2010

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT (ENVIRONMENTAL IMPACT STATEMENTS) AMENDMENT BILL 2010

EXPLANATORY STATEMENT

Circulated by authority of
Andrew Barr MLA
Minister for Planning

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Terms used in this Explanatory Statement

- "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

1. This bill amends the *Planning and Development Act 2007* as a result of decisions taken by the ACT Government in November 2009 and February 2010. This followed a joint review by the Government's Economic Stimulus Taskforce and ACTPLA of the operation of schedule 4 of the Act. Schedule 4 sets out the types of development activities and associated thresholds which are the 'triggers' for an EIS.

2. The bill refines these triggers in the light of experience since the introduction of the Act to ensure that the original intention of the Act that proposals likely to have a significant environmental impact should be subject to

development assessment in the impact assessment track and should be subject to the preparation of an EIS. A central purpose of the bill is to enable projects which are unlikely to have a significant environmental impact to be assessed in the merit track rather than the impact track. This will help reduce the cost of delivering in a timely manner important land release projects and associated infrastructure to the Canberra community.

3. Amending schedule 4 of the current legislation was necessary for the Act to more effectively achieve Government policy, particularly in ensuring that the development approvals process is flexible enough to match the level of assessment to the level of environmental impact. The proposed bill balances the need to achieve sustainable development for the ACT while at the same time keeping in place strong protections for the natural environment.

4. The Bill does not create or extend any offences and does not remove any existing rights and is consistent with the *Human Rights Act 2004*.

5. The key features of the bill are as follows:

<u>Clarification and refinement of the list of development types that are assessable in the impact assessment track</u>

6. This bill 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, and 4.3. The bill also makes a number of adjustments to the process required under chapter 8 of the Act for the preparation and completion of environmental impact statements, which must be attached to development applications in the impact track.

7. One of the key reforms behind the introduction of 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 by nature are likely to have a major environmental impact – this 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

8. This assessment system has worked well to date. However experience suggests that the list of development identified in schedule 4 to the Act as impact track assessable is set at too broad a level, and in a number of instances the wording is not sufficiently precise. As a result, schedule 4 is at risk of wording to catching projects that do not warrant assessment in this high end assessment track.

9. The amendments are aimed at ensuring that only development proposals which are likely to have a significant adverse impact on the environment will require an EIS. To this end, the bill amends schedule 4 and it does so through:

- a clarification of a number of items including revision of introduce greater precision in the expression of thresholds;
- a more focussed targeting of the reach of a number of items to ensure the list only includes those matters which warrant assessment in the impact track due to the likelihood of a significant adverse level of impact resulting from the scale, complexity and nature of the proposal;
- the use of the concept of *significant adverse environmental impact* including as appropriate provisions to permit the proponent to obtain an opinion (an *environmental significance opinion*) from the relevant agency as to whether a proposal is *not* likely to have a significant adverse environmental impact;
- the removal of a small number items from the list altogether.

.

<u>Removal of an item from the impact track does not mean the item will not be assessed</u>

10. This bill removes a number of development types from the impact track. The effect of such changes will be to shift the development assessment process for that type of development 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.

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

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

13. A merit application must be publicly notified and open to public comment. The application must also be assessed against the Territory Plan (e.g. code rules and merit criteria) and all of the applicable factors/criteria set out in ss119 and 120 of the Act. This includes assessment of the probable impact of the proposed development including the nature, extent and significance of probable environmental impacts. 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.*

14. 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).

15. The bill also revises schedule 4 to take account of the fact that in a number of instances substantial study of environmental impacts 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 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.

16. Also importantly, the Act will continue to provide that a proposal outside the impact track may 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). While schedule 4 covers most environmentally significant developments likely to be proposed in the ACT, it is not practicable for the schedule to anticipate every possible proposal. Exceptional projects not covered by the schedule could therefore trigger an EIS under ss124 or 125.

Significant adverse environmental impact

17. This is an important concept that is used frequently in the amended Act. The concept is used in the current Act in relation to s124 which allows the Minister to declare the impact track is applicable to a development proposal. In order to clarify the scope or application of a number of items in schedule 4, the bill broadens the applicability of the concept of significant adverse environmental

impact. The meaning of *significant adverse environmental impact* is set out in new s124A. In determining whether or not an impact is likely to be significantly adverse, a range of environmental factors must be considered, including the kind, size, frequency, intensity, scope and length of time of the impacts. The nature and significance of the affected environment must also be considered, particularly the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

18. The amendments will provide the flexibility for some development proposals which fall under schedule 4 to be assessed in the merit track, where the relevant agency provides an opinion that the proposal is not likely to result in a significant adverse environmental impact. Until now this has been a problem for some items in part 4.3 of schedule 4, where a proposal falls under the schedule 4, and even though it is clear the impact is likely to be minor, the Act has lacked discretion to deal with such a situation.

19. What is significant often depends very much on the context. For example, item 2(b) of new Part 4.3 of schedule 4 provides that clearing of more than 5ha of native vegetation on land designated as 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. In determining whether a particular proposal was unlikely to have such an impact it would generally be necessary to take into account the quality or integrity of the native vegetation. Native vegetation may be present anywhere along a continuous spectrum from near-to-natural vegetation to significantly degraded native pasture which contains only a low component of common native grasses among a groundcover dominated by exotic pasture species and weeds. That is, there are degrees of 'nativeness' where a decision on the significance of any impact will require an assessment of the value of native vegetation on the particular site against the broader context of the abundance, sensitivity and resilience of that vegetation type or ecological community in the ACT as a whole.

20. The bill provides a mechanism for the proponent to apply to the relevant agency for an opinion that a development proposal is not likely to have a significant environmental impact. The relevant agency must only provide such an opinion if it considers that the proposal is not likely to have a significant adverse environmental impact, otherwise it must reject the application (i.e. the default position is always that the relevant development proposal remains one that must be assessed in the impact assessment track). In considering an application the onus is on the proponent to provide a reasonable argument backed by evidence as to why the proposal will not have a significant adverse impact.

21. It is envisaged that this mechanism will be utilised where it is readily demonstrable that the environmental impact of a proposal is not likely to be significantly adverse. Where further investigations and environmental studies are needed, the bill provides for the relevant agency to require these be undertaken and for the costs of this and of arriving at a decision on an application for an opinion to be charged to the proponent. However, it is the

intention that where extensive or major further studies would be needed, the normal EIS process should apply. In these circumstances the relevant agency should simply be able to refuse the application and should not have to engage in a detailed argument as to why the proposal is likely to cause a significant adverse environmental impact. The decision maker should be able to rely on the fact that that if a proposal if of a type listed in schedule 4, then *prime facie* the development is deemed to be assessable in the impact track.

22. A summary of the mechanism provided in the bill for the relevant agency (in most cases, the Conservator of Flora and Fauna) and ACTPLA when dealing with an application for an environmental significance opinion is provided at the end of this overview section (see paragraphs 27 to 30). Note that this is a pre-application screening process to determine if certain matters listed in schedule 4 (development proposals requiring an EIS) can be taken out of the impact track and assessed in the merit track. It therefore occurs before an application for development approval can be made (i.e. lodged) with ACTPLA.

Improvements to the process for the preparation of environmental impact statements

23. 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 of the Act.

24. The bill makes a small number of changes to make the process for the preparation and completion of the 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 (i.e. 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 (as discussed above)
- limit to twice 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 requirements of the scoping document.
- permit relevant agencies such as the Conservator to recover the costs incurred in providing an opinion on environmental significance and for ACTPLA to recover the costs associated with assessment of an EIS, including engaging consultants to assist in the assessment.

Concessional leases

25. 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 i.e. “de-concessionalisation”. 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).

26. New Part 4.2 of schedule 4 (clause 29) 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 the cost of the preparation of an environmental impact statement this involves. To ensure that development applications for such matters are still fully assessed new s139 (2) (l) (clause 11) 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 24, 25).

Summary of procedure for an environmental significance opinion

27. It should be noted that seeking an environmental significance opinion *is* a pre-application screening process to determine the assessment track that will apply to an application for development approval. As such the opinion must be sought (if relevant) prior to the submission of an application for development approval.

28. How the relevant agency must deal with an application for an opinion

- relevant agency receives application for an environmental significance opinion (s138AA(2)) from proponent of a development listed in schedule 4 of the Act (applies to items listed at s138AA) if proponent believed the development was not likely to have a significant adverse environmental impact;
- relevant agency receives application and must consider whether the proposed development was not likely to have a significant adverse environmental impact (assessed against s124A);
- relevant agency can require by written notice that the applicant provide further information (s138AB (1) & (2))
- if the requested further information is not provided within time specified by notice, the agency may refuse to decide application (s138AB(3));
- if agency refuses to decide the application, both the applicant and ACTPLA must be notified in writing (s138AB(5));
- relevant agency is deemed to have rejected the application if the opinion is not provided within the time periods specified in s138AB (6);
- the relevant agency must reject the application unless it the considers that the proposal is not likely to have a significant adverse environmental impact (s138AB(4)(b));

- if the application is rejected, the development application must be made and assessed in the impact track, and an EIS will be required.

29. When the relevant agency may give an opinion

- if the relevant agency considers that the proposed development is not likely to have a significant adverse environmental impact it must give an opinion to that effect to the applicant (s138AB(4)(b));
- when the agency gives an opinion to the applicant, it must also give a copy to ACTPLA (s138AD(2));
- a relevant agency may recover from an applicant the costs incurred in deciding and preparing an opinion (s138AC(1));
- if the agency has sent an invoice for costs to the applicant, it must also give a copy to ACTPLA (s138AC(2);
- the relevant agency may withhold giving an opinion (or a notice of rejection) to the applicant until the invoice has been paid (s138AC (3)).

30. What ACTPLA must do if an opinion is given

- when ACTPLA receives a copy of an opinion from the relevant agency it must prepare a notice of the text of the opinion (s138AD(3)) and notify this under the *Legislation Act* (s138AD(4));
- ACTPLA must put a link to the notice on its website (s138AD(5));
- the opinion and notice are in force for 18 months from the date the opinion is notified (s138AD(6));
- if the applicant wants the development proposal to which the opinion applies to be assessed in the merit track on the basis of the opinion the applicant must attach to the development application both the opinion for the proposal and proof of payment of any costs invoiced by the relevant agency (s139(2)(m));
- if the requirements of s139 (2) (m) (and any other applicable matters) are met, ACTPLA can accept the application for assessment in the merit track (see s113 (1A)) and an EIS would not be required.

Summary of procedure for completion of an EIS

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

32. 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:

- proponent applies to ACTPLA for a scoping document (s212)
- ACTPLA prepares a scoping document setting out the matters that must be addressed in the EIS (s212). New s212 (2A) makes the scoping document a notifiable instrument which expires in 18 months after the day it is notified (s215). 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).

- proponent prepares a draft EIS and gives the draft to ACTPLA. The draft EIS must cover all matters raised in the scoping document.
- ACTPLA publicly notifies the draft EIS (s217)
- draft EIS is available for public comment for at least 20 working days (s218, 219)
- after the public notification period ends, the proponent revises the draft EIS taking into account the public comments (s221)
- proponent provides the revised draft EIS to ACTPLA (s222)
- ACTPLA considers whether the revised draft adequately addresses all matters covered by the scoping document and raised in public comments
- if ACTPLA is satisfied that the revised draft EIS is complete:
    i. it gives this and its assessment report to the Minister (ss222, 225). The assessment report is a notifiable instrument which expires in 18 months after the day it is notified (new s225A);
    ii. is not satisfied it must give the proponent no more than two opportunities to address the concerns. If after the second attempt ACTPLA remains unsatisfied it must reject the EIS (new s224A). If the EIS is rejected a second time, the EIS does not go to the Minister and the EIS process is effectively terminated.
- the Minister must consider the revised draft EIS and decide whether to:
    i. take no further action and inform ACTPLA of this (s226)
    ii. present the draft EIS to the Legislative Assembly (ss226, 227)
    iii. appoint an inquiry panel to consider and report on the draft EIS (ss226, 228)
- the revised draft EIS becomes a "completed EIS" if:
    i. the Minister informs ACTPLA that no further action will be taken (ss209A(1), 226); or
    ii. 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)
    iii. 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)
- the completed EIS must be attached to the application for development approval (s139 (2) (f)).

Bill provisions in detail

Clause 1 Name of Act

33. 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

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

Clause 3 Legislation amended

35. Clause 3 notes that the Bill amends the *Planning and Development Act 2007.* The Bill also amends the *Planning and Development Regulation 2008* (see clause 34)

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

36. Clause 4 inserts new sections 113(1A) and 113(1B).

37. For the purposes of development assessment the Act recognises the following categories:
    - exempt development proposals (i.e. 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 (highest level assessment for more complex proposals likely to have significant adverse environmental impacts)
    - prohibited development, development that is prohibited and cannot be the subject of a development application or approval

38. 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 with ACTPLA. 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).

39. 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.

40. 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 proposal is unlikely to have a significant adverse environmental impact. 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.

41. 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 Impact track applicability
Section 123 (b), new note

42. This clause inserts an explanatory note.

Clause 6 Minister may declare impact track applicable
Section 124 (3) and (4)

43. This clause omits old s124 (3) and (4) as a consequence of new s124A (clause 7)

Clause 7 New section 124A
Meaning of significant adverse environmental impact

44. Clause 7 creates a new s124A which takes the meaning of significant adverse environmental impact as set out in the current s124 (3) and (4) of the Act and applies this to the Act as a whole, including the new Division 7.3.1 and Schedule 4. Previously this applied to s124 (2) and the circumstances under which the Minister could declare under s124 (1) that the impact track applies to a development proposal. The meaning of significant adverse environmental impact has not been changed, but consistent use of the term brings a measure of clarity and precision to the provisions to which it applies, particularly schedule 4.

Clause 8 Division 7.3.1 New heading
Pre-application matters

45. Clause 8 omits the existing heading to Division 7.3.1 and substitutes a new heading as a consequence of new s138AAA (clause 9).

Clause 9 New sections 138AAA to 138AD

46. Clause 9 inserts new sections 138AAA, 138AB, 138AC, 138AD.

New s138AAA Impact track proposals if not likely to have significant adverse environmental impact

47. 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 29 and 30 of the bill.

48. New parts 4.2 and 4.3 of schedule 4 (clauses 29, 30) identify a number of development types that must be assessed in the impact track unless the relevant agency provides an opinion that the proposal is not likely to have a significant adverse environmental impact (an *environmental significance opinion*).

49. New section 138AAA (1) states which development types included in schedule 4 can be the subject of an opinion by a relevant agency, including:

- new part 4.2, items 3(c), 3(d)
- new part 4.3, items 1, 2(a), 2(b), 3, 6

The relevant agency is indicated in the item in the schedule. It is the Conservator of Flora and Fauna or the Heritage Council (for item 6, part 4.3).

50. New s138AAA (2) permits applications to be made to the relevant agency for an opinion that a development proposal is not likely to have a significant adverse environmental impact. This can be used to have the development application assessed in the merit track under new s139 (2) (m).

51. ACTPLA may approve (s425) a form to be used when applying for an opinion. If a form is approved by ACTPLA, this form must be used for the application (s425 (2)). An approved form is a notifiable instrument.

New s138AB Deciding environmental significance opinion application

52. New s138AB permits a relevant agency to require further information from the applicant (s138AB (3)). If further information is required the agency must give the applicant at least 20 working days to respond (s138AB (2)). If the requested further information is not provided within that time, then the relevant agency is entitled to refuse to decide the application (s138AB (3)).

53. The relevant agency must only give an opinion if it considers that the proposal is not likely to have a significant adverse environmental impact (s138AB (4) (a)) otherwise it must reject the application. If it rejects an application the relevant authority must give a written notice of this to both the applicant and ACTPLA (s138AB (5)). The meaning of significant adverse environmental impact is set out in new s124A. Refer to clause 7 for details on the meaning of this term and to the notes at paragraphs 12-16 for an explanation of its intended application.

54. The relevant agency is deemed to have rejected an application for an opinion if it does not give the opinion, or notice of rejection, within 30 working days of:

- the lodgement of the application (s138AB(6)(a)) if no additional information is requested by the agency; or
- the date that further information is provided, if further information was requested (s138AB(6)(b); or
- the time stated for giving of further information and that information has not been provided to the agency (s138AB(6)(c)

If an application is deemed to have been rejected under s138AB (6), the relevant agency may still choose to decide an application (s138AB (7)).

New s138AC Costs of environmental significance opinion

55. The relevant agency can recover the direct and indirect costs incurred by it in deciding an application or preparing an opinion, including the costs of obtaining assistance from a consultant (s138AC (1)).

56. If the relevant agency sends an applicant an invoice for recovery of costs related to an opinion, then it must also give a copy to ACTPLA (s138AC(2)). Refer to clause 11 (new s139(2)(m)) – a proponent who wishes to rely on an environmental significance opinion to have a development application assessed in the merit track must provide both the opinion *and* proof of payment of any invoiced costs to ACTPLA before it can accept the application.

57. New s138AC (3) provides that relevant agency may wait until it has received payment for invoiced costs before giving an opinion or notice of rejection under s 138AB.

New s138AD Requirements in relation to environmental significance opinions

58. If the relevant agency provides an opinion to an applicant under s138AB (4) it must at the same time give a copy of the opinion to ACTPLA. (s138AD (2).

59. When ACTPLA receives a copy of an opinion from the relevant agency ACTPLA must:
    - prepare a notice which includes the text of the opinion (s138AD(3); and
    - place a link to the notice on its website (s138AD(5);

60. The notice is a notifiable instrument (s138AD (4)), and both the notice and the environmental significance opinion expire 18 months from the date the notice is notified. (s138AD (6)).

61. For the avoidance of doubt, new s138AD states that the giving of an environmental significance opinion does not limit any power of the relevant agency under any ACT law.

Clause 10 Form of development applications Section 139 (2) (f) (ii)

62. Clause 10 deletes s139 (2) (f) (ii) and substitutes new s139 (2) (f) (ii). Refer also to new note 2 to s210 (clause 13) and new s211 (2) (clause 14).

63. 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 on the grounds that the expected environmental impact has been sufficiently addressed by another study.

Clause 11 New sections 139(2) (l) and (m)

64. Clause 11 inserts new sections 139(2) (l) and 139(2) (m).

New s139 (2) (l)

65. Refer also to new sections 261(2)(b) and 261(2)(e) (clauses 24 and 25)

66. Removal of the concessional status of a lease is a lease variation which requires a development application (s260). Under existing item 11, part 4.3, schedule 4 and s123 a development proposal to remove the concessional status from a concessional lease is assessable under the impact track. The bill removes this item from new part 4.3, schedule 4 (clause 30) and as a result de-concessionalisation will not be assessable in the impact track but will instead be assessable in the merit track.

67. Removing this item from the impact track means that it will not be necessary to prepare an EIS prior to lodgement of a development application to remove the concessional status of a lease. New s139(2)(l) requires instead that an application for approval of de-concessionalisation must attach an *assessment of the social, cultural and economic impacts* of the de-concessionalisation, as well as addressing any other matter required by regulation. These changes ensure that the level and content of the assessment of such applications is more appropriately focused.

68. 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 24, 25).

New s139 (2) (m)

69. Refer also to new Division 7.3.1 - Pre-application matters (clauses 8 and 9).

70. New s139 (2) (m) requires an applicant who wants a development application to be assessed in the merit assessment track on the basis of an environmental significance opinion obtained under new s138AA (clause 9) to attach both a copy of the opinion and proof of payment of any costs invoiced by the agency under new s138AA (7) to the development application.

71. The requirements for what must be included in an application for development approval are set out in s139. New s139 (2) (m) (clause 11) 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 (s139 (2)(m)).

Clause 12 What is an *EIS* and a *s125-related EIS*?
Section 210, new note

72. Clause 12 inserts a new note for s208.

73. This is a technical change made for clarity.

Clause 13 When is a completed EIS required?
Section 210, new note 2

74. Clause 13 inserts a new note 2 for s210. Refer also to new s139(2)(f)(ii) (clause 10)

75. This is a technical change made for clarity.

Clause 14 EIS not required if development application exempted
New section 211 (2)

76. Clause 14 inserts new s211 (2), (3), (4) and (5). Refer also to new s139 (2) (f) (ii) (clause 10).

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

78. New s211 (2) makes an exemption a notifiable instrument, and new s211 (5) specifies that an exemption expires 18 months after it is notified. New s211 (4) requires ACTPLA to put a link to the exemption on its website.

79. New s211(3) permits the making of regulations to set out criteria that the Minister must take into account in assessing whether there have already been sufficient studies for the purposes of s211.

Clause 15 Scoping of EIS
New section 212 (2A)

80. Clause 15 inserts a new s212 (2A) which makes a scoping document a notifiable instrument.

81. A scoping document must be obtained from ACTPLA by a proponent for a development proposal in the impact track and which requires a completed EIS (s212 (1)). A scoping document sets out what matters must be addressed by the EIS (s212 (2)).

Clause 16 New section 212 (4)

82. Clause 16 inserts a new s212 (5) requiring ACTPLA to put a link to the scoping document on its website.

Clause 17 Section 215
Term of scoping document

83. Refer also to clause 15 (s212 (2A)). Clause 17 deletes s215 and substitutes a new s215.

84. Clause 17 provides that the scoping document expires 18 months after it is notified.

Clause 18 Authority consideration of EIS
Section 222 (2) (b)

85. Clause 18 deletes s222 (2) (b) and substitutes new s222 (2) (b), 222(2) (c). Refer also to new s224 (1) (clause 19), s224A (clause 20).

86. 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).

87. New s222 (2) (b), s222 (2) (c) (clause 18), s224 (1) (clause 19) and s224A (clause 20) together amend the above process to the following effect. Under these new sections ACTPLA can consider a revised draft EIS given to it by the proponent under s222 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, s222)
- 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.

88. If the above situation occurs i.e. 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 19) applies. Under new s224A (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 20).

89. New ss222 (2) (b), 222(2) (c) (clause 18) incorporates the above new process i.e. it recognises that a revised draft EIS may be rejected by ACTPLA under new s224 (1), 224A (2).

90. 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 19 Chance to address unaddressed matters
Section 224 (1)

91. Clause 19 deletes s224 (1) and substitutes new s224 (1). Refer also to new ss222 (2) (b) (clause 18), s224A (clause 20).

92. 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 20). Refer to paragraphs 76 to 78 for more detail.

Clause 20 New section 224A and section 224B

s224A Rejection of unsatisfactory EIS

93. Clause 20 inserts new ss224A, 224B. Refer also to new sections 222(2) (b) (clause 18) and 224(1) (clause 19).

94. 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. .

224B Cost recovery

95. 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 23)

96. The revised draft EIS cannot be forwarded to the Minister until any invoice issued under new s224B is paid (new s225 (1A) (clause 21)).

Clause 21 Giving EIS to Minister
Section 225 (1)

97. Clause 21 deletes s225 (1) and substitutes new ss225 (1), 225(1A).

98. The revised draft EIS cannot be forwarded to the Minister until any invoice issued under new s224B (clause 20) is paid (new s225 (1A)). The draft EIS therefore cannot be completed until the invoice is paid.

Clause 22 Section 225 (3)

99. Clause 22 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 23 New section 225A

100. Clause 23 inserts new s225A.

101. New section 225A applies if the proponent provides ACTPLA with a revised draft EIS (following the public notification period) and ACTPLA accepts the revised draft EIS as complete under s222(2)(a). In this case, ACTPLA must forward the EIS to the relevant Minister (s225 (3)).

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

103. New section 225A also provides that:
- the assessment report is a notifiable instrument (s225A(2))
- ACTPLA must put a link to the assessment report on its website (s225A(4))
- The assessment report expires 18 months after it is notified (s225A (5)).

Clause 24 No decision on application unless consideration in public interest
Section 261 (2) (b)

104. Clause 24 deletes s261 (2) (b) and substitutes new s261 (2) (b). Refer also to new s139 (2) (l) (clause 11), new s261 (2) (e) (clause 25).

105. 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).

106. 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.

107. 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 30). Refer to new s139 (2) (l) (clause 11) for more details.

Clause 25 New section 261 (2) (e) and note

108. Clause 25 inserts new s261 (2) (e) with a new note. Refer also to new s139 (2) (l) (clause 11), new s261 (2) (b) (clause 24).

109. 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).

110. 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 26 New section 446B

111. Clause 26 inserts a new s446B. Refer also to clause 11 (new s139 (2) (l)).

112. Clause 30 deletes part 4.3, schedule 4 and replaces it with a new part 4.3. The current item 11 in part 4.3 requires that the de-concessionalisation of a lease be assessed in the impact track. Clause 30 will have the effect that the de-concessionalisation of a lease will no longer be assessable in the impact track but will instead be assessable in the merit track.

113. New s446B is a transitional provision which will allow a revised EIS (s221) which has been prepared by a proponent before the commencement of the amendments to part 4.3, schedule 4 (clause 30) to be taken as complying with requirements to attach an assessment of the social, cultural and economic impacts of the proposed de-concessionalisation as required under new s139 (2) (l) (i). This will allow the social assessment work completed for an EIS to be considered by ACTPLA and avoid the need for the proponent to submit new documentation.

Clause 27 Definitions —sch 4
Schedule 4, section 4.1, new definitions

114. Clause 27 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 29), 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 28 Schedule 4, section 4.1, definition of *threatening process*

115. Clause 28 deletes the current definition of a threatening process and replaces it with a reference to the definition used in the dictionary of the *Nature Conservation Act 1980*. This is a technical amendment.

Clause 29 Schedule 4, part 4.2

Development proposals requiring EIS – activities

116. Part 4.2 of schedule 4 lists specific types of development which are assessable in the impact track due to the likelihood of development proposals of this kind having a significant adverse environmental impact. The list is intended to only include matters which should be assessed in the impact track because of their likely impact due to scale, complexity and nature. Part 4.2 differs from Part 4.3 in that it applies to specific project types (e.g. a high voltage electricity transmission line, a water storage dam, etc). In contrast, Part 4.3 lists certain places, processes or environmental features, and requires development proposals which may have a significant adverse impact on these to be assessed in the impact track.

117. Clause 29 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 outlined below.

118. As noted in the overview, the changes to Part 4.2 include:

- a clarification of a number of items including revision of wording to introduce greater precision in the expression of thresholds;
- a more focussed targeting of the reach of a number of items to ensure the list only includes those matters which warrant assessment in the impact track due to the likelihood of an significant adverse level of impact resulting from the scale, complexity and nature of the proposal;
- the use of the concept of *significant adverse environmental impact* including as appropriate provisions to permit the proponent to obtain an opinion (an *environmental significance opinion*) from the relevant agency as to whether a proposal is *not* likely to have a significant adverse environmental impact;
- the removal of a small number items from the list altogether

119. Some of the more significant new elements of new Part 4.2 are summarised below.

Item	Development proposal
1	Construction of a transport corridor – Replaces existing item 1 of Part 4.2 of schedule 4. New item: • 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 substantial level of assessment and public consultation and a set policy outcome which makes assessment of this sort of basic infrastructure in the impact track unnecessary and inappropriate • applies to proposals in other areas which are likely to have a significant adverse environmental impact on air quality or ambient noise or vibration so as to be detrimental to human health.
2	Electricity generating stations – Replaces existing item 2 of Part 4.2 of schedule 4. New item: • puts all coal powered generating stations in impact track • other generating stations are in impact track if capable of supplying 4MW or such other amount or having other such characteristics as prescribed by regulation.
3	Construction of water storage dam Replaces existing item 3 of Part 4.2 of schedule 4. New item: • includes more precise parameters to define large dams • applies to any construction in a river corridor zone unless the conservator of flora and fauna produces opinion that the proposal is not likely to have a significant adverse environmental impact • 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 Replaces existing item 4 of Part 4.2 of schedule 4. New item: • excludes helicopter landing facilities used exclusively for emergency services

Item	Development proposal
5	Construction of a waste water treatment plant Replaces existing items 5 (sewage) and 12 (wastewater) of Part 4.2 of schedule 4. New item amalgamates previous items 5 and 12: • retains most previous capacity thresholds (i.e. than 100ML wastewater/year; 750kL/day or 2500 people equivalent/day; store more than 1 kt etc) • applies to any plant within 1km of boundary of a residential block in a residential or commercial zone • excludes on-site residential treatment plants • excludes smaller scale treatment plants other than those prescribed by regulation • excludes treatment of stormwater
6	Construction of a petroleum storage facility. Replaces existing item 7 of Part 4.2 of schedule 4, but retains the existing threshold
Deleted item	Construction of a correctional centre – was item 6 of Part 4.2 is omitted in new Part 4.2 • such a project does not in and of itself warrant assessment in the impact track; • 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 • 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 Replaces existing item 8 of Part 4.2 of schedule 4. New item: • applies to the construction of any permanent motor racing venue • proposals for other permanent venues covered in existing item 8 do not in necessarily warrant assessment in the impact track; but 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 • other legislation would also apply such as the *Environment Protection Act 1997*.
8	Use of land for commercial landfill facility Replaces existing item 9 of Part 4.2 of schedule 4. New item: • retains capacity thresholds of existing item • applies to any such facility within 1 km of boundary of a residential block/unit in a residential or commercial zone • does not apply to virgin excavated natural material (or similar earth and rock fill) • does not apply merely because the landfill will be within 100m of a body of water or in a domestic water supply catchment – these factors of themselves do not warrant impact track assessment
9	Construction of a waste management facility Replaces existing item 10 of Part 4.2 of schedule 4, but retains the existing thresholds

Item	Development proposal
10	Waste transfer station or recycling facility Replaces existing item 11 of Part 4.2 of schedule 4. New item: • retains capacity thresholds of existing item • applies to any such facility within 1 km of boundary of a residential block/unit in a residential or commercial zone • does not apply merely because the facility will be within 100m of a body of water – of itself this do not warrant impact track assessment • does not apply to small scale facilities on or near a residential block or used by residents such as wheelie bin enclosures, small recycling enclosures etc

Clause 30 Schedule 4, part 4.3

Development proposals requiring EIS – areas and processes

120. Clause 30 deletes Part 4.3 of schedule 4 and substitutes new Part 4.3.

121. Part 4.3 of schedule 4 lists certain places, processes or environmental features, and requires proposals which are likely to have a significant adverse environmental impact on these to be assessed in the impact track. In contrast Part 4.2 lists specific types of development (e.g. a commercial landfill, construction of a high voltage electricity transmission line) which are assessable in the impact track because of their likely impact due to scale, complexity and nature.

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

- a clarification of a number of items including revision of wording to introduce greater precision in the expression of thresholds;
- a more focussed targeting of the reach of a number of items to ensure the list only includes those matters which warrant assessment in the impact track due to the likelihood of a significant adverse level of impact resulting from the scale, complexity and nature of the proposal;
- the use of the concept of *significant adverse environmental impact* including as appropriate provisions to permit the proponent to obtain an opinion (an *environmental significance opinion*) from the relevant agency as to whether a proposal is *not* likely to have a significant adverse environmental impact;
- the removal of a small number items from the list altogether

123. Some of the more significant new elements of new Part 4.3 are summarised below.

Item	Development proposal
1	Proposal that may impact on an endangered species or ecological community etc. Replaces existing items 1 and item 2 of Part 4.3 of schedule 4. New item: • applies to any proposal that is likely to have a significant adverse environmental impact on any matter listed, unless the Conservator of Flora and Fauna produces an opinion that the proposal is not likely

Item	Development proposal
	to have a significant adverse impact • existing item 2 (proposal likely to contribute to a threatening process in relation to a species or ecological community) is covered by new item 1(e)
2	Proposal involving clearing of native vegetation Replaces existing item 3 of Part 4.3 of schedule 4. New item: • 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 • applies to clearing of more than 5 ha of native vegetation on land designated as a future urban area unless the Conservator of Flora and Fauna produces an opinion that the clearing is not likely to have a significant adverse environmental impact • the differential in thresholds 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 the specified 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 Replaces existing item 4 of Part 4.3 of schedule 4. New item: • applies unless the Conservator of Flora and Fauna considers that the proposal is not likely to have a significant adverse environmental impact
4	Proposal likely to have a significant adverse environmental impact on a domestic water supply catchment, or a water use purpose or prescribed environmental value under the water use and catchment code in the Territory Plan Replaces existing item 5 of Part 4.3 of schedule 4. New item • in substance item remains the same as the existing item 5 • wording has been clarified to ensure consistent application of significant adverse environmental impact concept
5	Proposal likely to result in environmentally significant water extraction or consumption Replaces existing item 6 of Part 4.3 of schedule 4. New item: • 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 is likely to have a significant adverse impact on the heritage significance of a place or object registered under *Heritage Act 2004* Replaces existing item 7 of Part 4.3 of schedule 4. New item: • applies to proposals likely to have a significant adverse impact on the relevant place/object, unless the Heritage Council produces an opinion that the proposal is not likely to have a significant adverse impact • only applies to place/object *registered* under the *Heritage Act 2004* (i.e. item does not apply to places/objects which have only been nominated for provisional registration)
7	Proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*. Replaces existing item 8 of Part 4.3 of schedule 4. New item: • only applies to development involving land that is included in the register (note: land is included in the register only if it is contaminated in a way that is causing or likely to cause a significant risk of harm to people's health or the environment
8	Proposal with potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is conducted by an entity prescribed by regulation Replaces existing item 9 of Part 4.3 of schedule 4. New item: • does not apply to an existing urban area or future urban area under the Territory Plan
Deleted item	Proposal for an on-going commercial, aquatic, recreational activity on an urban lake or waterway • item is deleted from new Part 4.3 as it does not of itself necessarily warrant assessment in the impact track • a 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 location
Deleted item	Proposal to vary a lease to change its concessional status • this item is deleted from new Part 4.3 as it does not of itself warrant assessment in the impact track • development applications for de-concessionalisation of a lease will be assessed in the merit rather than the impact track • note new s139(2)(l) (clause11) will require applications for de-concessionalisation to attach an assessment of the social, cultural and economic impacts of the proposed variation • 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). Refer also to clauses 24 and 25 augment and clarify the factors that the Minister must consider in assessing the public interest under s261.

Clause 31 Dictionary, note 2

124. Clause 31 is a technical amendment to add the Heritage Council to the list of at note 2 in the *Planning and Development Act* Dictionary. Note 2 lists examples of terms and entities defined in the *Legislation Act*.

Clause 32 Dictionary, new definitions

125. Clause 32 inserts several new definitions into the *Planning and Development Act* Dictionary, including environmental significance opinion, relevant agency, and significant.

Clause 33 Dictionary, definition of threatening process

126. Clause 33 inserts a definition of threatening process into the *Planning and Development Act* Dictionary, by reference to the *Nature Conservation Act 1980* Dictionary.

Clause 34 Planning and Development Regulation 2008, Section 54 (1) (e)

127. Clause 34 is a consequential amendment of the from the Planning and Development Regulation 2008. It deletes s54 (1) (e) of the regulation. Section 54 sets out the requirements for the content of the scoping document. S54(1)(e) provides that if a scoping document relates to a development proposal to vary a lease to change its concessional status, then the scoping document must specify what issues are to be addressed in the EIS in relation to the social impact of the proposed deconcessionalisation. The Bill deletes item 11, part 4.3, from schedule 4, with the effect that a development application for a de-concessionalisation would be assessed in the merit track, and hence not require an EIS.