified together for the concurrent consultation period (see 147AA).

The section is otherwise unchanged.

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

This clause inserts a new subsection 240(1) (h) before the existing note.

The provision provides the capacity for the authority to grant, by direct sale, the land that is subject to a declaration under new section 137AC (see clause 34) providing

that the territory plan has been varied to remove the prohibition on the use of the land for the required purpose.

New section 90B (see clause 20) allows the authority to vary the territory plan by a technical amendment if a declaration has been made under section 137AC. The technical amendment and the development application must be notified together for the concurrent consultation period. New section 147AA defines concurrent consultation period as at least 35 working days (see clause 37).

Clause 70 — Section 240(4), new definitions
This clause inserts new definitions in section 240 as a result of the insertion of new section 240(1) (h) in the Act by clause 70. It is a consequential amendment.

Clause 71 — New chapter 22
This clause inserts a new chapter 22 in the Act that provides for transitional arrangements for the bill.

Chapter 22 Transitional – Planning and Development (Efficiencies) Amendment Act 2016
New section 491 deals with existing concurrent documents. A concurrent document does not include a draft EIS given to the authority or an application for an EIS exemption made under section 211B before the day the bill commences.

New section 492 provides that a regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the bill.

New s492 also provides that a regulation may modify the chapter to make provision in relation to anything that in the Executive's opinion is not or is not adequately dealt with in this chapter. Subsection (3) provides that a regulation under subsection (2) has effect despite anything else in this Act or another territory law.

New section 493 provides that chapter 22 expires 2 years after the day it commences. This ensures that transitional matters can be dealt with for a period of 2 years after the bill commences.

Clause 72 — Dictionary, definition of *code variation*
This clause is a consequential amendment. It substitutes a new definition of code variation in the Dictionary as a result of the amendments made by clause 13 of the bill.

Clause 73 — Dictionary, new definitions
This clause is consequential and includes definitions in the Dictionary related to the new concurrent development application process inserted in the Act by the bill.

Clause 74 — Dictionary, definition of *draft EIS*
This is a consequential amendment. It substitutes a new definition of draft EIS in the Dictionary as a result of amendments made by clause 58 of the bill.

Clause 75 — Dictionary, definition of *prohibited* paragraph (a)
This is a consequential amendment that amends the section reference.

Clause 76 — Dictionary, definition of *representation*, paragraph (b)
This is a consequential amendment. The effect of the amendment is to make it clear that a representation under chapter 8 can be made on a draft EIS.

Schedule 1 Planning and Development Regulation 2008 – consequential amendments

Inserts new section 25A in the Planning and Development Regulation 2008

[1.1] New section 25A

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

New section 25A prescribes the distance of 20 metres for new section 137AC (1) (see clause34). This means an encroachment for new section 137AC cannot be more than 20 metres.