

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (GREENHOUSE GAS REDUCTION TARGETS)
AMENDMENT BILL 2012**

EXPLANATORY STATEMENT

**Circulated by
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INTRODUCTION

This explanatory statement relates to the *Planning and Development (Greenhouse Gas Reduction Targets) Amendment Bill 2012* as presented to the 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 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 being a task for the courts.

OVERVIEW

The bill is designed to ensure that planning decisions and the planning approvals process are consistent with the legislated greenhouse gas reduction targets in the *Climate Change and Greenhouse Gas Reduction Act 2010*. To achieve this the bill amends the objects of the Act, inserts new requirements for the statement of strategic directions and a range of other development plans as well as inserting a number of new requirements within existing planning and land authority functions. The bill creates new obligations on the planning and land authority and ensures that planning decisions are made recognising both the impacts of climate change and our obligation to respond and achieve the legislated greenhouse gas reduction targets in the *Climate Change and Greenhouse Gas Reduction Act 2010*.

HUMAN RIGHTS

The bill is confined to the administrative processes of the planning and land authority and does not limit any human rights protected by the *Human Rights Act 2004*. The bill only impacts on development proponents to the extent that some developments (those with a high level of greenhouse gas emissions) may no longer be permitted. It should be noted that proponents for developments in the impact track will almost always be corporations and limitations on the use of particular property should not be seen as limiting the right to property.

SUMMARY OF CLAUSES

Clauses 1-3 Name of the Act, Commencement and Legislation amended

These are preliminary clauses setting out the name of the amending act, the acts and regulations amended and the commencement date. Note that as an amendment bill, section 89 of the Legislation Act provides for the repeal of the Act the day after the commencement day.

Clause 4 Object of Act Section 6(a)

This clause amends the objects of the Act to add in the objective of ensuring that the planning and land system is consistent with the ACT greenhouse gas reduction targets. The targets are defined in clause 6 as those set out in the *Climate Change and Greenhouse Gas Reduction Act 2010*.

Clause 5 Meaning of *sustainable development* Section 9, definition of *sustainable development*, new paragraphs (e) and (f)

This clause adds to the definition of sustainable development to provide that meeting the greenhouse gas emissions reductions targets and planning for the impacts of climate change are also principles for achieving sustainable development.

Clause 6 New Section 9A

This clause inserts two new definitions into the Act: the ACT greenhouse gas reduction targets, which are those targets set out in the Climate Change and Greenhouse Gas Reduction Act 2010, and climate change impact analysis which is an assessment of the prospective greenhouse gas emissions caused by a developments.

The ACT Government has developed a climate change impact assessment tool for climate change impact analysis of Government bills and major policy proposals. A climate change impact assessment discussion paper is currently open for public comment, see

http://www.cmd.act.gov.au/_data/assets/pdf_file/0004/264181/TBL_Climate_Change_Discussion_Paper.pdf

For a more detailed description of the type of factors and framework for conducting a climate change impact assessment see the United Nation Environment Programme, *Handbook on Methods for Climate Change Impact Assessment and Adaptation Strategies*, available at http://www.ivm.vu.nl/en/Images/UNEPhandbookEBA2ED27-994E-4538-B0F0C424C6F619FE_tcm53-102683.pdf.

Clause 7 Giving effect to object of territory plan Section 49(1)

Consistent with the changes set out in clause 5 this clause amends the requirement in section 49 of the Act to provide that the territory plan must give effect to its objects in a way that gives effect to principles of sustainable development. As set out above in clause 5 two new principles have been added to the section 9 definition and this change will mean that the territory plan must give effect to its object in a way that plans for the future impacts of climate change and is consistent with the ACT greenhouse gas emissions targets.

Clause 8 Statement of strategic directions Section 52(1)

The statement of strategic directions contains broad strategic principles to guide long term planning for the ACT. The current requirements for the statement of strategic directions set out in section 52 are that it may contain planning principles covering areas of national, regional and Territory interest, including principles for sustainable development and that it should promote the planning strategy. This clause inserts the additional requirements that it must contain principles and plans for meeting the ACT greenhouse gas reduction targets as well as ensuring that other principles for sustainable development are also included.

Clause 9 What is a structure plan? New section 92(2)

A structure plan sets out principles and policies for development of the future urban areas; this clause inserts a requirement that a structure plan must give effect to the principles for sustainable development.

Clause 10 What is a concept plan? New section 93(2)

A concept plan applies the principles and policies in the structure plan to future urban areas and this clause provides that these plans must give effect to principles for sustainable development.

Clause 11 What is an estate development plan? New section 94 (1) (c)

An estate development plan sets out the proposed development of the estate in a way that is consistent with any existing concept plan for the area any other code. This clause adds in a requirement that these plans are also consistent with principles for sustainable development.

Clause 12 Consideration of whether review of territory plan necessary section 102 (2)(d)

In deciding whether a review of the territory plan is necessary the authority must consider whether the plan is consistent with a number of objects. This clause provides that the territory plan must give effect to the principles of sustainable development, as newly defined by clause 5.

Clause 13 Consideration of whether review of territory plan necessary New section 102 (2A)

At least every five year the planning and land authority must consider reviewing the territory plan. This clause provides that as part of that consideration the planning and land authority must also consider whether the statement of strategic directions is consistent with its functions.

Clause 14 Section 103 heading

This clause amends the heading of section 103 to clarify that it is one process that may occur after the section 102 review and clarify that it is a distinct process from the new section 103A process set out in clause 14.

Clause 15 New section 103A

This clause inserts a new section 103A which provides for a review of the territory plan in the context of the greenhouse gas emission reduction targets. This is subsequent to the consideration of whether or not a review of the whole plan is necessary under section 102 of the Act. If a review of the territory plan is undertaken it will overlap with the requirements in the new section 103A however if a section 102 review is found not to be necessary a section 103A review must still be undertaken by 31 December 2013.

The new section 103A review must be undertaken at least every five years and must identify whether or not the plan remains consistent with the greenhouse gas reduction targets. If the territory plan is no longer consistent a variation or a technical amendment must be prepared to amend the territory plan.

Following the review a notice of the authority's findings must be provided to the minister. The notice is a notifiable instrument that must be notified on the legislation register.

Clause 16 Meaning of *significant* adverse environmental impact New section 124A (1) (c)

Section 124A(1) sets out when an environmental impact is significant. This clause inserts a new subsection which provides that an environmental impact is significant if the authority is not satisfied that the impact of the proposed development is consistent with the ACT greenhouse gas reduction targets.

Clause 17 Impact track—development applications Section 127, new note

This clause inserts a new note which references a new requirement for climate change impact analysis set out in clause 18.

Clause 18 Impact track—when development approval must not be given New section 128 (1A)

This clause inserts an additional factor when determining a development application in the impact track. An approval must not be given for developments in the impact track if the planning and land authority is not satisfied that the proposal is consistent with the ACT greenhouse gas reduction targets.

The clause recognises that whilst it is very unlikely that any one development will have such an impact as to affect the achievement of the targets, approval should nevertheless not be given to developments that do have a high greenhouse gas intensity or that will inevitably lead to an increase in, or an inability to decrease, our emissions.

Clause 19 Impact track—considerations when deciding development approval New section 129 (ha)

This clause adds an additional requirement for the decision maker to consider when deciding whether to approve a development application in the impact track. In addition to the eight existing requirements, a decision maker must now also consider the climate change impact analysis that must be undertaken for the development. Note also that clause 17 provides that the decision maker must not approve a development application if it is inconsistent with the ACT greenhouse gas reduction targets and that the consideration of the climate change impact assessment is necessary in making that determination.

Clause 20 Form of development applications New section 139 (2) (f) (ia)

Consistent with clauses 17 and 18 this clause inserts a requirement that applications for development approval in the impact track must be accompanied by a climate change impact assessment.

Clause 21 New section 419A

This clause creates a new annual reporting requirement on the planning and land authority in fulfilling the requirements of the *Annual Reports (Government Agencies) Act 2004*. There are two parts to the additional requirements. Firstly there is a requirement for the planning and land authority to calculate the total amount of average greenhouse gas emissions that have been approved as part of the planning approvals process. For example if the authority approves 100 new dwellings each of which is expected to produce one tonne of greenhouse gas emissions and there are three other major projects that are each expected to produce 100 tonnes the total for the year to be reported by the authority would be 400 tonnes. The second part of the

requirement is more general and relates to the authority's compliance with responsibilities in relation to the greenhouse gas reduction targets.

Clause 22 Dictionary, new definitions

The clause inserts two new definitions into the dictionary that refer to the amended section 9A, see clause 6 for an explanation of the substance of the change.

Clause 23 Exemptions from requirement for development approval Schedule 1, section 1.22 (2) (a) (ii), new example

This clause amends the *Planning and Development Regulation 2008* by inserting a new example to make it clear that photovoltaic roof tiles come within the category of an exempt development as they are minor building works.