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# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

# PLANNING AND DEVELOPMENT (ENVIRONMENTAL IMPACT STATEMENTS) AMENDMENT BILL 2010

## EXPLANATORY GUIDE

Circulated by authority of
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**PLANNING AND DEVELOPMENT (ENVIRONMENTAL IMPACT STATEMENTS) AMENDMENT BILL 2010**

## To comment on the exposure draft

This is the explanatory guide to the exposure draft of the Planning and Development (Environmental Impact Statements) Amendment Bill 2010 (exposure draft). Comments are invited on the exposure draft.

The closing date for comments is COB 17 September 2010.

A copy of the exposure draft is available online at the following website:
www.legislation.act.gov.au/ed/annual/2010.asp

Alternatively, a copy can be obtained through the contacts below.

Comments on the exposure draft can be sent to the postal address below or by email to:
planning.systemreform@act.gov.au

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## Terms used in this Explanatory Guide

- "the Act" means the *Planning and Development Act 2007*;
- "the Regulation" means the Planning and Development Regulation 2008;
- "the bill" means the draft Planning and Development (Environmental Impact Statements) Amendment Bill 2010 that is the subject of this explanatory guide;
- "clause …" or similar is a reference to a section of the bill;
- "section …" or "existing section …" or similar is a reference to an existing section in the Act unless otherwise indicated;
- "new section …" or similar is a reference to a new section inserted into the Act by the bill whether as an entirely new section or as a substitution of a new section in the place of an existing section; and
- "revised section …" or "modified section …" or similar is a reference to a section of the Act as modified by the bill.
- "ACTPLA" means the ACT Planning and Land Authority
- "environmental impact statement" is an investigation of the potential impact of a project on the environment. A development application assessable in the impact track must include an environmental impact statement. The statement is taken into account in assessing and deciding the development application. The process for preparing such statements is summarised in paragraphs 19 and 20.
- "EIS" means environmental impact statement
- "concessional lease" means a lease that meets the definition of concessional lease in s235, essentially a lease sold for less than market value
- "de-concessionalisation" means the removal of the concessional status of a lease which can be done through application for development approval of a lease variation (s260)

## Overview of Bill

Clarification and refinement of the list of development types that are assessable in the impact assessment track

1. This bill amends the *Planning and Development Act 2007* ("the Act") and is about the identification of development applications that must be assessed in the impact assessment track. Development proposals which would require assessment in the impact track are listed in schedule 4 of the Act. The bill amends this schedule; specifically it deletes Parts 4.2 and 4.3 of the schedule and substitutes new parts 4.2, 4.3. The bill also makes a number of adjustments to the process required for the preparation and completion of environmental impact statements which must be attached to development applications in the impact track.

2. One of the key reforms behind the *Planning and Development Act 2007* was to ensure that the level and nature of assessment of development applications was appropriately tailored to the scale, complexity and likely impacts of the proposed

development. For this reason, the new Act implemented a multi-tier assessment system involving:

- exempt development – for projects that do not require approval under the planning legislation
- code track – for the assessment of relatively simple, low impact projects
- merit track – for the assessment of more complex, significant matters (standard process)
- impact track – for the assessment of projects that are high impact in nature – includes all development in schedule 4 to the Act (and development listed as impact track assessable in the development tables of the Territory Plan)
- prohibited development – projects which cannot proceed and cannot be the subject of a development application

3. This assessment system has worked well to date. However experience suggests that the list of projects deemed to be impact track assessable is too wide and is at risk of catching projects that do not warrant assessment in this high end assessment track. Impact track development is identified in schedule 4 to the Act. Experience suggests that this list in schedule 4 is too broad and in a number of instances not sufficiently precise.

4. The amendments are aimed at ensuring that only development proposals which are likely to have a significant adverse environmental impact will require an EIS. To this end, the bill amends schedule 4 and it does so through a clarification of a number of items, a more focussed targeting of the reach of a number of items as well as removal of some items from the list altogether.

Removal of an item from the impact track does not mean the item will not be assessed

5. This bill does remove a number of development types from the impact track. The effect of such changes will be to shift the development assessment process from the impact track to the merit track. The key difference is that there is no need to complete an environmental impact statement before lodging a development application in the merit track.

6. It is important to keep in mind that this shift will not mean that the development will not be assessed or will not be assessed thoroughly. This is the case for the following reasons.

7. Development applications in the merit track must still attach an assessment against the relevant rules and relevant criteria in the Territory Plan and other matters as required under s139 including, if required, a formal assessment of environmental effects. The application must be publicly notified and open to public comment. The application must also be assessed against the Territory Plan (eg code rules and merit criteria) and all of the applicable factors/criteria set out in ss119 and 120. This includes assessment of the probable impact of the proposed development including the nature, extent and significance of probable environmental impacts.

8. A development application in the merit track will in some cases also require assessment of its potential environmental impacts under other legislation such as the *Public Health Act 1997* or the *Environment Protection Act 1997*.

9. It is also important to keep in mind that a project that is no longer specifically listed in schedule 4 may still be assessable in the impact track for reasons unrelated to the omitted item. For example, new Part 4.2 of schedule 4 no longer specifically includes the construction of large sporting venues (but does include venues for motor racing). This is because such a project does not necessarily warrant the level of assessment involved in the impact track. However, the impact assessment track may still apply if the proposed sporting venue triggers another item in schedule 4. For example, it might be impact track assessable if it has significant adverse impacts on a place registered in the Heritage Act (item 6 of new Part 4.3 of schedule 4).

10. The bill also revises schedule 4 to take account of the fact that in a number of instances extensive study of environmental impact and public consultation would have occurred as part of the development of the Territory Plan. In such instances the extensive analysis required in the impact track including the preparation of an EIS may not be warranted and indeed may give rise to false expectations that policy settled in the Territory Plan is open to change. For example, item 1 of new Part 4.2 of schedule 4 (clause 23) applies to the construction of a transport corridor such as a major road on land other than land designated as a future urban area or a transport and services zone. The excision of these areas from this item reflects the fact that extensive study as to such infrastructure would have already occurred through the relevant variations to the Territory Plan.

11. Also importantly, a proposal outside the impact track can be shifted from the merit track to the impact track by the Planning Minister or the Health Minister, if the Minister considers this is warranted in a particular case (ss124-126).

Significant adverse environmental impact

12. In order to help clarify the scope or application of a number of items in schedule 4, the bill introduces the concept of *significant adverse environmental impact* into a number of schedule 4 items. This key term is defined in new s4.2 of Part 4.1 of schedule 4 (clause 22). A number of schedule 4 items will only apply if the relevant agency (eg Conservator of Flora and Fauna or Environment Protection Authority) considers that the relevant proposal is likely to cause a *significant adverse environmental impact*. In these cases the proposal is not in the impact track unless the agency determines that the likely impact will be a significant adverse one. In these cases, the question of whether a particular proposal is or is not assessable in the impact track will turn on the specific details of the proposal and the circumstances of the time rather than on the application of an arbitrary, catch all rule. For example, item 1 of new Part 4.3 of schedule 4 (clause 24) refers to proposals for development that are likely to have a significant adverse impact on a species or ecological community protected under the Nature Conservation Act or declared as endangered or vulnerable etc under the Act. The new wording in this item makes it clear that it only applies to development proposals that the Conservator of Flora and Fauna considers are likely to have a significant adverse environmental impact on a species or ecological community.

13. The concept of *significant adverse environmental impact* is also used in some schedule 4 items in a related but different way. A number of items in schedule 4 apply to relevant proposals unless the relevant agency provides an opinion that the

proposed development is not likely to result in a *significant adverse environmental impact.* In this case, an opinion from a relevant agency will take a matter out of schedule 4 and the impact track and put it into the merit track (as opposed to the above example where an agency opinion will take a matter out of the merit track and put it into the impact track). In this case, the onus is on the proponent to obtain an opinion from the relevant agency if the proponent wants the matter dealt with in the merit track rather than the impact track. For example, item 2(a) of new Part 4.3 of schedule 4 (clause 24) provides that clearing of more than 0.5ha of native vegetation on land outside a future urban area is assessable in the impact track unless the Conservator of Flora and Fauna provides an opinion that the clearing is not likely to have a significant adverse environmental impact.

14. The bill includes a mechanism for the proponent to apply to the relevant agency for an opinion that a proposal is not likely to have a significant environmental impact. The relevant agency must reject such an application if it considers that the likely environmental impact will be significantly adverse. If an application is not granted then the relevant development proposal remains one that must be assessed in the impact assessment track.

Improvements to the process for the preparation of environmental impact statements

15. A development application in the impact track must include a completed EIS (unless it is exempted under s211). The procedures for the preparation and completion of an EIS are set out in Chapter 8.

16. The bill makes a small number of changes to make the process for the preparation and completion of "environmental impact statements" (EIS) more effective and clear and also to give effect to the changes noted above. These include changes to:

- make it clear that the time for determining which assessment track applies to a development application – is the time that the application is made (ie when the application is formally lodged with ACTPLA)
- in certain cases, permit a proponent to apply for an agency opinion that a proposal is not likely have a significant adverse environmental impact
- limit the number of times that a draft EIS can be revised following public notification before it is accepted as complete or rejected
- require ACTPLA to provide the Planning Minister with an assessment report on whether or not the revised EIS has met the requirments of the scoping document .
- permit ACTPLA and other relevant agencies to recover the government costs incurred in association with the completion of an EIS or providing an opinion on significant adverse environmental impacts.

Concessional leases

17. A concessional lease is a lease granted for less than market value and consistent with s235. A concessional lease cannot be sold without the consent of ACTPLA (s265). Such leases can be varied through a development application to remove the concessional status ie "de-concessionalised". Such development applications are currently assessed in the impact track and cannot be decided unless the Minister considers that it is in the public interest to consider the application (s261).

18. New Part 4.2 of schedule 4 (clause 24) removes de-concessionalisation from the impact assessment track. This is because the implications of de-concessionalisation in itself are chiefly social and economic, and as such do not warrant assessment in the impact track and preparation of an environmental impact statement that this involves. To ensure that development applications for such matters are still fully assessed new s139(2)(l) (clause 8) requires such applications to include an assessment of the social, cultural and economic impacts of the de-concessionalisation. The factors that the Minister must take account of in considering whether decision on such an application is in the public interest are clarified (new ss261(2)(b), 261(2)(e) clauses 19, 20).

## Summary of procedure for completion of EIS

19. A development application assessable in the impact track must include a completed EIS (ss139(2)(f), 210).

20. The procedure for the preparation, consultation and completion of an EIS is set out in Part 8.2 Environmental Impact Statements of the Act. In summary, these steps involve:

1. proponent applies to ACTPLA for a scoping document (s212)
2. ACTPLA prepares a scoping document setting out the matters that must be addressed in the EIS (s212). The scoping document must include all matters required by regulation (s213(1)). The scoping document must be prepared within 30 working days of application (s214).
3. proponent prepares a draft EIS and gives the draft to ACTPLA. The draft EIS must cover all matters raised in the scoping document.
4. ACTPLA publicly notifies the draft EIS (s217)
5. draft EIS is available for public comment for at least 20 working days (s218, 219)
6. after the public notification period ends, the proponent revises the draft EIS taking into account the public comments (s221)
7. proponent provides the revised draft EIS to ACTPLA (s222)
8. ACTPLA considers whether the revised draft adequately addresses all matters covered by the scoping document and raised in public comments
9. if ACTPLA is satisfied that the revised draft EIS is complete then it gives this and the assessment report to the Minister (ss222, 225). If ACTPLA is not satisfied it must give the proponent an opportunity to respond to ACTPLA concerns
10. the Minister must consider the revised draft EIS and decide whether to:
    a. take no further action and inform ACTPLA of this (s226)
    b. present the draft EIS to the Legislative Assembly (ss226, 227)
    c. appoint an inquiry panel to consider and report on the draft EIS (ss226, 228)
11. the revised draft EIS becomes a “completed EIS” if:
    a. the Minister informs ACTPLA that no further action will be taken (ss209A(1), 226); or
    b. 15 working days have pass from when the Minister received the revised draft EIS and the Minister has neither written to ACTPLA nor established an inquiry panel (ss209A(1)(b), 226, 228)

c. if the Minister has appointed an inquiry panel under s228 and the panel has made its report or the time for reporting has elapsed (ss209A(1)(d), 230)

12. the completed EIS must be attached to the application for development approval (s139(2)(f)).

## Bill provisions in detail

**Clause 1 Name of Act**

21. Clause 1 indicates the name of the amendment Act. This Bill, if passed, will become the *Planning and Development (Environmental Impact Statements) Amendment Act 2010.*

**Clause 2 Commencement**

22. Clause 2 indicates the time of commencement of the amendment Act.

**Clause 3 Legislation amended**

23. Clause 3 notes that the Bill amends the *Planning and Development Act 2007* (the Act).

**Clause 4 Relationship between development proposals and development applications**
**New section 113 (1A)**

24. Clause 4 inserts new section 113(1A).

25. For the purposes of development assessment the Act recognises the following categories:

- exempt development proposals (ie development that is exempt from the need to obtain development approval under the Act)
- code track development proposals, proposals that require approval and are assessed in the code track (minor development relative to merit and impact tracks)
- merit track development proposals, proposals that require approval and are assessed in the merit track (standard assessment)
- impact track development proposals, proposals that require approval and are assessed in the impact track ('high end' assessment for more complex proposals involving potentially significant environmental impacts)
- prohibited development, development that is prohibited and cannot be the subject of a development application or approval

26. New sections 113(1A) and 113(1B) make it clear when the applicable assessment track is determined. Under the new s113(1A), the relevant assessment track is the track that applies at the time the relevant development application is made, that is, when the application is lodged. New s113(1B) provides that this does not affect the existing power of the Minister or Public Health Act Minister to declare, after the application is lodged, that the impact track is applicable (see s124 and s125 of Act).

27. In practice, an application is considered to be lodged after all of the following steps are completed:

- the relevant application form is completed and provided to ACTPLA;
- the application form is checked as complete by ACTPLA; and
- the application fee is paid

28. For example, a development proposal might be considered to be in the impact assessment track unless the Conservator of Flora and Fauna provides an opinion that the environmental impacts of the proposal is not likely to be significant. Whether the proposal is assessed in the merit or impact tracks will depend on whether the opinion was in place at the time the development application was lodged. If the opinion did not exist at this time but was provided later on, the development application commences and remains in the impact assessment track. A similar example is provided in the bill.

29. New section 113(1A) only applies to development proposals that require statutory approval under the Act, it does not apply to exempt or prohibited development.

**Clause 5 Division 7.3.1 heading**

30. Clause 5 deletes the existing heading to Division 7.3.1 and substitutes a new heading as a consequence of new s138A (clause 6).

**Clause 6 New section 138A**

31. Clause 6 inserts new section 138A.

32. Schedule 4 lists a number of types of development that must be assessed in the impact track (s123(b)). This list is amended by clauses 23, 24.

33. New parts 4.2 and 4.3 of schedule 4 (clauses 23, 24) identify a number of development types that must be assessed in the impact track unless the relevant agency confirms that the likely environmental impact of the proposal will not be significantly adverse. The relevant agency is the Environment Protection Authority or the Conservator of Flora and Fauna as indicated in the item in the schedule. These development types include items:

- 1, 3(c), 3(d), 7 of new part 4.2 of schedule 4
- 2(a), 2(b), 3 of new part 4.3 of schedule 4

34. New section 138A applies to the above items in new Parts 4.2 and 4.3 of schedule 4. The new section sets out the mechanisms for applying for an opinion from the relevant agency.

35. New s138A permits applications to be made to the relevant agency for the opinion (new s138A(2)). It also permits the agency to require further information from the applicant (new s138A(3)). If further information is required the agency must give the applicant at least 20 working days to respond (new s138A(4)). If the requested further information is not provided, then the relevant agency is entitled to refuse to consider the application ((new s138A(5)(a))

36. The relevant agency must reject the application for the opinion unless satisfied that the likely environmental impact will not be significantly adverse (new s138A(5)(b)). The meaning of s*ignificant adverse environmental impact* is noted in new s138A(8). New section 138A(8) points to the definition in new section 4.2 of new part 4.1 of schedule 4 (clause 22). Refer to notes on clause 22 for more details on the meaning of this term..

37. The agency is deemed to have declined to provide the opinion if it fails to do so within 30 working days of the lodgement of the application (new s138A(6)).

38. The relevant agency can recover the direct and indirect costs incurred by the agency in assessing the application for an opinion (new s138A(7)).

39. The content requirements for an application for development approval are set out in s139. New s139(2)(m) (clause 8) adds a new requirement for some applications. If the applicant wants the application to be assessed in the merit assessment track on the basis of an agency opinion (as noted above), then the application must include both a copy of the opinion and proof of payment of any costs invoiced by the agency under new s138(7).

**Clause 7 Form of development applications**
**Section 139 (2) (f) (ii)**

40. Clause 7 deletes s139(2)(f)(ii) and substitutes new s139(2)(f)(ii). Refer also to new note 2 to s210 (clause 11) and new s211(2) (clause 12).

41. The new section represents a minor, technical change and does not change the substance of the law. The wording of new s139(2)(f)(ii) makes it immediately clear that a development application in the impact assessment track does not have to include a completed EIS if the Minister has exempted the proposal from complying with this requirement under s211.

**Clause 8 New sections 139 (2) (l) and (m)**

42. Clause 8 inserts new ss139(2)(l), 139(2)(m).

<u>Removal of the concessional status of a lease – new s139(2)(l)</u>
(refer also to new ss261(2)(b), 261(2)(e) clauses 19, 20)

43. Removal of the concessional status of lease is a lease variation which requires a development application (s260). Under existing item 11 of Part 4.3 of schedule 4 and s123 a development proposal to remove the concessional lease status from a concessional lease is assessable under the impact track. Under the Act as amended by this bill de-concessionalisation will not be assessable in the impact track and will instead be assessable under the merit track. This results from the removal of this item from new Part 4.3 of schedule 4 (clause 24).

44. The above amendment means that it will no longer be necessary to prepare a full EIS prior to lodgement of a development application to remove the concessional status of a lease. The bill proposes an alternate form of assessment. New s139(2)(l) requires an application for approval of de-concessionalisation to attach an assessment

of the social, cultural and economic impacts of the de-concessionalisation. The assessment must also cover any other matter required by the regulation.

45. The removal of de-concessionalisation from the impact track and the new requirement for an assessment of social, cultural and economic impacts under new s139(2)(l) ensures that the level and content of the assessment of such applications is appropriate.

46. An application for de-concessionalisation cannot be decided unless the Minister first decides that consideration of the application is in the public interest (s261). This requirement remains in place but with some clarifications in new sections 261(2)(b) and 261(2)(e) (clauses 19, 20)

Requirement for DA to include the opinion from agency if relevant

47. New s139(2)(m) adds a new requirement for some applications. If the applicant wants the application to be assessed in the merit assessment track on the basis of an agency opinion obtained under new s138A (clause 6), then the application must include both a copy of the opinion and proof of payment of any costs invoiced by the agency under new s138A(7).

**Clause 9 Section 139 (4), new definition of *relevant agency***

48. Clause 9 inserts a definition of *relevant agency* for the purposes of new s139(2)(m) (clause 8).

**Clause 10 What is an *EIS* and a *s 125-related EIS*?**
**Section 208, new note**

49. Clause 10 inserts a new note for s208. This is a technical change made for clarity.

**Clause 11 When is a completed EIS required?**
**Section 210, new note 2**

50. Clause 11 inserts a new note (note 2) for s210. Refer also to new s139(2)(f)(ii) (clause 7) and new note 2 to s210 (clause 11).

51. This is a technical change made for clarity.

**Clause 12 EIS not required if development application exempted**
**New section 211 (2)**

52. Clause 12 inserts new s211(2). Refer also to new s139(2)(f)(ii) (clause 7).

53. Development applications that are assessable in the impact track must include a completed EIS (s139(2)(f)(ii)). There is an exception to this requirement. The Minister has the power to exempt a development proposal from this requirement if satisfied that the impacts have already been sufficiently studied (s211).

54. New s211(2) permits the making of regulations to set out the criteria that the Minister must take into account in assessing whether there have already been sufficient studies for the purposes of s211.

**Clause 13 Authority consideration of EIS Section 222 (2) (b)**

55. Clause 13 deletes s222(2)(b) and substitutes new s222(2)(b), 222(2)(c). Refer also to new ss224(1) (clause 14), s224A (clause 15).

56. The Act currently requires that following the public consultation period for the draft EIS, the proponent must revise the draft EIS so that it covers issues raised in public comments. The proponent then gives the revised draft EIS to ACTPLA for a completeness check. Section 222 states that ACTPLA must accept a revised draft EIS as complete if satisfied that it sufficiently covers matters required by the scoping document as well as all of the issues raised in public comments. If ACTPLA is satisfied the revised draft EIS is complete it forwards it to the Minister (s225). If ACTPLA is not satisfied then ACTPLA must inform the proponent of this by written notice and give the proponent an opportunity to respond to the notice (s222(2)(b), 224).

57. New ss222(2)(b), 222(2)(c) (clause 13), 224(1) (clause 14) and s224A (clause 15) together amend the above process to the following effect. Under these new sections the process of considering a revised draft EIS from the proponent by ACTPLA under s222 can occur twice but no more than twice. If the process has occurred twice and ACTPLA is still not satisfied that the revised draft EIS is complete then ACTPLA must reject the EIS. Specifically the new sections apply in the following situation:

- proponent prepares revised draft EIS taking into account public comments and forwards to ACTPLA for completeness check (s221, 222)
- ACTPLA considers revised draft EIS and is not satisfied that it is complete and sends a s224 notice of the incompleteness to the proponent inviting the proponent to respond (ss222(2)(b), 224)
- proponent considers the s224 notice and responds by revising the draft EIS and sending it back to ACTPLA
- ACTPLA considers the further revised draft EIS but again is not satisfied that it is complete and sends a second s224 notice to the proponent
- proponent again considers the ACTPLA notice and responds and sends the further revised draft EIS back to ACTPLA
- ACTPLA considers the further revised draft EIS for a second and last time but is still not satisfied that it is complete.

58. If the above situation is reached, ie ACTPLA has issued two s224 notices but is still not satisfied that the revised draft EIS is complete (or the proponent has failed to respond to the s224 notice) then new s224(1) (clause 14) applies. Under new s224(1) ACTPLA does not have the option of sending a third s224 notice to the proponent. At this point ACTPLA has no option but to reject the revised draft EIS under new s224A(2)(b) (clause 15).

59. New ss222(2)(b), 222(2)(c) (clause 13) incorporates the above new process ie it recognises that a revised draft EIS may be rejected by ACTPLA under new s224(1), 224A(2).

60. An EIS that is rejected cannot be forwarded to the Minister under s225, cannot become a completed EIS, and cannot be attached to a development application for the proposed development.

**Clause 14 Chance to address unaddressed matters Section 224 (1)**

61. Clause 14 deletes s224(1) and substitutes new s224(1). Refer also to new ss222(2)(b) (clause 13), s224A (clause 15).

62. New s224(1) permits ACTPLA to consider the revised draft EIS and issue a s224 notice no more than twice. If ACTPLA is still not satisfied that the EIS is complete after the proponent has responded to the second s224 notice then ACTPLA must reject the draft EIS under new s224A (clause 15). Refer to paragraphs 57 to 59 for more detail.

**Clause 15 New section 224A and section 224B**

63. Clause 15 inserts new ss224A, 224B. Refer also to new ss 222(2)(b) (clause 13), 224(1) (clause 14).

64. New section 224A applies if ACTPLA has issued a s224 notice to the proponent twice and ACTPLA is still not satisfied that the revised draft EIS is complete or the proponent has not responded to the s224 notice. In this case, ACTPLA must reject the revised draft EIS (new s224A(2)). An EIS that is rejected cannot be forwarded to the Minister under s225, cannot become a completed EIS, and cannot be attached to a development application for the proposed development. .

65. New section 224B permits ACTPLA to recover from the proponent the direct and indirect costs incurred in engaging a consultant to assist ACTPLA in:

- preparing a scoping document (s212(2))
- determining whether a revised draft EIS is complete and ready for forwarding to the Minister (ss222, 224, 224A)
- whether a revised draft EIS can still be considered even if it is provided more than 18 months after the scoping document was provided to the proponent (s223)
- preparing an assessment report under new s225A (clause 18)

66. The revised draft EIS cannot be forwarded to the Minister until any invoice issued under new s224B is paid (new s225(1A) (clause 16)). The draft EIS therefore cannot be completed until the invoice is paid.

**Clause 16 Giving EIS to Minister Section 225 (1)**

67. Clause 16 deletes s225(1) and substitutes new ss225(1), 225(1A).

68. The revised draft EIS cannot be forwarded to the Minister until any invoice issued under new s224B (clause 15) is paid (new s225(1A). The draft EIS therefore cannot be completed until the invoice is paid.

**Clause 17 Section 225 (3)**

69. Clause 17 deletes s225(3). This is a technical amendment to correct an error. Section 225(3) implies that a development application can be lodged without a completed EIS. This is not correct (ss139(2)(f), 210).

**Clause 18 New section 225A**

70. Clause 18 inserts new s225A.

71. New section 225A applies if the proponent provides ACTPLA with a revised draft EIS (following the public notification period) and ACPLA accepts the revised draft EIS as complete under s222(2)(a). In this case, ACTPLA must forward the draft EIS to the Minister (s225(2)).

72. New section 225A requires ACTPLA to forward an "assessment report" with the draft EIS to the Minister. The assessment report must confirm that ACTPLA is satisfied under s222(2)(a) that the revised draft EIS covers issues as required by the scoping document and addresses issues raised during the public notification period ie that the draft EIS is complete (new s225A(1)(a)). The assessment report can also indicate how ACTPLA arrived at this conclusion (new s225A(1)(a)).

**Clause 19 No decision on application unless consideration in public interest**
**Section 261 (2) (b)**

73. Clause 19 deletes s261(2)(b) and substitutes new s261(2)(b). Refer also to new s139(2)(l) (clause 8), new s261(2)(e) (clause 20).

74. The concessional status of a concessional lease can only be removed by a lease variation through a development application (s260). Such a development application cannot be decided unless the Minister decides that it is in the public interest for the application to be considered. In deciding this, the Minister must take into account the factors set out in s261(2).

75. One of the matters that the Minister must consider is "whether approving the application would cause any disadvantage to the community" (s261(2)(b)). New s261(2)(b) clarifies this provision by indicating that this assessment must be considered in the light of the potential uses that might be available under the Territory Plan.

76. Under existing item 11 of Part 4.3 of schedule 4 and s123 a development proposal to remove the concessional lease status from a concessional lease is assessable under the impact track. Under the Act as amended by this bill de-concessionalisation will not be assessable in the impact track and will instead be assessable under the merit track. This results from the removal of this item from new Part 4.3 of schedule 4 (clause 24). Refer to new s139(2)(l) (clause 8) for more details.

**Clause 20 New section 261 (2) (e) and note**

77. Clause 20 inserts new s261(2)(e) with a new note. Refer also to new s139(2)(l) (clause 8), new s261(2)(b) (clause 19).

78. The concessional status of a concessional lease can only be removed by a lease variation through a development application (s260). Such a development application cannot be decided unless the Minister decides that it is in the public interest for the application to be considered. In deciding this, the Minister must take into account the factors set out in s261(2).

79. New section 261(2)(e) adds to the list of the factors that the Minister must consider in assessing whether it is in the public interest to decide a development application to remove the concessional status of a lease. The new section requires the Minister to also consider whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by keeping the lease a concessional lease.

**Clause 21 Interpretation—sch 4**
**Schedule 4, new definitions**

80. Clause 21 inserts into schedule 4 to the Act, new definitions of the following terms used in item 3 of new Part 4.2 of schedule 4 (clause 22, which relates to proposals for the construction of a water storage dam.):

*crest*
*lowest point of the general foundations*
*normal operating level*
*recommended design flood*

**Clause 22 Schedule 4, new section 4.2**

81. Clause 22 inserts new section 4.2 into Part 4.1 of schedule 4.

82. New s4.2 defines *significant adverse environmental impact.* This is an important concept that is used frequently in the amended Act. New s4.2 of Part 4.1 of schedule 4 provides that an adverse environmental impact is significant if:

- the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or
- the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity

In deciding whether an adverse environmental impact is significant, the following matters must be taken into account:

- the kind, size, frequency, intensity, scope and length of time of the impact;
- the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

83. Note the above s4.2 definition of the term *significant adverse environmental impact* will apply to different grammatical forms of the same term (s157 of the Legislation Act).

84. The above is similar to the provisions relevant to the decision of the Minister under s124 to impose the impact track on a merit track development application.

85. The above definition brings a measure of clarity and precision to the many provisions to which it applies. The term is relevant to the operation of the following provisions:

| | |
|---|---|
| proponent can apply to the relevant agency for an opinion that the likely environmental impact of a proposal will not be *significantly adverse* | new s138A (clause 6), refer also to new s139(2)(m) (clause 8) |
| a merit track development application can be lodged for some development proposals listed in amended schedule 4 provided the application includes an agency opinion (new s138A) that the likely environmental impact of the proposal will not be *significantly adverse* | new s139(2)(m) (clause 8) (refer also to new s138A (clause 6)). |
| The types of development proposals that are assessable in the impact track unless the relevant agency provides an opinion that the likely environmental impact of a proposal will not be *significantly adverse*.<br><br>For example, the construction of a transport corridor will need to be assessed in the impact track (item 1 of new Part 4.2 of schedule 4) unless the environment protection authority produces an opinion that the proposal is not likely to cause a *significant adverse environmental impact* on air quality etc. | items 1, 3(c), 3(d), 7 of new Part 4.2 of schedule 4 (clause 23)<br><br>items 2(a), 2(b), 3 of new Part 4.3 of schedule 4 (clause 24) |
| The types of development proposals that are caught by schedule 4 and as such are assessable in the impact track if the relevant agency finds that the proposal is likely to have a significant adverse environmental impact.<br><br>For example, a development proposal must be considered in the impact track if the conservator of flora and fauna considers that the development would have a *significant adverse environmental impact* a species that is endangered (item 1 of new Part 4.3 in schedule 4). | items 1, 4, 5, 6, 7, 8 of new Part 4.3 of schedule 4 (clause 24) |

**Clause 23 Schedule 4, part 4.2**

86. Part 4.2 of schedule 4 lists specific types of development which are assessable in the impact track. The list is intended to include matters which should be assessed in the impact track because of their scale, complexity and likely impact. Part 4.2 differs from Part 4.3 in that it applies to specific projects. In contrast, Part 4.3 lists certain environmental features, places or processes and requires certain actions which impact on these to be assessed in the impact track.

87. Clause 23 deletes Part 4.2 of schedule 4 and substitutes new Part 4.2. Some of the more significant elements of new Part 4.2 are highlighted below.

88. As noted in the overview, the changes to Part 4.2 include:
    - revision of wording to introduce greater precision in the expression of thresholds
    - use of the concept of *significant adverse environmental impact* including as appropriate provisions to permit the proponent to obtain an opinion from the relevant agency as to whether a proposal would cause significant adverse environmental impact
    - revisions to ensure the list only includes those matters which warrant assessment in the impact track due to the scale, complexity and likelihood of a significant level of impact

| **Item** | **Development proposal** |
|---|---|
| 1 | Construction of transport corridor –<br>Replaces existing item 1 of Part 4.2 of schedule 4. New item is:<br>• does not apply to land in a future urban area or transport and services zone - this reflects the fact that the variation of a Territory Plan to designate an area as future urban area land itself involves a level of assessment and public consultation and a set policy outcome which would make assessment in the impact track unnecessary and inappropriate<br>• only applies to matters that are likely to have a significant impact ie if environment protection authority produces opinion that the likely environmental impact will not be significantly adverse then the proposal is not in the impact track |
| 2 | Electricity generating stations –<br>Replaces existing item 2 of Part 4.2 of schedule 4. New item:<br>• puts all coal powered generating stations in impact track<br>• other generating stations are in impact track if capable of supplying 4MW or such other amount as prescribed |
| 3 | Construction of water storage dam<br>Replaces existing item 3 of Part 4.2 of schedule 4. New item:<br>• includes more precise parameters<br>• applies to any construction in a river corridor zone unless conservator of flora and fauna produces opinion that the proposal is not likely to have a significant adverse environmental impact<br>• applies to any construction on a continuously flowing river in a non-urban zone under the Territory Plan unless conservator of flora and fauna produces opinion that the proposal is not likely to have a significant adverse environmental impact |
| 4 | Construction of an airport or airfield<br>Replaces existing item 4 of Part 4.2 of schedule 4. New item:<br>• excludes facilities used exclusively for emergency services |

| Item | Development proposal |
|---|---|
| 5 | Construction of a waste water treatment plant<br>Replaces existing item 5 of Part 4.2 of schedule 4. New item:<br>• includes adjusted parameters<br>• does not apply to plants for treatment of stormwater<br>• applies to any plant within 1km of boundary of a residential block in a residential or commercial zone<br>• applies to any plant with capacity to treat more than 100ML of wastewater |
| 6 | Construction of a petroleum storage facility. Replaces existing item 7 of Part 4.2 of schedule 4, but retains the existing threshold |
| | Construction of a correctional centre – was item 6 of Part 4.2 is omitted in new Part 4.2<br>• such a project does not necessarily in and of itself warrant assessment in the impact track;<br>• proposal would still be assessed in the merit track against requirements of the Territory Plan and the Act including assessment of whether the Territory Plan would permit such a facility on the relevant land<br>• other legislation would also apply such as the *Corrections Management Act 2007, Environment Protection Act 1997.* |
| 7 | Construction of a permanent venue for motor racing events<br>Replaces existing item 8 of Part 4.2 of schedule 4. New item:<br>• applies to motor racing venues only<br>• applies to any venue within 2 km of boundary of a residential block/unit in a residential or commercial zone<br>• does not apply if environment protection authority produces an opinion that the proposal is not likely to have a significant adverse environmental impact |
| 8 | Use of land for commercial landfill facility<br>Replaces existing item 9 of Part 4.2 of schedule 4. New item:<br>• does not apply to excavation of virgin natural material<br>• does not apply merely because the landfill will be within 100m of a body of water or in a domestic water supply catchment – these triggers of themselves do not warrant impact track assessment<br>• applies to any such facility within 1 km of boundary of a residential block/unit in a residential or commercial zone |
| 9 | Construction of a waste management facility<br>Replaces existing item 10 of Part 4.2 of schedule 4. New item is:<br>• more clear and precise |

| Item | Development proposal |
|---|---|
| 10 | Waste transfer station or recycling facility<br>Replaces existing item 11 of Part 4.2 of schedule 4. New item:<br>• does not apply merely because the facility will be within 100m of a body of water<br>• applies to any such facility within 1 km of boundary of a residential block/unit in a residential or commercial zone<br>• does not apply to small scale facilities such as wheelie bin enclosures |

**Clause 24 Schedule 4, part 4.3**

89. Clause 24 deletes Part 4.3 of schedule 4 and substitutes new Part 4.3.

90. Part 4.3 of schedule 4 lists certain environmental features, places or processes and requires certain actions which impact on these to be assessed in the impact track. In contrast Part 4.2 lists specific types of development which are assessable in the impact track. The list is intended to include matters which should be assessed in the impact track because of their scale, complexity and likely impact.

91. As noted in the overview, the changes to Part 4.3 include:

- revision of wording to introduce greater precision in the expression of thresholds
- use of the concept of *significant adverse environmental impact* including as appropriate provisions to permit the proponent to obtain an opinion from the relevant agency as to whether a proposal would cause significant adverse environmental impact
- revisions to ensure the list only includes those matters which warrant assessment in the impact track due to the level of their impact, scale and complexity

92. Some of the more significant new elements of new Part 4.3 are highlighted below.

| Item | Development proposal |
|---|---|
| 1 | Proposal that may impact on a species or ecological community etc …<br>Replaces existing items 1, 2 of Part 4.3 of schedule 4. New item is:<br>• only applies if the Conservator of Flora and Fauna considers the proposal is likely to have a significant adverse environmental impact on [(a) or (b) … (f)] |
| ~~2~~ | Proposal that is likely to contribute to a threatening process in relation to a species or ecological community.<br>• This item is deleted from new Part 4.3 as it is now covered in new item 1 of Part 4.3<br>• in its new location, this item only applies to proposals that the Conservator of Flora and Fauna considers is likely to have a significant adverse environmental impact on one of the features listed in item 1 of Part 4.3 |
| **Item** | **Development proposal** |
| 2 | Proposal involving clearing of native vegetation |

| Item | Development proposal |
|---|---|
| | Replaces existing item 3 of Part 4.3 of schedule 4. New item is:<br>• applies to clearing of more than 0.5ha of native vegetation on land other than land designated as a future urban area in the Territory Plan unless the conservator of flora and fauna produces an opinion that the clearing is not likely to have a significant adverse environmental impact<br>• applies to clearing of more than 5 ha of native vegetation on future urban area land unless the conservator of flora and fauna produces an opinion that the clearing is not likely to have a significant adverse environmental impact<br>• the above differential between future urban area land and other land reflects the fact that the variation of a Territory Plan to designate an area as future urban area land itself involves a level of assessment and public consultation and a set policy outcome which up to a certain threshold would make assessment in the impact track unnecessary and inappropriate |
| 3 | Proposal for development of land reserved for purpose of wilderness area, national park etc<br>Replaces existing item 4 of Part 4.3 of schedule 4. New item is:<br>• applies only to development proposals that the conservator of flora and fauna considers is likely to have a significant adverse environmental impact on the land |
| 4 | Proposal likely impacting on domestic water supply catchment, water use purpose, prescribed environmental value of a waterway<br>Replaces existing item 5 of Part 4.3 of schedule 4. New item is:<br>• only applies to proposals that are likely to have a significant adverse environmental impact |
| 5 | Proposal resulting in water extraction –<br>Replaces existing item 6 of Part 4.3 of schedule 4. New item is:<br>• in summary does not apply to properly designed stormwater or other waste water reuse schemes in urban areas<br>• does not apply to urban lakes, ponds or retardation basins or wastewater reuse schemes in existing urban areas or future urban areas which are designed in accordance with the water sensitive urban design general code in the Territory Plan |

| Item | Development proposal |
|---|---|
| 6 | Proposal that Heritage Council considers is likely to impact on place registered under *Heritage Act 2004*<br>Replaces existing item 7 of Part 4.3 of schedule 4. New item:<br>• only applies to proposals that the Heritage Council considers is likely to have a significant adverse environmental impact on the relevant place/object<br>• only applies to places or objects *registered* under the Heritage Act (does not apply to places/objects only nominated for provisional registration) |
| 7 | Proposal involving land that the environment protection authority considers may be contaminated …<br>Replaces existing item 8 of Part 4.3 of schedule 4. New item:<br>• only applies to development involving land that the environment protection authority considers may be contaminated in a way that is causing or likely to cause a significant risk of harm to people's health |
| 8 | Proposal that could affect the integrity of a site of environmental or ecological scientific research<br>Replaces existing item 9 of Part 4.3 of schedule 4. New item:<br>• does not apply to urban area or future urban areas under the Territory Plan |
| ~~10~~ | Proposal for an on-going commercial, aquatic, recreational activity on an urban lake or waterway<br>• This item is deleted from new Part 4.3 as it does not of itself necessarily warrant assessment in the impact track<br>• activities of this kind may still require assessment in the impact track if it is caught by another item in new Parts 4.2, 4.3 of schedule 4 (it may for example trigger item 1 of Part 4.3) |
| ~~11~~ | Proposal to vary a lease to change its concessional status<br>• this item is deleted from new Part 4.3 as it does not of itself necessarily warrant assessment in the impact track<br>• this will mean that development applications to de-concessionalise a lease will be assessed in the merit rather than the impact track<br>• note new s139(2)(l) (clause 8) will require applications for de-concessionalisation to attach an assessment of the social, cultural and economic impacts of the proposed variation<br>• a development application to de-concessionalise a lease cannot be decided until the Minister determines that it is in the public interest to consider the application (s261). New s261(2)(b) (clause 19) and new s261(2)(e) (clause 20) augment and clarify the factors that the Minister must consider in assessing the public interest under s261. |