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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT (PROJECT FACILITATION) AMENDMENT BILL 2014

EXPLANATORY STATEMENT

Presented by

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EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Development (Project Facilitation) Amendment Bill 2014* 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 Legislative Assembly.

Terms used in this explanatory statement

"The Bill" means the Planning and Development (Project Facilitation) Amendment Bill 2014

Background

The system put in place by the *Planning and Development Act 2007* (the Act) is working effectively. However, some areas of planning policy have recently arisen that demonstrate some rigidities in the planning system. These include the absence of a process for faster delivery of projects of major public importance, a time consuming process for development proposals with small encroachments into other Territory Plan defined land use zones, the absence of a process for declaring brownfield sites as priority precinct areas, unnecessary delays in the environmental impact assessment process and the absence of an explicit process for assessing development applications on the basis of draft Territory Plan variations.

The Bill proposes a number of amendments to the Planning and Development Act to remove these rigidities and make processes more flexible to facilitate development that is a priority for the ACT community.

Overview of Bill

The Project Facilitation Bill proposes a number of amendments to the Act for improving process efficiencies in the development assessment and Territory Plan variation process and facilitating the delivery of key Government projects.

The Project Facilitation Bill makes the following amendments to development assessment and Territory Plan variation provisions in the Planning and Development Act:

1. Introduce a new provision to allow the Territory Executive to vary the Territory Plan through a special precinct area variation. The special precinct variation identifies a designated area for priority development and changes the Territory Plan. After the variation is made, the Bill would within the precinct area permit Territory Plan fine tuning by special amendment and would remove third party ACT Civil and Administrative Tribunal (ACAT) merit review of development approvals within the precinct area. The Executive must be satisfied that the special precinct area would achieve a substantial public benefit. The Executive must assess the public benefit in light of public comments made on the special precinct variation.

2. Introduce a new provision to allow the Territory Executive to make a declaration of a project of major significance by disallowable instrument. The Territory Executive

must be satisfied that the development proposal would achieve a substantial public benefit. Development approval for the declared project would not be subject to ACAT merit review or review by the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989*. A person may not start a proceeding in a court in relation to a significant project declaration more than 60 days after the declaration is made. A person may not start a proceeding in a court in relation to a development application to which a significant project declaration applies more than 60 days after the day the development application is approved. This will reduce uncertainty and potential delay. The Minister will be the decision-maker once the declaration has been made.

3. Allow a development proponent to lodge a development application that applies a draft Territory Plan variation. Currently, the development proposal would need to wait 6-18 months for the Territory Plan variation to be realised and implemented. Although the Planning and Development Act does not explicitly prohibit the lodgement of a development application against a draft variation, the Planning and Development Act does not clearly state whether such an application can be assessed and granted in principle. The proposed amendment would permit a proponent to apply for in principle development approval on the basis of the draft variation. The approval would not take effect until the Territory Plan variation becomes operational.

4. In the impact track, allow simultaneous DA notification and public consultation on the attached Environmental Impact Statement (EIS). The current process requires the development proponent to complete the EIS process (including public consultation) prior to lodging the development application. This process may add eight weeks or longer to timeframes. The proposed amendment would give the proponent the option to lodge the DA and have the EIS publicly notified at the same time.

The key features of the bill in more detail are as follows:

1. Special precinct area variation

Effects of the amendment

The bill introduces a new procedure to vary the Territory Plan through a special precinct area variation. This new procedure aims to help the Government to identify geographical areas for priority development that is of major economic, social, cultural, economic or environmental importance to the Territory and to enable this development to be expedited as quickly as possible.

The special precinct variation process introduces a transparent mechanism for keeping the public informed and involved in the development of special precinct areas. The Canberra community is consulted at the beginning of the process. The declaration is tabled in the Legislative Assembly and subject to rigorous scrutiny and debate. Subsequent development applications within the special precinct area are publicly notified, with an additional opportunity for the community to comment. Public consultation comments must be taken into account by the decision-maker before any development is approved.

If special amendments to the Territory Plan are made within the special precinct area after the special precinct variation is made, these too will be subject to limited public notification and consultation.

The special precinct variation process allows the Territory Plan to recognise a designated area for priority development. Changes to the Territory Plan to identify the area are made through a single quick process. The special precinct variation is subject to public consultation and scrutiny by the Legislative Assembly.

There is no realistic alternative to the development of new legislation to implement this process.

The variation process

The Bill inserts a new Part 5.3A into the Planning and Development Act. This new Part prescribes requirements for the variation of the Territory Plan to identify a special precinct area. The Minister may direct the planning and land authority to prepare a draft variation of the Territory Plan to identify a special precinct area (draft special precinct variation).

The draft special precinct variation must identify the area, include a structure plan for the special precinct area, include any Territory Plan variations that are required to implement the special precinct variation, state the proposed period of effect for the variation, and state how the variation meets the prescribed criteria in section 85H for special precinct variations. Before being made, the Territory Executive must be satisfied that the variation of the Territory Plan to identify the special precinct area would achieve a substantial public benefit. The variation and the supporting structure plan must be consistent with the planning strategy. The variation must also achieve one or more of the following objectives: implementation of the planning strategy or elements of the planning strategy, sustainable development of the Territory or economic, social, cultural or environmental progress for the Territory. The draft declaration process will permit Territory Plan variations to be made through the declaration process itself. If the proposed special precinct area includes a proposed significant project, the draft variation must attach the draft significant project declaration. If the draft special precinct variation includes a proposed restriction declaration, the draft variation must attach the proposed restriction declaration.

The draft special precinct variation is subject to public notification and consultation. New section 85B of the Act provides that the planning and land authority must give written notice to the national capital authority (NCA) and any entity prescribed by regulation and invite comment on the draft special precinct variation. The planning and land authority is required to consult the Conservator of Flora and Fauna and/or the Heritage Council on any proposed restriction declaration. Restriction declarations are discussed in further detail below.

New section 85C of the Act sets out requirements for public consultation on a draft special precinct variation. The planning and land must prepare a consultation notice

stating that copies of the draft variation are available for public inspection and purchase during a stated period of not less than 30 working days at stated places. The consultation notice is a notifiable instrument and will be notified on the ACT Legislation Register. The planning and land authority must also publish the consultation notice in a daily newspaper and on the authority website.

The consultation notice must invite people to give written comments (consultation comments) about the draft special precinct variation to the planning and land authority at a stated address during the consultation period. The consultation notice must also state that copies of consultation comments, or comments received from the national capital authority, will be made available for public inspection for a period of at least 15 working days starting 10 working days after the day the consultation period ends, at stated places. The planning and land authority may extend or further extend the consultation period.

New section 85D (Public consultation – availability of draft variation etc) sets out requirements for public consultation on the draft special precinct variation. The planning and land authority must make copies of the draft special precinct variation mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.

New section 85E (Public inspection of comments on draft variation) provides for the public inspection of the consultation comments. The planning and land authority must make copies of any consultation comments made on a draft special precinct variation available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft special precinct variation.

New section 85F (Draft variation to be given to the Minister) applies to a draft special precinct variation if the consultation process for the draft variation has ended. The planning and land authority must give the draft special precinct variation to the Minister, together with a written report setting out comments received from the national capital authority and any prescribed entities, details of the public consultation, and the issues raised in any consultation about the draft special precinct variation. If the draft special precinct variation included a proposed restriction declaration, the report must include comments received from the Conservator of Flora and Fauna and Heritage Council.

The Minister must give the draft special precinct variation and report to the Executive along with any comments by the Minister, or return the draft special precinct variation to the planning and land authority and direct the authority to do one or more of the following: conduct further stated consultation, consider any relevant planning report or strategic environmental assessment, consider any revision suggested by the Minister, revise the draft special precinct variation in a stated way or withdraw the draft special precinct variation.

If the Minister directs the withdrawal of a draft special precinct variation, the planning and land authority must prepare a notice stating that the draft special precinct variation is withdrawn. The notice is a notifiable instrument. The planning and land authority must also publish the notice in a daily newspaper.

New section 85G sets out requirements for the final variation of the Territory Plan to identify a special precinct area. The Executive may vary the Territory Plan to identify a special precinct area (a special precinct variation). The Executive may also make a restriction declaration in relation to the special precinct area as part of the special precinct declaration (see below for more information on restriction declarations).

The special precinct variation must identify the area that is the special precinct area, state the period the special precinct variation or any part of the variation is in force, state how, in the Executive's opinion, the area meets the special precinct area criteria in section 85H, include a structure plan for the special precinct area and include the consultation report on the draft variation prepared by the planning and land authority under section 85F.

New section 85H prescribes when the Executive may make the declaration. The Executive may only declare a special precinct area under section 85G under the following circumstances: the planning and land authority has consulted relevant entities and the public about the draft special precinct variation in accordance with section 85B and the Executive has considered the planning and land authority's consultation report provided to the Minister by the authority under section 85F. The Executive must consider the special precinct variation must be consistent with the statement of strategic directions and the planning strategy. The Executive must consider the variation of the Territory Plan to identify the special precinct area would achieve a substantial public benefit. The Executive must also consider that the special precinct variation would achieve one or more of the following objectives: implementation of the planning strategy or elements of the planning strategy, progress toward sustainable development of the Territory or economic, social, cultural or environmental progress for the Territory. The Executive must also consider that the Territory Plan as varied by the special precinct variation will give effect to the objects of the Territory Plan.

However, the Executive may make a special precinct variation in a revised form to the draft special precinct variation if, having regard to the report of the planning and land authority and comments of the Minister under section 85F, the Executive considers it appropriate to do so.

New section 85I establishes the disallowance and commencement process for a special precinct variation. A special precinct variation is a disallowable instrument. Subject to any disallowance under chapter 7 of the Legislation Act, if there is a motion to disallow the declaration and the motion is negatived by the Legislative Assembly, the special precinct variation commences the day after the disallowance motion is negatived. If there is no motion to disallow, the special precinct variation commences on the day after the 6th sitting day after the day the variation is

presented to the Legislative Assembly. Otherwise, if the special precinct variation provides for a later date or time of commencement, the variation commences at the later date or time.

Special precinct variations – significant project and restriction declarations
A special precinct variation can proceed concurrently with a declaration of a project of major significance. If the special precinct area includes a significant project, the variation must attach the significant project declaration.

If the special precinct area includes a restriction declaration, the variation must include any Territory Plan variations that are required to implement the restriction declaration and attach the restriction declaration.

Special precinct area – Territory Plan variation process

The existing planning laws and Territory Plan do not permit the identification of specific geographical areas for priority development. The same Territory Plan variation, development assessment and appeal processes apply to all areas. This can involve considerable delay in particular through the Territory Plan variation process (6-18 months) and appeal processes (months to years).

Background - Standard variations of the Territory Plan
Part 5.3 of the Planning and Development Act establishes the process for varying the Territory Plan. In summary, the process begins when the planning and land authority prepares a draft plan variation (see section 60) or the Minister directs the authority to revise the Territory Plan or a provision of the plan (see section 14(1)(b)).

If the planning and land authority prepares a draft plan variation, the authority must prepare a consultation notice (see section 63) that invites comments on the draft variation, and, when publicly notified, may give the draft plan variation interim effect (see sections 64 and 65). The draft plan variation and background papers must be available for public inspection and purchase during the consultation period for no less than 15 working days.

If a draft variation has interim effect, this means that it operates as if the Territory Plan were varied in accordance with the draft variation. The Territory, the Executive, a Minister or a territory authority must not do or approve the doing of anything that would be inconsistent with the Territory Plan if it were varied in accordance with the draft plan variation.

The planning and land authority may revise or withdraw the draft plan variation at the end of public consultation (see section 68). If the draft plan variation is not withdrawn, the planning and land authority must give the variation to the Minister for approval (see section 69) and give notice that the variation and other documents are available for public inspection (see section 70). If notice is given of the draft plan variation's availability for inspection, the draft plan variation notified may have interim effect (see sections 71 and 72). The Minister may refer the draft plan variation to a Legislative Assembly committee. If the Minister receives a committee report about

the draft plan variation, the Minister may approve the draft variation or take other action such as returning the draft plan variation to the planning and land authority and directing the authority to conduct further consultation, consider any relevant planning report or strategic assessment, or revise the draft plan variation (see section 76).

The Minister may revoke an approval of a draft plan variation before presenting the approved plan variation to the Legislative Assembly (see section 77) but otherwise must present the approved plan variation to the Legislative Assembly (see section 79). The Legislative Assembly may reject the plan variation (see section 80). If the plan variation, or a provision of the plan variation, is not rejected, the Minister must fix a day when the variation commences (see section 83).

Background - Technical amendments of the Territory Plan
Different provisions apply to plan variations that are technical amendments. Technical amendments of the Territory Plan have a shorter process than standard variations.

Technical amendments include:

- a variation that has the sole purpose of correcting a formal error in the Plan and would not adversely affect anyone's rights if approved;
- a variation that would only change a code and is consistent with the policy purpose and policy framework of the code;
- a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan);
- a variation to change the boundary of a zone or overlay under section 96A (Rezoning—boundary changes);
- a variation required to bring the Territory Plan into line with the National Capital Plan;
- a variation to omit something that is obsolete or redundant in the Territory Plan;
- a variation to clarify the language in the Territory Plan if it does not change the substance of the plan; and
- a variation to relocate a provision within the Territory Plan if the substance of the provision is not changed.

Only limited consultation is required for the following technical amendments (see section 88):

- code variations;
- variations in relation to a future urban area under section 95;
- a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94 (3) (g);
- a variation to clarify the language in the Territory Plan if it does not change the substance of the plan; and
- a variation to relocate a provision within the Territory Plan if the substance of the provision is not changed.

Section 90 of the Planning and Development Act sets out the requirements for limited consultation. A technical amendment, other than a technical amendment for which limited consultation is needed, does not need any consultation before it is made under section 89.

For limited consultation to occur, the planning and land authority must publish a notice in a daily newspaper that describes the proposed technical amendment, states where a copy of the proposed plan variation and information about the amendment is available for inspection and states how and when written consultation comments may be made on the amendment. The period for making consultation comments must be at least 20 working days. The notice must also state that a copy of any consultation comments will be made available for inspection for at least 15 working days, starting 10 working days after the consultation period ends.

The planning and land authority must tell the National Capital Authority about the proposed technical amendment. At the end of the consultation period, the planning and land authority must consider any consultation comments made in accordance with the notice and any views of the National Capital Authority.

Section 89 of the Planning and Development Act sets out the process for making technical amendments. The section applies if the planning and land authority is satisfied that a plan variation, if made, would be a technical amendment, and any limited consultation needed for the variation has taken place. The planning and land authority may put the plan variation in writing, incorporating any amendments made to the variation following the limited consultation. The plan variation is a notifiable instrument. The planning and land authority must fix a day when the plan variation is to commence. Not later than 5 working days after the day the plan variation is notified under the Legislation Act, the planning and land authority must publish a notice in a daily newspaper that describes the variation, states the date of effect of the variation; and if the authority considers it necessary or helpful, states where the plan variation and information about the plan variation is available for inspection.

Effect of special precinct declaration – new Territory Plan variation process

The bill introduces a new process for varying the Territory Plan to identify special precinct areas. New section 85L provides that a variation to the Territory Plan that is included in a special precinct declaration takes effect on the day the special precinct variation commences. The planning and land authority must publish details in a daily newspaper of each variation to the Territory Plan made by a special precinct variation and where copies of the plan variation may be inspected or purchased. The planning and land authority must make copies of the plan variation available for inspection or purchase during office hours at the places, and during the period, published in the newspaper.

The bill also provides for technical amendments to the Territory Plan within special precinct areas.

Clause 15 of the bill substitutes a new Part 5.4 (Plan variations – technical and special amendments) into the Planning and Development Act. The new Part 5.4 applies to technical and special amendments to the Territory Plan.

New Part 5.4 distinguishes between technical and special amendments of the Territory Plan.

New section 87 provides that each of the following variations is a technical amendment to the Territory Plan. This does not change the previous provision, ie all of the following are already technical amendments:

- an error variation that would not adversely affect anyone's rights if approved and has as its only object the correction of a formal error in the Territory Plan;
- a variation required to bring the Territory Plan into line with the National Capital Plan;
- a variation to omit something that is obsolete or redundant in the Territory Plan;
- a variation to change the boundary of a zone or overlay under section 96A; and
- a variation in relation to an estate development plan under section 96 other than a variation that incorporates an ongoing provision that was not included in the plan under section 94(3)(g).

New section 88 provides that each of the following variations is a special amendment to the Territory Plan:

- a code variation that would only change the code and is consistent with the policy purpose and policy framework of the code;
- a variation in relation to a future urban area or special precinct area under section 95;
- a variation in relation to an estate development plan under section 96 if it incorporates an ongoing provision that was not included in the plan under section 94(3)(g);
- a variation to clarify the language in the Territory Plan if it does not change the substance of the plan; and
- a variation to relocate a provision within the Territory Plan if the substance of the provision is not changed.

New section 89 (Making technical and special amendments) applies if the planning and land authority is satisfied that a plan variation would, if made, be a technical or special amendment and If the plan variation is a special amendment, any consultation that is needed for the variation under section 90 has been completed.

New section 90 establishes a process of limited consultation for special amendments. This section applies if planning and land authority is satisfied that a plan variation would, if made, be a special amendment. The planning and land authority must publish a notice in a daily newspaper that describes the proposed special amendment, states where a copy of the proposed plan variation and

information about the amendment is available for inspection, how and when written comments may be made, states that a copy of any consultation comments made will be made available for inspection for at least 15 working days starting 10 working days after consultation period ends. The consultation period must be at least 20 working days.

The planning and land authority must tell the national capital authority about the proposed special amendment. The planning and land authority must consider any consultation comments made in response to the consultation notice and any views expressed by the national capital authority during that consultation.

New section s92(b) provides that the structure plan for a special precinct area must set out any variations to the Territory Plan that take effect immediately on the declaration of the special precinct area. The structure plan must also state the maximum extent to which the outer boundary of the special precinct area may be adjusted by technical amendments under section 95 (Special amendments – future urban areas and special precinct areas).

Section 95 applies to special amendments in future urban areas and special precinct areas. The planning and land authority may vary the Territory Plan under section 89 (Making technical and special amendments) to rezone the land, establish or vary a precinct code in relation to the land, make or vary development tables in relation to the land; and change the boundary of the land. However the planning and land authority may only vary the Territory Plan if the variation is consistent with the structure plan for the area and for a variation mentioned in paragraph (2)(d), no part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

Restriction declaration – special precinct variations

The bill provides that a restriction may be made for special precinct variations. A restriction declaration means that the *Heritage Act 2004* and *Tree Protection Act 2005* (apart from declared sites and registered trees) do not apply to development approvals for these matters. A restriction declaration also means the Heritage Council and Conservator of Flora and Fauna do not provide advice on development applications.

This amendment is not a significant departure from the existing planning system. The Planning and Development Act already permits the planning and land authority to approve development applications (DAs) contrary to advice provided by the Heritage Council or the Conservator of Flora and Fauna (Conservator) on tree protection in limited circumstances. The Act permits the planning and land authority to approve a DA inconsistent with advice given if satisfied that any applicable guidelines and realistic alternatives to the proposed development have been considered, and the decision to approve is consistent with the objects of the Territory Plan (sections Sections 119(2) and 128(2)). However Conservator advice on a

registered tree or declared site must be complied with in all circumstances (sections 119(3) and 128(1)(b)(iii)).

Background - Role of Heritage Council and Conservator of Flora and Fauna in the development process

The Heritage Council and Conservator of Flora and Fauna (Conservator) provide advice on development applications in accordance with their statutory roles under the Heritage Act and Tree Protection Act.

Section 148 of the Planning and Development Act provides that the planning and land authority must refer development applications in the merit track and impact track to entities prescribed by regulation and seek their advice on the proposed development. These entities include the Heritage Council and the Conservator.

The entity must give the planning and land authority their advice on the development application within 15 working days after receiving the development application. When making a decision on the development application, the planning and land authority must consider the advice of referral entities.

Restriction declaration process

New section 85N provides that the Executive may make a declaration (a restriction declaration) that the Heritage Act and/or the Tree Protection Act have a restricted operation in relation to development in a special precinct area.

The restriction declaration must be made at the same time the special precinct area is made. The restriction declaration must identify the area within the special precinct area that the declaration applies to, identify the development within the special precinct area that the declaration applies to and state the period that the declaration is in force.

The planning and land authority must give written notice inviting comment on the draft special precinct declaration to the Conservator and the Heritage Council (new section 85B(1)(b)). When the planning and land authority gives the draft special precinct variation to the Minister at the end of the consultation process, the planning and land authority must also give the Minister a written report setting out comments received from the Conservator and the Heritage Council (new section 85F(2)(c)).

A restriction declaration is a disallowable instrument (see new section 85O). Subject to any disallowance under the Legislation Act, the restriction declaration commences on the same day as the special precinct variation to which the declaration relates commences. However, if the declaration provides for a later date or time of commencement, it commences on the later date or time.

The Executive may extend the period of effect of a restriction declaration (see new section 85P). Subject to any disallowance under the Legislation Act, the extension

commences under the following circumstances. If there is a disallowance motion, the extension commences on the day after the day the disallowance motion is negatived. If there is no disallowance motion, the extension commences on the day after the 6th sitting day after the day the extension is presented to the Legislative Assembly. The planning and land authority must notify an extension of the period by publishing a notice of the extension in a daily newspaper and on the authority website.

Effect of restriction declaration – new section 85Q

New section 85Q applies if the Minister or the planning and land authority is considering a development application under chapters 7 (Development approvals), 8 (Environmental impact statements and inquiries) and 9 (Leases and licences) and a restriction declaration applies to the development application.

This new section provides that the Heritage Act and the Tree Protection Act, other than provisions relating to registered trees and declared sites, are not a relevant consideration for a decision in relation to the development application.

New section 85Q also provides that sections 119(2) (Merit track – when development approval must not be given), 120(d) (Merit track – considerations when deciding development approval), 128(2) (Impact track – when development approval must not be given), 129(e) (Impact track – considerations when deciding development approval) and 148(1) (Some development applications to be referred) of the Planning and Development Act do not apply to relevant advice given in relation to a development application to which a restriction declaration applies. The exclusion of these sections of the Planning and Development Act means that if a restriction declaration applies, development applications in the merit and impact tracks are not referred to the Conservator of Flora and Fauna or the Heritage Council for advice. The decision-maker is not required to consider any advice from these entities when assessing a development application.

A restriction declaration also has the effect under the Heritage Act and the Tree Protection Act to stop certain registration decisions by the Heritage Council or Conservator of Flora and Fauna while the declaration is in force.

The Bill inserts new section 42A into Part 6 of the Heritage Act. New section 42A provides that the Heritage Council must not make a decision, or take steps leading up to making a decision, on registration or provisional registration of a heritage place or object if a restriction declaration or proposed restriction declaration applies to the place or object.

For the purposes of section 42A, a proposed restriction declaration applies to a place or object if the planning and land authority has notified a draft special precinct variation under section 85C of the Planning and Development Act, the draft special precinct variation includes a proposed restriction declaration in relation to development in the special precinct area, the draft special precinct variation has not

been withdrawn and a restriction declaration has not been made in relation to development in the special precinct area.

For the purposes of section 42A, a restriction declaration is in force if the Executive has made a restriction declaration under section 85N of the Planning and Development Act and the declaration is in force.

The Bill also inserts new section 52A into the Tree Protection Act. New section 52A provides that applies if a tree has been nominated for provisional registration, the Conservator of Flora and Fauna has not made a decision in relation to the tree and either a proposed restriction declaration applies to the tree; or a restriction declaration is in force in relation to the tree. The Conservator must not make a decision or take steps leading up to the process of making a decision on registration or provisional registration of the tree if a restriction declaration or proposed restriction declaration applies.

For the purposes of section 52A, a proposed restriction declaration applies to a tree if the planning and land authority has notified a draft special precinct variation under section 85C of the Planning and Development Act, the draft special precinct variation includes a proposed restriction declaration in relation to development in the special precinct area, the draft special precinct variation has not been withdrawn and a restriction declaration has not been made in relation to development in the special precinct area.

For the purposes of section 52A, a restriction declaration is in force if the Executive has made a restriction declaration under section 85N of the Planning and Development Act and the declaration is in force.

<u>Removal of ACT Civil and Administrative Tribunal (ACAT) merit review and limitation of review by the Supreme Court for special precinct areas</u>

The development assessment and approval process, with some exceptions for relatively minor matters, is subject to ACAT merit review by both the proponent and third parties. In addition all development approvals are subject to challenge in the Supreme Court under the Administrative Decisions (Judicial Review) Act 1989 (ADJR). These are important and effective avenues for review and accountability. However, they can result on occasion in some delay and the process introduces an element of uncertainty as to final outcomes. There are costs in relation to the delay for the proponent as well as implications to the wider community in relation to significant projects. The delay can amount to months or in some cases years. This potential delay and uncertainty can be especially problematic for developments that are a high priority for the Government and community when their implementation in a timely and certain manner is of prime importance.

In order to expedite the development assessment and approval process, the Bill removes merit review by the ACAT for development applications on land in special precinct areas established by a special precinct variation. This removes a possible element of uncertainty in relation to developments in special precinct areas and reduces potential costs and delays associated with litigation. This is not an unprecedented exclusion. The Planning and Development Act and Planning and Development Regulation exclude a number of other development areas from ACAT merit review including town centres, industrial areas and the Kingston Foreshore.

Development approvals within the special precinct area will still subject to review by the Supreme Court under common law and under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act).

This restriction is appropriate given the proposed opportunity for extensive public and Legislative Assembly debate through the precinct declaration process. Further debate and challenge to the operation of the precinct declaration through ACAT is not necessary or appropriate. Further this measure is appropriate given the high priority nature of development in the area.

To give effect to this policy, the Bill amends the definition of 'reviewable decision' in section 407 of the Planning and Development Act. The Bill adds new paragraph (b)(iv) to section 407, to provide that the definition of a 'reviewable decision does not include a decision under chapter 7 (Development approvals), 8 (Environmental impact statements and inquiries) or 9 (Leases and licences) of the Planning and Development Act in relation to a development or use that is located in a special precinct area.

In addition, it should be noted that the decision to make the special precinct variation itself that sets up the special precinct area will not be subject to review by the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* (ADJR Act). Further, a person may not start a proceeding in a court in relation to the making of a special precinct variation more than 60 days after the variation is made.

<u>Special precinct areas – human rights implications</u>

The restriction of third party appeals in special precinct areas arguably engages Human Rights Act 2004 s17 (Taking part in public life) and s21 (Fair trial).

However, case law indicates that human rights legislation does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. For example, in *Thomson v ACT Planning and Land Authority* [2009] ACAT 38, the Commissioner commented, "...providing certainty and predictability for applicants for development approval, and

the need to ensure a timely approval process are sufficiently important objectives to justify some constraints on third party review rights."[1]

In addition, the right to take part in public life is comprehensively addressed by the extensive opportunities for public comment on the draft declaration, publicly notified development applications and technical amendments to the Territory Plan.

The declaration will also be subject to scrutiny and debate by the Canberra community's democratically elected representatives in the Legislative Assembly.

Special precinct variation - Mental Health Facility at Symonston

The Bill includes separate arrangements for a special precinct variation in relation to a mental health facility at the Symonston site.

New section 85J provides that despite section 85I, a special precinct variation in relation to a mental health facility at the Symonston site is a notifiable instrument and commences on the day stated in the variation.

A notifiable instrument is used in this case so that the construction of the proposed mental health facility may be expedited. This immediate commencement is required because the Territory has identified an immediate need for a medium/low security mental health facility of approximately 25 beds to meet current and future demand. The need for this facility was recognised by the Legislative Assembly in a unanimous motion on 7 August 2013.

This is a transitional provision, which expires one year after the day section 85J commences.

[1] *Thomson v ACT Planning and Land Authority* [2009] ACAT 38 at para 99

2. Declaration of projects of major significance

The Bill introduces a new process for the Executive to declare certain development proposals to be projects of major significance to the Territory. The declaration process will help the Government to expedite these important projects and reduce red tape and uncertainty surrounding the development approval process. Like the special precinct area process, the Bill also introduces a transparent mechanism for keeping the public informed and involved in the development of projects of major significance. The Canberra community is consulted at the beginning of the process. The declaration is tabled in the Legislative Assembly and subject to rigorous scrutiny and debate. Subsequent development applications for the project are publicly notified, with an additional opportunity for the community to comment. Public consultation comments must be taken into account by the decision-maker before any development is approved.

Development approvals for a project of major significance are not subject to third party merit review by the ACAT or review by the Supreme Court under the ADJR Act. Review by the Supreme Court under its common law jurisdiction is time limited.

This amendment allows for the recognition of specific development proposals as projects for priority development. Projects of major significance are subject to public consultation and scrutiny by the Legislative Assembly. This amendment enables projects of major significance to proceed quickly to finality and reduces any uncertainty that may have arisen from litigation.

There are no reasonable alternatives to the limitations on ACAT and Supreme Court review. Other possible legislative options for priority development are discussed in more detail below.

The declaration process

Clause 23 of the Bill inserts new Division 7.2.8 (Projects of major significance) into the Planning and Development Act.

New section 137A provides that the Minister may direct the planning and land authority to prepare a draft declaration of a project of major significance (a draft significant project declaration).

The draft significant project declaration must state the development proposal that is the subject of the declaration, the proponent for the development proposal, the period the declaration is in force, how the project meets the criteria in s137I (it is of major economic, social, cultural or environmental significance to the Territory) and the likely assessment track and timeframes for assessment.

The validity of a declaration is not affected if a development application is made under the declaration and the development application is determined as being in a different assessment track to the assessment track mentioned in the draft significant project declaration.

New section 137B provides that sections 137C to 137G do not apply to a draft significant project declaration if the draft declaration is included in a draft special precinct variation.

New 137C provides that the planning and land authority must give written notice inviting comment on a draft significant project declaration under s137A to the national capital authority and any entity prescribed by regulation. The planning and land authority must also consult with the public in accordance with s137C.

New section 137D provides that before giving a draft significant project declaration to the Minister under s137F, the planning and land authority must prepare a consultation notice. The consultation notice must state that copies of the draft declaration are available for public inspection and purchase during a stated period of not less than 30 working days (the consultation period) at stated places. The consultation notice must invite people to give written comments (consultation comments) about the draft declaration to the authority at a stated address during the consultation period, and state that copies of consultation comments, or comments received from the national capital authority, will be made available for public inspection for a period of at least 15 working days starting 10 days after the consultation period ends, at stated places.

The planning and land authority may, by an extension notice, extend or further extend the consultation period. The consultation notice, and any extension notice, are notifiable instruments. In addition to notification on the Legislation Register, the planning and land authority must publish the consultation notice and any extension notice in a daily newspaper and on the authority website.

New section 137E provides that the planning and land authority must make copies of the draft significant project declaration mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at places stated in the consultation notice.

New section 137F provides that the planning and land authority must make copies of any consultation comments made on a draft significant project declaration available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft declaration.

New section 137G applies at the end of the consultation process. The planning and land authority must give the draft significant project declaration to the Minister, together with a written report setting out comments received from the national capital authority and any prescribed entities and details of public consultation and the issues raised in any consultation about the draft declaration.

The Minister must give the draft significant project declaration and report to the Executive along with any comments by the Minister or return the draft significant project declaration to the planning and land authority and do 1 or more of the following: conduct further stated consultation, consider any relevant planning report

or strategic environmental assessment, consider any revision suggested by the Minister, revise the draft significant project declaration in a stated way, or withdraw the draft significant project declaration.

If the Minister directs the withdrawal of a draft significant project declaration by the planning and land authority, the authority must prepare a notice stating that the draft significant project declaration is withdrawn.

If the Minister directs withdrawal of the project, planning and land authority must also publish the notice in a daily newspaper.

New section 137H applies to the final declaration by the Executive. The Executive may declare that a development proposal is a project of major significance (a significant project declaration).

A significant project declaration must state the development proposal that is the subject of the declaration, state the proponent for the development proposal, state the period the declaration is in force, state how, in the Executive's opinion the project meets the criteria in section 137I (it is of major economic, social, cultural or environmental significance to the Territory) and indicate the likely assessment track and timeframes for assessment.

New section 137I sets out the criteria for a declaration of a project of major significance. The Executive may only declare a development proposal a project of major significance under section 137H if the Executive is satisfied that the development proposal would achieve a substantial public benefit and is of major economic, social, cultural or environmental significance to the Territory.

New section 137J sets out the process for disallowance and commencement of a project of major significance. The declaration of a project of major significance by the Executive is a disallowable instrument.

Subject to a disallowance under the Legislation Act, chapter 7, the declaration commences under the following circumstances. If the declaration is required to be attached to a special precinct variation under section 85G(2)(g), it commences on the same day as the special precinct variation. If there is a motion to disallow the declaration and the motion is negatived by the Legislative Assembly, the declaration commences the day after the disallowance motion is negatived. If there is no disallowance motion, the declaration commences on the day after the 6th sitting day after the day the declaration is presented to the Legislative Assembly. If the declaration provides for a later date or time of commencement, declaration commences on this later date or time.

A declaration of a project of major significance under s137H expires on the earlier of the day that the declaration is expressed to cease to have effect or the day that the development approval in relation to the development proposal takes effect.

The Executive may amend the declaration to extend the period of effect (new section 137K). An extension of the period is a disallowable instrument. Subject to any disallowance under the Legislation Act, Chapter 7, the extension commences: if there is a motion to disallow the extension and the motion is negatived by the Legislative Assembly, it commences the day after the day the disallowance motion is negatived. If there is no disallowance motion, the extension commences on the day after the 6th sitting day after the day the extension is presented to the Legislative Assembly.

The planning and land authority must notify an extension of the period by publishing a notice of the extension in a daily newspaper and on the authority website.

New section 137L (Revocation) provides that the Executive may revoke a significant project declaration. The revocation must not take effect less than 30 working days after the revocation is made by the Executive. A revocation is a notifiable instrument. The planning and land authority must notify the revocation by publishing a notice of the revocation in a daily newspaper and on the authority website.

Restrictions on ACAT and Supreme Court review

As noted above, the development assessment and approval process, with some exceptions for relatively minor matters, is subject to ACAT merit review by both the proponent and third parties. In addition all development approvals are subject to challenge in the Supreme Court under the Administrative Decisions (Judicial Review) Act 1989 (ADJR). These are important and effective avenues for review and accountability. However, they can result on occasion in some delay and the process introduces an element of uncertainty as to final outcomes. There are costs in relation to the delay for the proponent as well as implications to the wider community in relation to significant projects. The delay can amount to months or in some cases years. This potential delay and uncertainty can be especially problematic for developments that are a high priority for the Government and community when their implementation in a timely and certain manner is of prime importance.

In order to expedite the development assessment and approval process for projects of major significance the Bill removes merit review by the ACAT and limits Supreme Court review for declared projects of major significance. This is to remove uncertainty over the development of these important projects and reduce potential costs and delays associated with litigation.

In relation to ACAT merit review, this is not an unprecedented exclusion. The Planning and Development Act and Planning and Development Regulation exclude a number of other development areas from ACAT merit review including town centres, industrial areas and the Kingston Foreshore.

Clause 53 amends the definition of 'reviewable decision' by adding new subparagraph (b)(iii) to section 407 of the Planning and Development Act. The amendment provides that a 'reviewable decision' does not include a decision under chapter 7 (Development approvals), 8 (Environmental impact statements and inquiries) or 9 (Leases and licences) in relation to a project that has been declared by the Executive to be a project of major significance under s137H.

The bill also excludes projects of major significance from review by the Supreme Court under the ADJR Act. Schedule 1, Part 1.1 of the Bill amends schedule 1, item 15, column 3 of the ADJR Act, which lists decisions to which the ADJR Act does not apply. The bill provides that the ADJR Act does not apply to a decision making or forming part of the process of making, or leading up to the making, of a significant project declaration. The bill also provides that the ADJR Act does not apply to a decision under chapter 7 (development approvals), chapter 8 ((Environmental impact statements and inquiries) or 9 (Leases and licences) in relation to a development proposal that has been declared by the Executive to be a project of major significance, other than a decision prescribed by regulation.

The bill also places time restrictions on review of projects of major significance by the Supreme Court under its common law jurisdiction. New section 137M (Projects of major significance – time limit on bringing court proceedings) provides that a person may not start a proceeding in a court in relation to a significant project declaration more than 60 days after the declaration is made. A person may not start a proceeding in a court in relation to a development application to which a significant project declaration is in force more than 60 days after the day the development application is approved.

These restrictions are appropriate given the need to ensure that such projects that have been identified as projects of major significance to the community can be finalised as quickly as possible. The restrictions are proportionate given the proposed opportunity for extensive public and Legislative Assembly debate through the precinct declaration process. Further debate and challenge to the operation of the declaration through the courts is not necessary or appropriate.

Human rights implications – projects of major significance

The restriction of third party appeals to the ACAT and review by the Supreme Court arguably engages sections 17 (Taking part in public life) and s21 (Fair trial) of the Human Rights Act.

However, case law indicates that human rights legislation does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. For example, in *Thomson v ACT Planning and Land Authority* [2009] ACAT 38, the Commissioner commented, "...providing certainty and predictability for applicants for development approval, and

the need to ensure a timely approval process are sufficiently important objectives to justify some constraints on third party review rights."[2]

Although the bill restricts third party review rights and review by the Supreme Court under the ADJR Act, the right to judicial review under the Supreme Court's inherent jurisdiction remains, albeit with time constraints.

In addition, the right to take part in public life is comprehensively addressed by the extensive opportunities for public comment on the draft declaration, publicly notified development applications and technical amendments to the Territory Plan.

The declaration will also be subject to scrutiny and debate by the Canberra community's democratically elected representatives in the Legislative Assembly.

Possible alternatives to declaration of projects of major significance

There are some alternatives to the recommended process. One alternative is to rely on project-specific legislation such as one off single purpose Acts similar to the Gungahlin Drive Extension Authorisation Act 2004. This is not recommended because such an approach risks ad hoc, inconsistent results through repeated departure from the planning framework. The proposed declaration process puts in place a process that allows these matters to be approached in a consistent, systematic manner within the planning framework.

Another alternative is to not pass any legislation but instead rely on the Minister "call in" power under the Planning and Development Act for key projects. This is not recommended because the call in power, in contrast to the proposed declaration process, does not:

a) remove rights of review under the ADJR Act;
b) time limit Supreme Court review under the common law;
c) require official approval by the Territory Executive;
d) require public consultation before taking effect; and
e) require Legislative Assembly consideration before taking effect.

Sole reliance on the call in power would therefore arguably be a less transparent, democratic and effective option than the proposed process.

A further alternative is to pass legislation or make a regulation to remove the requirement for relevant projects (such as the proposed mental health facility) to obtain development approval under the Planning and Development Act at all. This option is not recommended. This is because such exemptions are typically used for relatively minor matters and use of the exemption process for a major project is likely to be challenged in the Supreme Court. Further such an approach will not in itself deal with issues that can arise in relation to the Heritage Act or Tree Protection Act. The latter would require further legislation.

[2] *Thomson v ACT Planning and Land Authority* op cit.

3. Allowing a development proponent to lodge a development application that applies a draft Territory Plan variation

The bill amends the Planning and Development Act to allow a development proponent to lodge a development application on the basis that it complies with a draft Territory Plan variation that has been publicly notified (notwithstanding that the variation does not have interim effect). The application for approval would not be decided before the variation takes effect.

The Bill expressly permits a proponent to apply for development approval notwithstanding that the proposal is inconsistent with the existing Territory Plan. The application will be able to be made on the basis that the proposal is consistent with a proposed Territory Plan variation. This may be done to save waiting for the completion of the relevant Territory Plan variation which can take 6-18 months.

The Bill permits the application to be publicly notified, referred to Government agencies for comment and assessed on the basis of the proposed Territory Plan variation. However, no approval will able to be granted until the Territory Plan variation has been passed by the Legislative Assembly.

This amendment allows the development application to progress at the same time 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. This process does not impact on the integrity of the development assessment and public notification process, as the development approval cannot be made unless and until the Territory Plan variation takes effect.

Legislative amendment is required to achieve this outcome. There are no practical alternative measures available.

Process for lodgement

Clause 25 of the Bill inserts new Div 7.3.2A into the Planning and Development Act for applications in anticipation of plan variations. New section 147A provides that an applicant may lodge an application for development approval if the planning and land authority has prepared and published a consultation notice about a draft plan variation under section 63 (Public consultation – notification) and the development proposal in the application would be consistent with the Territory Plan if it were varied in accordance with the draft plan variation. The application must state that it is made in accordance with the draft plan variation and identify the draft plan variation. The application must also otherwise comply with the requirements for the form of development applications in section 139 of the Planning and Development Act.

New section 147B sets out requirements for the processing of these development applications. The planning and land authority must process and assess the application as if the draft plan variation was in effect. However, the decision-maker may only approve a development approval if the application is consistent with the

plan variation and the plan variation has commenced under section 83 of the Planning and Development Act.

The planning and land authority must, in publicly notifying the development application under division 7.3.4 (Public notification of development applications and representations state that the application is lodged in accordance with the draft plan variation and identify the draft plan variation.

4. Concurrent lodgement of development application and Environmental Impact Statement (EIS)

The Bill allows the concurrent lodgement of a development application in the impact track with a draft EIS. Such development applications would ordinarily require the preparation of an environmental impact statement (EIS) before they can proceed. The Bill permits the proponent to complete the required EIS in tandem with the lodgement 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. The process saves time by allowing the simultaneous completion of the EIS and notification of the development application. The process also permits the public to review the draft EIS in the context of the actual development application. This gives the public a more clear understanding and assessment of the overall proposal.

From the proponent's point of view this option comes with some risk. The proponent risks the entire exercise being rejected on the basis that the completed EIS is not satisfactory even if the development application was otherwise acceptable. For this reason, this process remains an option available rather than a mandatory process.

Legislative amendment is required to allow the proponent to access this option. There are no practical alternatives to amending the legislation.

Background – EIS process

All development applications assessable in the impact track require a completed EIS (unless exempted under section 211 of the Act). This involves the proponent preparing a draft EIS and public consultation on the draft.

If the development application requires a completed EIS, the proponent must apply to the planning and land authority under section 212 of the Planning and Development Act. The planning and land authority must then identify the matters that are to be addressed by an EIS in relation to the development proposal and prepare a notice of these matters (the scoping document). The scoping document is a notifiable instrument.

The proponent must prepare a draft EIS addressing each matter raised in the scoping document and give the draft EIS to the planning and land authority for public

notification (section 216). The draft EIS must be made available for public comment for no less than 20 working days (section 218).

At the end of the public consultation, the proponent gives a revised EIS to the planning and land authority (section 221). The planning and land authority reviews this, and then provides the revised EIS to the Minister (section 225). The Minister may then either decide to take no action on the EIS (section 226), present the EIS to the Legislative Assembly (section 227) or establish an inquiry panel to inquire about the EIS (section 228). If the Minister decides to take no action, the EIS is complete.

This process can add a minimum of eight weeks to the period before a development application can be lodged. Sometimes the EIS process can take months to years to complete. The Bill will give the proponent the option to lodge a development application concurrently with the draft EIS.

The Bill provides that public consultation on a draft EIS may occur at the same time as notification of the development application. The proposal will be publicly notified for a minimum of 30 working days. This is an increase on the 20 working day public notification for the EIS under section 218 of the Act, and an increase on the 15 day public notification for the development application under section 28 of the *Planning and Development Regulation 2008*. This amendment will save time and give the public a more holistic view of the development proposal.

Concurrent lodgement process

Clause 24 of the Bill amends section 139(2)(f)(ii) of the Planning and Development Act, which prescribes the form that a development application must take. This section now provides that an application for a development approval in the impact track must be accompanied by a completed or draft EIS for the proposal unless the application has been exempted from the requirement to include an EIS under section 211 of the Planning and Development Act.

Clause 21 of the Bill substitutes a new section 127 into the Planning and Development Act to prescribe requirements for development applications in the impact track. New s127(2) provides that the development application must include a completed EIS or a draft EIS.

The development application must include a completed EIS if the proponent of the development proposal has previously lodged a development application in relation to the development proposal, this previous application was made less than two years before the development application and the planning and land authority rejected the EIS in relation to the previous application.

Clause 22 inserts a new section 131(2) into the Planning and Development Act. This new section prescribes new requirements for the time for a decision on a development application. If the development application is accompanied by a draft EIS, the time for deciding the application is extended by the same number of days as

the proponent has taken to give a revised EIS to the planning and land authority under section 221 of the Planning and Development Act.

Clause 43 of the Bill inserts new section 217A into the Planning and Development Act. This new section applies if a draft EIS accompanies an application for a development approval in the impact track. The planning and land authority publicly notifies a draft EIS for the purposes of section 217 of the Planning and Development Act (Public notification of draft EIS) if the planning and land authority notifies the draft EIS and the development application together in compliance with div 7.3.4. The notice must state that anyone can make representations on the development application or the draft EIS.

Clause 47 of the Bill inserts new section 221A into the Planning and Development Act. This new section prescribes the time for revising a draft EIS that accompanies a development application. This section applies if the proponent of a development proposal has given the planning and land authority a draft EIS as an accompanying document to an application for a development approval. The proponent must give the planning and land authority an EIS under section 221 (revising draft EIS) not later than 30 working days after the public consultation period for the draft EIS has ended. The planning and land authority may extend the period within which the proponent must give an authority an EIS under section 221 once only, for a period of up to 60 days.

Clause 48 of the Bill substitutes a new section 222(1) of the Planning and Development Act (Authority consideration of EIS). New section 222(1) provides that if the proponent of a development application gives the planning and land authority an EIS under s221 within the time required by section 221A.

If section 221A does not apply, if the proponent of a development proposal gives the planning and land authority an EIS under section 221 not later than 18 months after the scoping document for the proposal is given to the proponent under s214. If the proponent of a development proposal gives the authority an EIS under section 221 more than 18 months after the scoping document for the proposal is given to the proponent under section 214 and the authority is satisfied that there has been no significant change to the circumstances surrounding the development proposal that is not sufficiently addressed in the EIS. Section 222 also applies if the proponent of a development proposal gives the authority an EIS in accordance with a notice under s224(2) (Chance to address unaddressed matters).

Clause 49 of the Bill substitutes a new section 224(1) into the Planning and Development Act (Chance to address unaddressed matters). New section 224(1) provides that section 224 applies in relation to the EIS for a development proposal given to the planning and land authority under section 221 if the authority is not satisfied in relation to a matter mentioned in section 222(2)(a) (i.e. the authority is not satisfied that it has addressed matters raised in the scoping document for the proposal or taken any timely representation on the EIS into account).

Clause 50 substitutes a new section 224(4) into the Planning and Development Act. New section 224(4) provides that section 224 only applies to an EIS revised under this section if the authority has not, under this section, given the proponent of the development proposal more than one notice about the EIS and the EIS was not given to the authority under s127(2)(b) (i.e. provided to the authority as a draft EIS).

Clause 51 substitutes a new section 224A(1) of the Planning and Development Act. The new section provides that section 224A (Rejection of unsatisfactory EIS) applies if the planning and land authority gives the proponent of a development proposal a notice under section 224(2) (i.e. a written notice that the planning and land authority does not accept the EIS, explains why the authority does not accept the EIS and states the time within which the proponent may respond to the notice whether by providing a revised EIS or otherwise).

Outline of Provisions

Clause 1 — Name of Act
This clause names the Act as the *Planning and Development (Project Facilitation) Amendment Act 2014.*

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

Clause 3 — Legislation amended
This clause provides that the Act amends the *Planning and Development Act 2007*.

This clause also includes a Note. The Note provides that this Act also amends other legislation (see sch 1).

Clause 4 — New section 51(2)(aa)
This clause amends section 51 of the Planning and Development Act.

Section 51 sets out requirements for the contents of the Territory Plan. New section 51(2)(aa) provides that the Territory Plan must also identify special precinct areas and include structure plans that apply to those areas.

Clause 5 – Section 51(2), new note
This clause adds a new note to section 51(2) of the Planning and Development Act.

The new note provides that for more information about special precinct areas see part 5.3A of the Planning and Development Act.

Clause 6 – Part 5.3 heading
This clause changes the heading of Part 5.3 of the Planning and Development Act from “Variations of territory plan other than technical amendments” to “Variations of territory plan other than special precinct area variations and technical or special amendments”.

Clause 7 – Section 57(1) - How territory plan is varied under pt 5.3
This clause amends section 57(1) of the Planning and Development Act. Section 57 establishes the process for full variations of the Territory Plan. Section 57(1) previously provided, “A variation of the Territory Plan (other than a technical amendment) begins…” Section 51(1) now states, “A variation of the Territory Plan (other than a special precinct area variation or a technical or special amendment) begins…” This incorporates other types of amendment to the Territory Plan.

Clause 8 – Section 57(1), note
This clause amends the note at section 57(1) of the Planning and Development Act by substituting new Notes 1 and 2.

New Note 1 provides that for Territory Plan variations that are special precinct area variations, see pt 5.3A. New Note 2 provides that for Territory Plan variations that are technical or special amendments, see pt 5.4 and pt 5.5.

Clause 9 – Section 57(8)
This clause amends section 57(8) of the Planning and Development Act to provide that different provisions apply to plan variations that are special precinct area variations (see pt 5.3A), and technical or special amendments, including future urban areas (see pt 5.4 and 5.5, particularly s 95).

Clause 10 – Definitions – pt 5.3, Section 58, new definitions
This clause amends the list of Part 5.3 definitions in section 58 to refer to a special amendment as defined in section 88 of the Planning and Development Act and a technical amendment as defined in section 87.

Clause 11 – Section 58, definition of *technical amendments*
This clause omits the definition of “technical amendments” from section 58 of the Planning and Development Act.

Clause 12 – Section 59 – Application of pt 5.3
This clause substitutes a new section 59 into the Planning and Development Act.

New section 59 is headed “Application of pt 5.3”. New section 59 provides that Part 5.3 does not apply to variations that are for special precinct area declarations under part 5.3A or to technical or special amendments under parts 5.4 and 5.5.

Clause 13 – Section 69(2), note – Draft plan variations to be given to Minister etc
This clause amends section 69 of the Planning and Development Act to provide that the Minister must give a copy of any draft plan variation documents given to the Minister under section 69(2) to the Executive.

This clause also inserts a new note providing that the Minister must also give a copy of the documents given to the Minister under this section to a committee of the

Legislative Assembly, and refers to section 73 (Consideration of draft plan variations by Legislative Assembly committee).

Clause 14 – New Part 5.3A – Plan variations – special precinct areas
This clause inserts a new Part 5.3A into the Planning and Development Act.

New Part 5.2A prescribes requirements for special precinct area variations of the Territory Plan**.** Part 5.3A includes the following new sections of the Planning and Development Act.

New Division 5.3A.1 – Special precinct areas - consultation requirements

- **New section 85A – Draft declaration of special precinct area**
  New section 85A establishes the procedure for the preparation of a draft special precinct area variation. The Minister may direct the planning and land authority to prepare a draft variation of the Territory Plan for a special precinct area (a draft special precinct variation)

  The draft special precinct variation must identify the area that is the proposed special precinct area, include a structure plan for the special precinct area, include any Territory Plan variations that are required to implement the special precinct variation, state the period the special precinct variation is in force, state how the special precinct variation meets the criteria in section 85H, and include any information that the Minister considers appropriate.

  If the proposed special precinct area includes a proposed significant project, the draft special precinct variation must attach the draft significant project declaration. A Note provides that a significant project declaration may also be made separately from a special precinct variation (pt 7.2.8).

  If the proposed special precinct area includes a proposed restriction declaration, the draft special precinct variation must include any Territory Plan variations that are required to implement the restriction declaration. The draft special precinct variation must also attach the proposed restriction declaration. A restriction declaration cannot be made other than through the special precinct variation process.

  For this division, a draft significant project declaration and a proposed restriction declaration that are attached to a draft special precinct variation form part of the draft special precinct variation.

- **New section 85B – Consultation on draft variation**
  New section 85B provides that the planning and land authority must give written notice inviting comment on a draft special precinct variation to the National Capital Authority and an entity prescribed by regulation.

  If the draft special precinct variation includes an attached proposed restriction declaration related to the *Tree Protection Act 2005*, the planning and land authority must give written notice inviting comment from the Conservator of

Flora and Fauna. If the draft variation includes an attached proposed restriction declaration related to the *Heritage Act 2004*, the planning and land authority must give written notice inviting comment from the Heritage Council.

The planning and land authority must also consult with the public in accordance with section 85C.

- **New section 85C – Public consultation – notification**
  New section 85C sets out requirements for the preparation of a consultation notice for a draft special precinct variation. Copies of the draft variation must be available for public inspection and purchase for no less than 30 working days. The consultation notice must invite people to give written comments on the draft declaration, and state that these consultation comments, or comments received from the National Capital Authority, will be made available for public inspection for at least 15 working days starting 10 days after the day the consultation period ends. The planning and land authority may extend or further extend the consultation period.

- **New section 85D – Public consultation – availability of draft variation etc**
  New section 85D provides that the planning and land authority must make copies of the draft special precinct variation mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.

- **New section 85E – Public inspection of comments on draft declaration**
  New section 56E provides that the planning and land authority must make copies of any consultation comments made on a draft special precinct variation available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft special precinct variation.

- **New section 85F – Draft variation to be given to Minister**
  New section 85F applies to a draft special precinct variation if the consultation process for the draft special precinct variation has ended. The planning and land authority must give the Minister the draft declaration, together with a report setting out any comments received from the National Capital Authority and any prescribed entities, details of the public consultation and the issues raised in any consultation about the draft special precinct variation. If the draft special precinct variation included an attached proposed restriction declaration, the report must include comments received from the Conservator of Flora and Fauna and Heritage Council.

  The Minister must give the draft special precinct variation and report to the Executive along with any comments by the Minister or return the draft declaration to the planning and land authority and direct the authority to conduct further consultation, consider any relevant planning report or strategic environmental assessment, consider any revision suggested by the Minister,

revise the draft special precinct variation or withdraw the draft special precinct variation.

Division 5.3A.2 – Special precinct variations

- **New section 85G – Executive may make special precinct variation**
  New section 85G provides that the Executive may vary the Territory Plan for a special precinct area (a special precinct variation). The Executive may also include a significant project declaration and a restriction declaration as part of the special precinct variation.

  The special precinct variation must identify the special precinct area, include a structure plan for the special precinct area, include any Territory Plan variations that are required to implement the special precinct variation, state the period the special precinct variation or any part of the variation is in force and state how in the Executive's opinion, the area meets the special precinct area criteria in section 85H of the Planning and Development Act. The special precinct variation must also include the consultation report on the draft special precinct variation prepared by the planning and land authority under section 85F.

  If the special precinct area includes a significant project, the significant project declaration must be attached to the special precinct variation. If the special precinct variation includes a restriction declaration, it must include any Territory Plan variations that are required to implement the restriction declaration and attach the restriction declaration.

- **New section 85H – When Executive may make special precinct variation.**
  New section 85H prescribes criteria that the Executive must be satisfied of before making a special precinct variation under section 85G. The Executive may only make the variation if the planning and land authority has consulted relevant entities and the public about the draft special precinct variation, the Executive has considered the planning and land authority's consultation report and any comments provided by the Minister along with that report and the Executive considers that the proposed special precinct area and supporting structure plan are consistent with the planning strategy.

  The Executive must consider that the variation of the Territory Plan to identify a special precinct area would achieve a substantial public benefit. The Executive must also consider the variation of the Territory Plan to identify the special precinct area would achieve one or more of the following objectives:
    - implementation or progress towards implantation of the planning strategy or elements of the planning strategy;
    - progress towards sustainable development of the Territory; and
    - economic, social, cultural or environmental progress for the Territory.

  The Executive must also consider that the Territory Plan as varied by the special precinct variation would give effect to the objects of the Territory Plan.

However, the Executive may make a special precinct variation in a revised form to the draft special precinct variation if, having regard to the report of the planning and land authority and comments of the Minister under section 85F, the Executive considers it appropriate to do so.

- **New section 85I – Special precinct area – disallowance and date of effect**
  New section 85I prescribes the periods of disallowance and commencement for the special precinct area declarations.

  A special precinct variation is a disallowable instrument. Subject to any disallowance under the Chapter 7 of the *Legislation Act 2001*, the special precinct variation commences under the following circumstances. If there is a motion to disallow the variation and the motion is negatived by the Legislative Assembly, the variation commences on the day after the day the disallowance motion is negatived. If there is no motion to disallow the variation, the variation commences on the day after the 6th sitting day after the day the variation is presented to the Legislative Assembly. If the variation itself provides for a later date or time of commencement, it commences on the later date or time.

- **New section 85J – Special precinct variation – Symonston mental health facility**
  New section 85J inserts different requirements for a special precinct variation in relation to a mental health facility at the Symonston site. This is related to the amendment at clause 63.

  Despite section 85I, a special precinct variation in relation to this site is a notifiable instrument and is not required to be tabled in the Legislative Assembly. A special precinct variation in relation to a mental health facility at the Symonston site commences on the day stated in the variation. This is a transitional provision, which will expire one year after the day this section commences.

- **New section 85K – Period of effect of variation**
  New section 85K provides that a special precinct variation remains in force for the period stated in the variation.

- **New section 85L – Effect of variation– variations to Territory Plan**
  New section 85L provides that a variation to the Territory Plan that is included in a special precinct variation takes effect on the day the declaration commences.

  The planning and land authority must publish in a daily newspaper details of each variation to the Territory Plan made by a special precinct declaration and where copies of the plan variation may be inspected or purchased. The planning and land authority must make copies of the plan variation available

for inspection or purchase during office hours at the places, and during the period, published in the newspaper.

- **New section 85M – Special precinct variation – time limit on bringing court proceedings**
  New section 85M provides that a person may not start a proceeding in a court in relation to a special precinct variation more than 60 days after the variation is made.

  This section also includes a Note. The Note provides that section 104 of the Planning and Development Act limits challenges to the validity of Territory Plan provisions more generally.

New Division 5.3A.3 – Restriction declarations

- **New section 85N – Executive may restrict operation of certain Acts**
  New section 85N provides that the Executive may make a declaration the *Heritage Act 2004* and/or the *Tree Protection Act 2005* have a restricted operation in relation to development in the special precinct area. The restriction declaration must be made at the same time as the special precinct variation.

  A restriction declaration must identify the area within the special precinct area that it applies to. A restriction declaration must also identify the development within the special precinct area that it applies to and state the period that the declaration is in force.

- **New section 85O – Restriction declaration – disallowance and date of effect**
  New section 85O provides that a restriction declaration is a disallowable instrument.

  Subject to any disallowance under the Legislation Act, chapter 7, the declaration commences on the same day as the special precinct variation to which the declaration relates commences, or if the declaration provides for a later date or time of commencement, on the later date or time.

- **New section 85P – Period of effect of declaration**
  New section 85P provides that a restriction declaration remains in force for the period stated in the declaration, or, if the period stated is extended by the Executive, the extended period. An extension of the period by the Executive is a disallowable instrument.

  Subject to any disallowance under the Legislation Act, Chapter 7, the extension commences under the following circumstances. If there is a motion to disallow the extension and the motion is negatived by the Legislative Assembly, the extension commences on the day after the day the disallowance motion is negatived. If there is no disallowance motion, the

extension commences on the day after the 6th sitting day after the day the extension is presented to the Legislative Assembly.

The planning and land authority must notify an extension of the period by publishing a notice of the extension in a daily newspaper and on the authority website.

- **New section 85Q - Effect of restriction declaration**
  New section 85Q applies if the Minister or the planning and land authority is considering a development application under chapter 7 (Development approvals), 8 (Environmental impact statement and inquiries) or 9 (Leases and licences) of the Planning and Development Act and a restriction declaration applies to the development application.

  The Heritage Act and the Tree Protection Act (other than provisions relating to registered trees and declared sites) are not a relevant consideration in relation to the development application.

  The following provisions of the Planning and Development Act do not apply to relevant advice given in by the Heritage Council in or the Conservator of Flora and Fauna relation to a development application to which the exclusion legislation applies:
  - section 119(2) (Merit track – when development approval must not be given);
  - section 120(d) (Merit track – considerations when deciding development approval);
  - section 128(2) (Impact track – when development approval must not be given);
  - section 129(e) (Impact track – considerations when deciding development approval); and
  - section 148(1) (Some development applications to be referred).

  "Registered Tree" is defined in section 9 of the Tree Protection Act. "Relevant advice" means advice given by the Heritage Council in performing its functions under the Heritage Act 2004 or advice given by the Conservator of Flora and Fauna in performing his or her functions under the *Tree Protection Act 2005.*

  The Note provides that a restriction declaration also has the effect under the Heritage Act and the Tree Protection Act to stop certain registration decisions by the Heritage Council or Conservator of Flora and Fauna while the declaration is in force.

- **New Section 85R – Revocation of restriction declaration**
  The Executive may revoke a restriction declaration. The revocation must not take effect less than 30 working days after the day the revocation is made by the Executive. A revocation is a notifiable instrument.

The planning and land authority must notify the revocation by publishing a notice of the revocation in a daily newspaper and on the authority website.

To avoid doubt, the revocation of a restriction declaration does not affect any variation to the Territory Plan made under section 85G(2)(h)(i).

Clause 15 – Part 5.4 – Plan variations – technical and special amendments
This clause inserts a new Part 5.4 into the Planning and Development Act. New Part 5.4 substitutes the following sections of the Planning and Development Act:

- **Section 86 – Definitions – pt 5.4**
  New section 86 provides a list of definitions for Part 5.4. These definitions cross-reference other sections of the Planning and Development Act. The section cross-references the definition of 'code variation' in section 88(a), 'error variation' in section 87(a), 'special amendment' in section 88 and 'technical amendment' in section 87.

- **Section 87 – What are *technical amendments* of territory plan?**
  New section 87 provides that each of the following variations is a technical amendment to the Territory Plan:
  - an error variation that would not adversely affect anyone's rights if approved and has as its only object the correction of a formal error in the Territory Plan (section 87(a));
  - a variation required to bring the Territory Plan into line with the National Capital Plan (section 87(b));
  - a variation to omit something that is obsolete or redundant in the Territory Plan (section 87(c));
  - a variation to change the boundary of a zone or overlay under section 96A (section 87(d)); and
  - a variation in relation to an estate development plan under section 96 other than a variation that incorporates an ongoing provision that was not included in the plan under section 94(3)(g) (section 87(e)).

- **Section 88 – What are *special amendments* of territory plan?**
  New section 88 provides that each of the following variations is a special amendment to the Territory Plan:
  - a code variation that would only change the code and is consistent with the policy purpose and policy framework of the code (section 88(a));
  - a variation in relation to a future urban area or special precinct area under section 95 (section 88(b));
  - a variation in relation to an estate development plan under section 96 if it incorporates an ongoing provision that was not included in the plan under section 94(3)(g) (section 88(c))l
  - a variation to clarify the language in the Territory Plan if it does not change the substance of the plan (section 88(d)); and
  - a variation to relocate a provision within the Territory Plan if the substance of the provision is not changed (section 88(e)).

- **Section 89 – Making technical and special amendments**
  New section 89 (Making technical and special amendments) applies if the planning and land authority is satisfied that a plan variation would, if made, be a technical or special amendment and If the plan variation is a special amendment, any consultation that is needed for the variation under section 90 has been completed.

  The planning and land authority may put the plan variation, incorporating any amendments made to the variation following consultation, in writing. The plan variation is a notifiable instrument.

  The planning and land authority must fix a day when the plan variation is to commence. No later than 5 working days after the plan variation is notified under the Legislation Act, the planning and land authority must publish a notice in a daily newspaper that describes the variation and states the date of effect of the variation. If the authority considers it necessary or helpful, the notice must state where the plan variation and information about the plan variation is available for inspection.

- **Section 90 – Special amendments – limited consultation**
  New section 90 establishes a process of limited consultation for special amendments. This section applies if planning and land authority is satisfied that a plan variation would, if made, be a special amendment. The planning and land authority must publish a notice in a daily newspaper that describes the proposed special amendment, states where a copy of the proposed plan variation and information about the amendment is available for inspection, how and when written comments may be made, states that a copy of any consultation comments made will be made available for inspection for at least 15 working days starting 10 working days after consultation period ends. The consultation period must be at least 20 working days. The planning and land authority must tell the national capital authority about the proposed special amendment. The planning and land authority must consider any consultation comments made in response to the consultation notice and any views expressed by the national capital authority during that consultation.

Clause 16 – Part 5.5 heading
This clause changes the heading of Part 5.5 of the Planning and Development Act from “Plan variations - structure and concept plans, rezoning and estate development plans” to “Plan variations – structure and concept plans, special precinct areas, rezoning and estate development plans”.

Clause 17 – Section 92 and 93 – What is a structure plan? What is a concept plan?
This clause substitutes a new section 92 into the Planning and Development Act.

New section 92 provides that a structure plan sets out principles and policies for development of future urban areas and special precinct areas. A structure plan must

be consistent with the statement of strategic directions. The structure plan for a special precinct area must set out any variations to the Territory Plan that take effect immediately on the declaration of the special precinct area. The structure plan must also state the maximum extent to which the outer boundary of the special precinct area may be adjusted by technical amendments under section 95 (Special amendments – future urban areas and special precinct areas).

This clause also substitutes a new section 93 into the Planning and Development Act.

New section 93 provides that a concept plan applies the principles and policies in a structure plan to a future urban area or a special precinct area, and is a precinct code in the Territory Plan that guides the preparation and assessment of development in areas to which the concept plan relates.

Clause 18 – Section 95 – Special amendments – future urban areas and special precinct areas
This clause substitutes a new section 95 into the Planning and Development Act.

New section 95 applies to special amendments in future urban areas and special precinct areas. The planning and land authority may vary the Territory Plan under section 89 (Making technical and special amendments) to rezone the land, establish or vary a precinct code in relation to the land, make or vary development tables in relation to the land; and change the boundary of the land.

However the planning and land authority may only vary the Territory Plan if the variation is consistent with the structure plan for the area and for a variation mentioned above, no part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

Clause 19 – Sections 96(2) and 96A(1)
This clause amends sections 96(2) and 96A(1) to refer to the making of technical and special amendments in section 89.

Clause 20 – Section 109(1)(c) – Consideration of planning strategy
This clause amends section 109(1)(c) of the Planning and Development Act to provide that the Executive must consider the planning strategy under section 85H.

Clause 21 – Section 127 – Impact track – development applications
This clause substitutes a new section 127 into the Planning and Development Act.

New section 127 provides that this section applies to a development application for a development proposal in the impact track unless the application is exempted by the Minister under section 211.

The development application must include a completed EIS or a draft EIS. The note at section 127(2) provides that while the proponent has the option of providing either

a completed EIS or a draft EIS with the development application, the development approval may only be given on the basis of a completed EIS.

The development application must include a completed EIS if the proponent of the development proposal has previously lodged a development application in relation to the development proposal, the previous application was made less than 2 years before the development application and the planning and land authority rejected the EIS in relation to the previous application.

Clause 22 – New section 131(2) – Impact track – time for decision on application
This clause inserts new section 131(2) into the Planning and Development Act. New section 131(2) provides that if a development application is accompanied by a draft EIS, the time for deciding the application is extended by the same number of days as the proponent has taken to give a revised EIS to the planning and land authority under section 221 (Revising the draft EIS).

Clause 23 – New division 7.2.8 – Projects of major significance
This clause inserts new division 7.2.8 (Projects of major significance) into the Planning and Development Act.

New division 7.2.8 establishes a process for the declaration of projects of major significance, and inserts the following new sections into the Planning and Development Act.

- **New section 137A – Draft declaration of project of major significance**
  New section 137A provides that the Minister may direct the planning and land authority to prepare a draft declaration of a project of major significance.

  The draft declaration must state the development proposal that is the subject of the declaration, identify the land on which the development proposal is located, state the period the declaration is in force, state how the project meets the criteria in s137I, state the likely assessment track and timeframes for assessment and include any information that the Minister considers appropriate.

  The validity of a declaration made is not affected if a development application is made under the declaration and the development application is determined as being in a different assessment track from the track mentioned in the draft declaration.

- **New section 137B – Draft declaration included in draft special precinct variation**
  New section 137B provides that sections 137C to 137G do not apply to a draft significant project declaration if the draft declaration forms part of the draft special precinct variation for division 5.3A.1 (Special precinct areas – consultation requirements).

- **New section 137C – Consultation on draft declaration**
  New section 137B provides that the planning and land authority must give written notice inviting comment on a draft significant project declaration to the National Capital Authority and an entity prescribed by regulation. The planning and land authority must also consult with the public in accordance with section 137D.

- **New section 137D – Public consultation – notification**
  New section 137D provides that the planning and land authority must prepare a consultation notice stating that copies of the draft declaration are available for public inspection and purchase for no less than 30 working days and inviting people to give written comments about the draft declaration to the planning and land authority. The consultation notice is a notifiable instrument.

  The consultation notice must also state that copies of consultation comments, or comments received from the National Capital Authority, will be made available for public inspection for at least 15 working days starting 10 working days after the consultation period ends.

  The planning and land authority may extend or further extend the consultation period. An extension notice is a notifiable instrument.

  The planning and land authority must publish the consultation notice and any extension notice in a daily newspaper and on the authority website.

- **New section 137E – Public consultation – availability of draft declaration**
  New section 137E provides that the planning and land authority must make copies of the draft significant project declaration mentioned in a consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.

- **New section 137F – Public inspection of comments on draft declaration**
  New section 137F provides that the planning and land authority must make copies of any consultation comments made on a draft significant project declaration available for public inspection. The consultation comments must be made available during office hours during the period, and at the places, mentioned in the consultation notice for the draft declaration.

- **New section 137G – Draft declaration to be given to Minister**
  New section 137G applies to a draft significant project declaration after the consultation process has ended. The planning and land authority must give the draft significant project declaration to the Minister together with a written report setting out details of the public consultation and the issues raised in any consultation about the draft declaration.

The Minister must give the draft significant project declaration and report to the Executive along with any comments by the Minister or return the draft significant declaration the planning and land authority and direct the authority to withdraw the draft significant project declaration. If the Minister directs the withdrawal of a draft significant project declaration, the planning and land authority must prepare a notice stating that the draft significant project declaration is withdrawn. The Minister's direction and the withdrawal notice are notifiable instruments.

The planning and land authority must also publish the notice of withdrawal of the draft declaration in a daily newspaper.

- **New section 137H – Declaration of projects of major significance**
  New section 137H provides that the Executive may declare that a development proposal is a project of major significance in a significant project declaration.

  A significant project declaration must state the development proposal that is the subject of the declaration, identify the land on which the development proposal is located, state the period of effect for the declaration, state how, in the Executive's opinion, the project meets the criteria in section 137I and indicate the likely assessment track and timeframes for assessment.

  The validity of a declaration made is not affected if a development application is made under the declaration and the development application is determined as being in a different assessment track from the track mentioned in the declaration.

- **New section 137I – Criteria for declaration of project of major significance**
  New section 137I establishes criteria for the declaration of a project of major significance. The Executive may only declare a development proposal a project of major significance under section 137H if the Executive considers that the development proposal would achieve a substantial public benefit and is of major economic, social, cultural or environmental significance to the Territory.

- **New section 137J – Project of major significance – disallowance and date of effect.**
  New section 137J establishes the commencement and disallowance process for a declaration of a project of major significance. A declaration of a project of major significance by the Executive under section 137G is a disallowable instrument.

  Subject to any disallowance under the Legislation Act, chapter 7, the declaration commences under the following circumstances. If the declaration is required to be attached to a special precinct variation under section

85G(2)(g), it commences on the same day as the special precinct variation. In any other case, if there is a motion to disallow the declaration and the motion is negatived by the Legislative Assembly, the declaration commences the day after the day the disallowance motion is negatived. If there is no disallowance motion, the declaration commences on the day after the 6th sitting day after the day the declaration is presented to the Legislative Assembly. If the declaration itself provides for a later date or time of commencement, the declaration commences on this later date or time.

- **New section 137K – Period of effect of declaration**
  New section 137K provides that a significant project declaration under section 137H expires on the earlier of the day that the declaration is expressed to cease to be in force or the day that the development approval in relation to the development proposal takes effect.

  The Executive may amend the declaration to extend the period that the declaration is in force. An extension of the period is a disallowable instrument. Subject to any disallowance under the Legislation Act, chapter 7, the extension commences under the following circumstances. If there is a motion to disallow the extension and the motion is negatived by the Legislative Assembly, the extension commences the day after the day the disallowance motion is negatived. If there is no disallowance motion, the extension commences on the day after the 6th sitting day after the day the extension is presented to the Legislative Assembly.

  The planning and land authority must notify an extension of the period by publishing a notice of the extension in a daily newspaper and on the authority website.

- **New section 137L – Revocation of declaration**
  New section 137L provides that the Executive may revoke a significant project declaration. The revocation must not take effect less than 30 working days after the day the revocation is made by the Executive. A revocation is a notifiable instrument.

  The planning and land authority must notify the revocation by publishing a notice of the revocation in a daily newspaper and on the authority website.

- **New section 137M – Project of major significance – time limit on bringing court proceedings**
  New section 137M provides that a person may not start a proceeding in a court in relation to a significant project declaration more than 60 days after the declaration is made.

  A person may not start a proceeding in a court in relation to a development application to which a significant project declaration is in force more than 60 days after the day the development application is approved.

Clause 24 – section 139(2)(f)(ii) – Form of development applications
This clause amends section 139(2)(f)(ii) of the Planning and Development Act, which prescribes the form that a development application must take. This section now provides that an application for a development approval in the impact track must be accompanied by a completed or draft EIS for the proposal unless the application has been exempted from the requirement to include an EIS under section 211 of the Planning and Development Act.

Clause 25 – New division 7.3.2A – Applications in anticipation of plan variations
This clause inserts new division 7.3.2A into the Planning and Development Act. New division 7.3.2A applies to development applications made in anticipation of variations to the Territory Plan. The division includes the following new sections:

- **New section 147A – Applications may be made in anticipation of draft plan variations**
  New section 147A applies if the planning and land authority has prepared and published a consultation notice about a draft plan variation under section 63 of the Planning and Development Act. An applicant may lodge an application for development approval as if this draft plan variation were in force.

  The application for development approval must identify the draft plan variation and state that it was lodged on the assumption that the draft plan variation was in effect.

- **New section 147B – Applications under s147A – procedure**
  New section 147B establishes procedures for the processing of development applications made in anticipation of Territory Plan variations. This new section provides that Chapters 7 (Development approvals), 8 (Environmental impact statements and inquiries) and 9 (Leases and licences) apply to these development applications.

  New section 147B provides that the planning and land authority must process and assess the development application as if the draft plan variation was in effect. However, the decision-maker may only approve a development approval if the application is consistent with the plan variation and the plan variation has commenced under section 83 (Commencement and publication of plan variations) or section 84 (Partial rejection of plan variations by Legislative Assembly) of the Planning and Development Act.

  New section 147B(4) provides that when the planning and land authority publicly notifies the development application under division 7.3.4 (Public notification of development applications and representations), the authority must state that the application is lodged in accordance with a draft plan variation and identify the draft plan variation.

Clause 26 – New section 161A – Meaning of decision-maker div 7.3.6

This clause inserts a new section 161A in division 7.3.6 of the Planning and Development Act.

New section 161A defines the 'decision-maker' for the purposes of div 7.3.6. The Minister is the decision-maker for a development application for a project that has been declared by the Executive to be a project of major significance. The minister is also the decision-maker for a development application that the Minister decides to consider under the Ministerial call-in power under division 7.3.5. For any other development application, the decision-maker is the planning and land authority.

Clause 27– Section 162(1) – Deciding development applications
This clause amends section 162(1) of the Planning and Development Act to provide that the decision-maker for a development application must either approve a development application, approve a development application subject to a condition or refuse a development application.

This is a technical amendment which omits references to the decisions being made by the Minister or planning and land authority to clarify the meaning of the provision. The decision-maker for the particular development application is defined in new section 161A as noted above.

Clause 28 – Sections 162(2) and (3)
This clause amends sections 162(2) and (3) of the Planning and Development Act by substituting a reference to the "planning and land authority or Minister" for a reference to the "decision-maker". This is related to the amendments made in clause 27.

Clause 29 – Section 163(1)(c) – Power to approve etc development applications deemed refused
This clause amends section 163(1)(c) of the Planning and Development Act by substituting a reference to the "planning and land authority or Minister" for a reference to the "decision-maker". This is related to the technical amendments made in clauses 27 and 28.

Clause 30 – Section 163(2)
This clause amends section 163(2) of the Planning and Development Act by substituting a reference to the "planning and land authority or Minister" for a reference to the "decision-maker". This is related to the amendments made in clauses 27 - 29.

Clause 31 – Section 163(3)
This clause amends section 163(3) of the Planning and Development Act by substituting a reference to the "planning and land authority or Minister" for a reference to the "decision-maker". This is related to the technical amendments made in clauses 27 - 30.

Clause 32 – Section 165(1) – Conditional approvals

This clause amends section 165(1) of the Planning and Development Act by substituting a reference to the “planning and land authority or Minister” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 - 31.

Clause 33 – Section 165A(1)(a) – Lease to be varied to give effect to development approval

This clause amends section 165A(1)(a) of the Planning and Development Act by substituting a reference to the “planning and land authority or Minister” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 - 32.

Clause 34 – Section 172(1)(c) – Notice of decision on referred development application

This clause amends section 172(1)(c) of the Planning and Development Act by substituting a reference to the “authority” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 - 33.

Clause 35 – Section 172(2)(a)

This clause amends section 172(2)(a) of the Planning and Development Act by substituting a reference to the “authority” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 – 34.

Clause 36 – Section 172(2)(b)

This clause amends section 172(2)(b) of the Planning and Development Act by substituting a reference to the “authority” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 – 35.

Clause 37 – Section 172(3)

This clause amends section 172(3) of the Planning and Development Act by substituting a reference to the “planning and land authority” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 27 – 36.

Clause 38 – Sections 175 to 182 – When development approvals take effect – no representations and no right of review etc

This clause amends sections 175 to 182 of the Planning and Development Act by substituting a reference to the “planning and land authority or Minister” for a reference to the “decision-maker”. This is related to the technical amendments made in clauses 28 - 37.

Clause 39 – Section 183(1)(a) – When development approval takes effect – reconsideration and review right

This clause amends section 183(1)(a) of the Planning and Development Act by omitting the words “or Minister”.

This amendment now provides that the reconsideration and review right applies if the planning and land authority, and not the planning and land authority or Minister,

refuses a development application under section 162 or approves the application subject to a condition.

Clause 40 – Section 210, notes 1 and 2 - When is a completed EIS required?
This clause substitutes notes 1 and 2 in section 210 of the Planning and Development Act.

The new Note 1 provides that a development application in the impact track must include either a completed EIS or a draft EIS. However, development approval must not be given unless there is a complete EIS. The Note refers to div 7.2.4 of the Planning and Development Act for requirements for applications in the impact track.

The new Note 2 provides that the Minister may exempt a development application from the requirement to include a completed EIS under section 211 of the Planning and Development Act.

Clause 41 – Section 211 - EIS not required if development application exempted
This clause amends section 211 of the Planning and Development Act.

Section 211 previously provided that the Minister may exempt a development application from a requirement to include an EIS if satisfied that the expected environmental impact of the development proposal has already been sufficiently addressed by another study.

This clause amends section 211 to provide that the Minister may exempt a development application from the requirement to include an EIS or a draft EIS if the expected environmental impact of the development proposal has already been sufficiently addressed by another study.

Clause 42 – Section 216, new note - Preparing draft EIS
This clause inserts a new note into section 216 of the Planning and Development Act. Section 216 prescribes the requirements for preparing a draft EIS.

The new Note provides that the proponent may also give the draft EIS to the planning and land authority as part of the development application process, and refers to sections 127 and 139 of the Planning and Development Act.

Clause 43 – new section 217A – Notification requirements – draft EIS joint with development application
This clause inserts a new section 217A into the Planning and Development Act.

New section 217A prescribes notification requirements for circumstances where a draft EIS accompanies an application for a development approval under section 127 of the Planning and Development Act.

The new section provides that the planning and land authority publicly notifies a draft EIS for the purposes of section 217 (Public notification of draft EIS) if the planning

and land authority notifies the draft EIS and the development application together in compliance with division 7.3.4 of the Planning and Development Act and the notice states that anyone may make representations on the development application or the draft EIS.

Clause 44 – Section 218, meaning of *public consultation period*, paragraphs (a) and (b) – definition of *public consultation period* for draft EIS
This clause substitutes new paragraphs (a) and (b) into section 218 of the Planning and Development Act.

Section 218 defines the meaning of a public consultation period for a draft EIS. New section 218(a) provides that if section 217A applies to the draft EIS, the public notification period is defined under section 157.

New section 218(b) provides that in any other case, the public consultation period is the period, not less than 20 working days, when representations may be made on the draft EIS under section 217(1)(ii) or if the period is extended under section 219(3), the period as extended.

Clause 45 – Section 219(1) - Representations about draft EIS
This clause substitutes a new section 219(1) into the Planning and Development Act.

Section 219 applies to representations about a draft EIS. Section 219(1) previously stated, “Anyone can make a representation about a draft EIS publicly notified under section 217”. The section now provides, “Anyone can make a representation about a draft EIS that is publicly notified.” This amendment takes into account that a draft EIS may be publicly notified with a development application.

Clause 46 – Section 221(1)(a) - Revising draft EIS
This clause amends section 221(1)(a) of the Planning and Development Act.

Section 221 prescribes requirements for revising a draft EIS. Section 221(1)(a) previously stated that the section applies “if a draft EIS has been publicly notified under section 217”. Section 221(1)(a) now provides that the section applies “if a draft EIS is publicly notified”. This amendment takes into account that a draft EIS may be publicly notified with a development application.

Clause 47 – New section 221A
This clause inserts a new section 221A into the Planning and Development Act.

New section 221A prescribes the time for revising a draft EIS that accompanies a development application. This section applies if the proponent of a development proposal has given the planning and land authority a draft EIS as an accompanying document to an application for a development approval. The proponent must give the planning and land authority an EIS under section 221 (revising draft EIS) not later than 30 working days after the day the public consultation period for the draft EIS has ended.

The planning and land authority may, on application, extend the period within which the proponent must give the authority an EIS under section 221 once only, for a period of up to 60 days.

Clause 48 – Section 221(1) - Authority consideration of EIS
This clause substitutes a new section 222(1) into the Planning and Development Act.

New section 222(1) provides that if the proponent of a development application gives the planning and land authority an EIS under s221 within the time required by section 221A.

If section 221A does not apply, if the proponent of a development proposal gives the planning and land authority an EIS under section 221 not later than 18 months after the scoping document for the proposal is given to the proponent under s214. If the proponent of a development proposal gives the authority an EIS under section 221 more than 18 months after the scoping document for the proposal is given to the proponent under section 214 and the authority is satisfied that there has been no significant change to the circumstances surrounding the development proposal that is not sufficiently addressed in the EIS. Section 222 also applies if the proponent of a development proposal gives the authority an EIS in accordance with a notice under s224(2) (Chance to address unaddressed matters).

Clause 49 – Section 224(1) - Chance to address unaddressed matters -
This clause substitutes a new section 224(1) into the Planning and Development Act (Chance to address unaddressed matters).

New section 224(1) provides that section 224 applies in relation to the EIS for a development proposal given to the planning and land authority under section 221 if the authority is not satisfied in relation to a matter mentioned in section 222(2)(a) (i.e. the authority is not satisfied that it has addressed matters raised in the scoping document for the proposal or taken any timely representation on the EIS into account).

Clause 50 – Section 224(4)
This clause substitutes a new section 224(4) into the Planning and Development Act. This is related to the amendment made to section 224A(2) at clause 52.

New section 224(4) provides that section 224 only applies to an EIS revised under this section if the authority has not, under this section, given the proponent of the development proposal more than one notice about the EIS and the draft EIS was not given to the authority under s127(2)(b). The planning and land authority may give the proponent up to notices to address unaddressed matters in the EIS.

Clause 51 – Section 224A(1) – Rejection of unsatisfactory EIS
This clause substitutes a new section 224A(1) into the Planning and Development Act.

The new section provides that section 224A (Rejection of unsatisfactory EIS) applies if the planning and land authority gives the proponent of a development proposal a notice under section 224(2). A notice under section 224(2) is a written notice that the planning and land authority does not accept the EIS, explains why the authority does not accept the EIS and states the time within which the proponent may respond to the notice whether by providing a revised EIS or otherwise.

Clause 52 – Section 224A(2)
This clause amends section 224A(2) of the Planning and Development Act. This amendment is related to the amendment made in clause 50.

Section 224A applies to rejection of an unsatisfactory EIS by the planning and land authority. Section 224A(2) previously provided that the planning and land authority must reject an EIS if "the proponent does not respond within the time stated in the second notice" or "the proponent responds within the time stated in the second notice but the authority remains unsatisfied in relation to a matter mentioned in section 222 (2) (a)." This clause omits the word 'second' from section 224A(2) so that the section simply refers to a notice.

This amendment has been made because the requirement for the planning and land authority to issue up to two notices to address unaddressed matters in an EIS is already catered for in section 224.

Clause 53 – Definitions – ch 13 – Section 407, definition of *reviewable decision*, new subparagraph (b)(iii) and (iv)
This clause adds new subparagraphs (b)(iii) and (b)(iv) to section 407 of the Planning and Development Act to provide that the definition of a 'reviewable decision' does not include a decision under chapter 7 (Development approvals), 8 (Environmental impact statements and inquiries) or 9 (Leases and licences) of the Planning and Development Act in relation to a development proposal that has been declared by the Executive to be a project of major significance under section 137H.

The definition of a reviewable decision also does not include a decision under chapter 7, chapter 8 or chapter 9 in relation to a development or use that is located in a special precinct area.

Clause 54 – New section 411(1)(aa) – Restrictions on public availability – comments, applications, representations and proposals
This clause inserts a new section 411(1)(aa) into the Planning and Development Act. This new section provides that section 411 also applies to a person who makes consultation comments on a draft special precinct variation.

Clause 55 – Section 411(1)(b)
This clause amends section 411(1)(b) of the Planning and Development Act. This clause omits the word "technical" and substitutes the word "special". This means that section 411 applies to a person who makes a consultation comments on a proposed special amendment to the Territory Plan, rather than a technical amendment.

Clause 56 – New section 411(1)(ba)
This clause inserts a new section 411(1)(ba) into the Planning and Development Act. This new section provides that section 411 also applies to a person who makes consultation comments on a draft significant project declaration.

Clause 57 – Section 411(2) – definition of *relevant document*, new paragraph (aa)
This clause amends section 411(2) of the Planning and Development Act by adding a new paragraph (aa) to the definition of a "relevant document". The amendment provides that a relevant document in relation to a person who makes consultation comments on a draft special precinct variation is the consultation comments.

Clause 58 – Section 411(2) - definition of *relevant document,* paragraph (b)
This clause amends the definition of a "relevant document" in section 411(2)(b) of the Planning and Development Act. This clause omits the word "technical" and substitutes the word "special". This amendment provides that a relevant document in relation to a person who makes consultation comments in relation to a proposed special amendment is the consultation comments.

Clause 59 – Section 411(2) – definition of *relevant document*, new paragraph (ba)
This clause amends section 411(2) of the Planning and Development Act by adding a new paragraph (ba) to the definition of a "relevant document". The amendment provides that a relevant document in relation to a person who makes consultation comments on a draft significant project declaration is the consultation comments.

Clause 60 – Section 412(5), definition of relevant document, new paragraphs (ba) and (bb)) – Restrictions on public availability – security
This clause inserts new paragraphs (ba) and (bb) into section 412(5) of the Planning and Development Act. These new paragraphs add a draft special precinct declaration and consultation comments on a draft special precinct variation to the list of relevant documents in this section.

Clause 61 – Section 412(5), definition of *relevant document*, paragraph (c)
This clause amends the definition of "relevant document" in section 412(5)(c) of the Planning and Development Act by omitting the word "technical" and substituting the word "special". This amendment means that a special rather than a technical amendment is a relevant document for the purposes of this section.

Clause 62 – Section 412(5), definition of *relevant document,* new paragraphs (da) and (db)
This clause inserts new paragraphs (da) and (db) into section 412(5) of the Planning and Development Act. These paragraphs add a draft significant project declaration and consultation comments on a draft significant project declaration to the list of relevant documents.

Clause 63 - New Schedule 6

This clause inserts a new schedule 6 into the Planning and Development Act with a map of the Symonston site. This amendment is related to new section 85J of the Planning and Development Act.

Clauses 64 to 78
These clauses make a number of consequential amendments to the Dictionary of the Planning and Development Act.

Schedule 1 – Consequential amendments
Part 1.1 – Administrative Decisions (Judicial Review) Act 1989
Clause [1.1] – Schedule 1, item 15, column 3
This clause amends Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1989* to exclude the following decisions from the operation of the Administrative Decisions (Judicial Review) Act:

- a decision making or forming part of the process of making, or leading up to the making of, a special precinct variation;
- a decision making, or forming part of the process of making, or leading up to the making of, a significant project declaration; and
- and a decision under chapter 7, 8 or 9 of the Planning and Development Act in relation to a project that has been declared by the Executive to be a project of major significance.

Part 1.2 – Heritage Act 2004
Clause [1.2] – New section 42A – Effect of restriction declaration for a special precinct area
This clause inserts new section 42A into Part 6 of the Heritage Act 2004. New section 42A applies in the following circumstances: a place or object has been nominated for provisional registration, a place or object has not been nominated but the Heritage Council is considering whether to provisionally register the place or object, or a place or object has been provisionally registered by the Council under section 33 of the Heritage Act. The Council has not made a final decision in relation to the place or object under section 32 (provisional registration) or registration (section 40). A proposed restriction declaration applies to the place or object or a restriction declaration is in force in relation to the place or object.

The Council must not make a decision under Part 6 or take steps under Part 6 forming part of the process of making a decision or leading up to the process of making a decision.

For the purposes of section 42A, a proposed restriction declaration applies to a place or object if the planning and land authority has notified a draft special precinct variation under section 85C of the Planning and Development Act, the draft special precinct variation includes a proposed restriction declaration in relation to development in the special precinct area, the draft special precinct variation has not been withdrawn and a restriction declaration has not been made in relation to development in the special precinct area.

For the purposes of section 42A, a restriction declaration is in force if the Executive has made a restriction declaration under section 85N of the Planning and Development Act and the declaration is in force.

Section 42A provides a cross-reference to the definition of a "restriction declaration" in section 85N of the Planning and Development Act.

Part 1.3 – Planning and Development Regulation 2008
Clause [1.3] – New section 28(b)(ia)
This clause inserts a new section 28(b)(ia) into the Planning and Development Regulation 2008.

Section 28 of the Planning and Development Regulation prescribes public notification periods for development applications. New section 28(b)(ia) provides that if the development application is in the impact track and is accompanied by a draft EIS, the public notification period is 30 working days.

Clause [1.4] – Section 28, new note
This clause inserts a new note into section 28 of the Planning and Development Regulation.

The new note provides that under section 139 of the Planning and Development Act, the proponent may apply for development approval of a project in the impact track on the basis of either a completed EIS or a draft EIS.

Part 1.4 – Tree Protection Act 2005
Clause [1.5] – New section 52A – Effect of restriction declaration for a special precinct area
This clause inserts a new section 52A into the Tree Protection Act 2005. New section 52A applies if a tree has been nominated for provisional registration, the Conservator of Flora and Fauna has not made a decision in relation to the tree and either a proposed restriction declaration applies to the tree; or a restriction declaration is in force in relation to the tree.

The Conservator must not make a decision under division 7.2 (Registration process) or take steps under division 7.2 forming part of the process of making a decision under this division or leading up to the process of making a decision under this division.

For the purposes of section 52A, a proposed restriction declaration applies to a tree if the planning and land authority has notified a draft special precinct variation under section 85C of the Planning and Development Act, the draft special precinct variation includes a proposed restriction declaration in relation to development in the special precinct area, the draft special precinct variation has not been withdrawn and a restriction declaration has not been made in relation to development in the special precinct area.

For the purposes of section 52A, a restriction declaration is in force if the Executive has made a restriction declaration under section 85N of the Planning and Development Act and the declaration is in force.

Section 52A provides a cross-reference to the definition of a “restriction declaration” in section 85N of the Planning and Development Act.