

**2013**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (TERRITORY PLAN VARIATIONS)  
AMENDMENT BILL 2013**

**EXPLANATORY STATEMENT**

**Presented by  
Mr Simon Corbell  
Minister for Environment and Sustainable Development**

This explanatory statement relates to the *Planning and Development (Territory Plan Variations) Amendment Bill 2013* (the bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

## **Background**

The Territory Plan forms the policy framework for the administration of planning in the Australian Capital Territory. The Territory Plan includes a statement of strategic directions. The function of the strategic statement is to: contain broad strategic planning principles to guide the long term planning for the ACT; guide the preparation and making of variations to the Territory Plan; and to guide environmental impact statements, planning reports and strategic environmental assessments.

The Territory Plan contains a map that sets out zones and precincts in the territory, the objectives and development tables applying to each zone, and a series of general, development and precinct codes. The Territory Plan also contains structure plans and concept plans for the development of future urban areas. The statutory requirements for the Territory Plan are set out in the *Planning and Development Act 2007*, primarily in Chapter 5.

Chapter 5 outlines the process for management of the Territory Plan. It includes provisions about how the plan can be amended, requirements for community and entity consultation, the role of the Minister and planning and land authority, when a draft plan variation is referred to a committee of the Legislative Assembly, and how amendments come into effect.

The Planning and Development Act provides for two broad categories of Territory Plan variation processes. Part 5.3 of the Act addresses variations to the Territory Plan other than technical amendments. Part 5.4 deals with technical amendments.

In addition to this, Part 5.5 (Plan variations – structure plans and rezoning) addresses related matters associated with future urban areas and related consequences of the approval of an estate development plan (EDP). An EDP is assessed through the development application process prescribed in the Act. The bill amends the heading to Part 5.5 to better reflect the amended operation of the Part.

## **Overview of Bill**

These amendments have been made to improve the management of the Territory Plan. The purpose of these amendments is to clarify existing legislative requirements in relation to future urban areas and estate development plans. The amendments also make current processes for updating and maintaining the Territory Plan more efficient.

The amendments confirm that the existing power to rezone land in future urban areas includes the power to introduce or amend the codes that will apply to the land.

The amendments also make it clear that an estate development plan can apply to land that is not within a future urban area and can include on-going provisions for inclusion in the Territory Plan.

The amendments also extend the public consultation periods for Territory Plan variations, including technical amendments.

Because of the technical legislative nature of the proposed changes, a regulatory impact statement is not required. The proposed amendments enhance the existing provisions and do not impose any burdens on the community.

#### Future urban areas rezoning and precinct code

A future urban area (FUA) reflects the indicative planning for an area and may initially show little detail. Overtime however planning studies are completed and it becomes appropriate to amend the zoning in a FUA to reflect these studies. The planning study must be consistent with the structure plan for the area.

When rezoning an area, a precinct code can be established. If one already exists, it can be amended. The progression of planning for the new Molonglo Valley demonstrated the variations to the zoning (and rezoning) of the area to reflect detailed planning studies.

#### Future urban areas and estate development plans

A future urban area is an area of Territory land identified in the Territory Plan as an area for future urban development. The community may understand these areas as *new estates*. A future urban area is understood to be an area that will undergo change and will be developed over time.

Historically new estates were developed in greenfield areas i.e. land that has not been developed. However this is changing and new estates may be developed in existing developed areas. For instance, an area may already be developed as residential but over time and in response to changing community needs the area may undergo redevelopment. This redevelopment may change the area from an area where the predominate housing type is a single dwelling to one that includes a higher intensity of residential development e.g. apartments and may include commercial zones and community facility zones. Another example may be an existing undeveloped part of a developed area being developed. The Molonglo Valley development is an example of new estate development occurring adjacent to existing developed areas.

The Act sets out the requirements for an estate development plan and the plan is approved under the development application processes. The estate must be consistent with the Territory Plan.

### Estate development plans and ongoing provisions

The amendments address the issue of ongoing provisions in estate development plans.

An estate development plan can include such things as design and construction requirements for roads, infrastructure, reticulated services and ongoing provisions.

An ongoing provision is something that is allowed by the Territory Plan and that the proponent identifies should be ongoing for the estate. An ongoing provision may also be identified by the planning and land authority. The ongoing provision must be consistent with the Territory Plan and is approved as part of the plan through the development application process. For example, the Residential Subdivision Development Code, Criterion 109 requires proponents to identify blocks that need to meet the requirements in the Planning for Bushfire Risk Mitigation General Code. This requirement would be identified in the EDP, and if approved the Territory Plan is amended to show this ongoing provision in precinct code for the estate.

In this way the community and industry understand the planning rules and controls for particular areas in new estates.

### Plan variations – community consultation – increase in consultation timeframes

The amendments increase community consultation timeframes for a draft plan variation from 15 working days to 30 working days. This means that the community has longer to consider proposed amendments and to make comment on those amendments.

The amendments increase the community consultation timeframes for a technical amendment that must complete limited consultation. The timeframe is increased from 15 working days to 20 working days.

The amendments also increase community consultation timeframes for development applications involving estate development plans with ongoing provisions identified by the proponent. Where a development application is for an estate development plan for a future urban area and contains an ongoing provision, consultation has been increased from 10 working days to 20 working days. Where a development application is for an estate development plan for a non-future urban area and contains an ongoing provision, consultation has been increased from 15 working days to 20 working days.

## Outline of Provisions

### Part 1 - Preliminary

#### Clause 1 — Name of Act

This clause names the Act as the *Planning and Development (Territory Plan Variations) Amendment Act 2013*.

#### Clause 2 — Commencement

This clause provides that the Act commences on the day after its notification day.

#### Clause 3 — Legislation amended

This clause provides that the Act amends the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*.

### Part 2 - Planning and Development Act 2007

#### Clause 4 — Public consultation – notification, Section 63(1)(a)

This clause amends section 63(1)(a).

Section 63 relates to public consultation on draft plan variations. This clause amends section 63(1)(a) to increase the period of time that copies of the draft variation and background papers are available for public inspection.

The amendment increases the consultation period from 15 working days to 30 working days.

#### Clause 5 — What are *technical amendments* of Territory Plan? Section 87(c)

This clause substitutes existing section 87(c) and inserts a new section 87(ca).

Section 87 prescribes the types of Territory Plan variations that are technical amendments. Existing s87 includes amendments under section 95 and s96. However, because section 88 provides that limited consultation is required for only an s95 technical amendment it is beneficial to split the existing section into two subsections. This does not affect the operation of the provision.

New section 87(c) provides that a variation in relation to a future urban area under section 95 (Technical amendments – future urban areas) is a technical amendment. A new note is inserted, which provides that a variation to rezone land that is not a future urban area is not a technical amendment. This makes it clear that a technical amendment under s95 must be for an area that is a future urban area.

New 87(ca) provides that a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) is a technical amendment.

#### Clause 6 — Is consultation needed for technical amendments? Section 88(1)(b)

This clause substitutes existing subsection (1)(b) with a new subsection (1)(b) to reflect the new heading at section 95 made by clause 16. The clause also inserts new subsection (1)(ba).

Section 88 sets out the consultation requirements for technical amendments. Section 88(1) provides that only limited consultation is required for the following technical

amendments: a code variation, a variation in relation to a future urban area under section 95 (Rezoning – future urban areas) (amended by clause 16), a variation to clarify the language of the Territory Plan if it does not change the substance of the plan, and a variation to relocate a provision within the Territory Plan if the substance of the provision is not changed.

New section 88(1)(ba) provides that only limited consultation is required for a variation in relation to an estate development plan under section 96 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 94(3)(h). Section 94(3)(h) was inserted into the Act in a related amendment at clause 14.

#### **Clause 7 — Limited consultation, Section 90(4)**

This clause amends section 90(4).

Section 90 sets out requirements for limited consultation on technical amendments to the Territory Plan.

This amendment increases the public consultation period from 15 working days to 20 working days.

#### **Clause 8 — Part 5.5 heading**

This clause substitutes the existing heading of Part 5.5.

The existing heading of Part 5.5 ‘Plan variations – structure plans and rezoning’ does not reflect the amended operation of the Part. This clause amends the heading to ‘Plan variations – structure and concept plans, rezoning and estate development plans.’

This amendment provides a more specific description of the matters contained in Part 5.5, and clarifies that this Part includes concept plans and estate development plans.

#### **Clause 9 — What is a *concept plan*? Section 93(b)**

This clause substitutes existing section 93(b).

Section 93 defines a concept plan. This section provides that a concept plan applies the principles and policies in the structure plan to future urban areas, and that it is a precinct code in the Territory Plan.

The amendment to section 93(b) clarifies and simplifies the existing description of a precinct code. New section 93(b) provides that a concept plan is a precinct code in the Territory Plan that guides the preparation and assessment of development in future urban areas to which the concept plan relates.

**Clause 10 — What is an estate development plan? Section 94(1) and note**

This clause substitutes existing section 94(1) with a new section 94(1).

Section 94 defines an estate development plan.

Section 94(1) is amended to clarify what estate development is. The amendment provides that an estate development plan, for an estate, sets out the proposed development of the estate, and the creation of blocks in the estate. If the estate is in a future urban area, the estate development plan must be consistent with the concept plan for the area where the estate is. In all cases, the estate development plan must be consistent with any other code that applies to the estate.

This clause also inserts a new note. The note provides that a development application for the development of an estate must be accompanied by an estate development plan, and refers to section 139(2)(n) of the Act. An estate development plan is assessed and approved through the development application process. The note makes this clear.

**Clause 11 — Section 94(2)**

This clause amends section 94(2).

Section 94(2) is amended by substituting the word ‘contain’ with the word ‘identify’. This is an editorial amendment required because the plan cannot ‘contain’ the blocks and zones for the estate rather it identifies the blocks and zones.

**Clause 12 — Section 94(2)(b)**

This clause substitutes existing section 94(2)(b) with a new section 94(2)(b) and inserts new section 94(2)(c).

This amendment clarifies the content requirements for estate development plans in future urban areas and non-future urban areas.

The amended 94(2)(b) provides that if the estate is in a future urban area, the estate development plan must identify the zones proposed for the estate and any existing zones that are to continue to apply. The proposed new zones must be consistent with the Concept Plan.

New section 94(2)(c) provides that if the estate is not in a future urban area, the estate development plan must identify the existing zones in the estate. An estate development plan cannot propose new zones for an estate because the plan must be consistent with the existing Territory Plan (rezoning in a non-FUA area requires a draft plan variation, see the Act part 5.3.)

**Clause 13 — Section 94(3)(d)**

This clause omits section 94(3)(d).

Section 94(3)(d) provided that the estate development plan may include building envelopes for the estate. This is now no longer required due to a related amendment at clause 14 below.

**Clause 14 — New section 94(3)(h)**

This clause inserts new section 94(3)(h).

This amendment provides that an estate development plan may include a provision that is an existing rule or criteria in a code that is proposed to apply to particular block or blocks (an *ongoing provision*) and is consistent with the Territory Plan.

This clause clarifies the meaning of an ongoing provision in an estate development plan.

**Clause 15 — Section 94(3), new examples**

This clause inserts a new example into section 94(3).

The examples are for the amendment made at clause 14, which inserted new section 94(3)(h) to define ongoing provisions. Examples of ongoing provisions include a building requirement in relation to potential bushfire attack and building envelopes.

**Clause 16 — Section 95 heading**

This clause amends the heading of section 95.

This amendment provides a more specific description of the content of section 95. This section was previously headed 'Rezoning – future urban areas'. The amended heading 'Technical amendments – future urban areas' clarifies that this section refers to a technical amendment of the Territory Plan in relation to future urban areas.

**Clause 17 — Section 95(1)**

This clause amends section 95(1).

Section 95 applies to technical variation of the Territory Plan with respect to future urban areas.

This amendment provides more specific detail for precinct codes in relation to the land. Section 95(1) previously stated that the planning and land authority may vary the Territory Plan to rezone land in a future urban area unless the rezoning is inconsistent with the principles and policies in the structure plan for the area.

This amendment omits the words 'unless the rezoning'.

Section 95(1) now provides that the planning and land authority may vary the Territory Plan to rezone land in a future urban area and establish or vary a precinct



code in relation to the land, unless the variation is inconsistent with the principles and policies in the structure plan for the area.

#### **Clause 18 — Section 96**

This clause substitutes the heading of section 96, amends sections 96(1), (2) and (3), and inserts a new section 96(4).

This amendment changes the heading of section 96 from ‘When land ceases to be in future urban area’ to ‘Effect of approval of estate development plan’. This updates the name of the section to ensure consistency with other amendments made at section 96.

Section 96(1) is substituted with a new subsection. The new subsection deletes the words ‘of land’ as redundant and inserts a new note. The note provides that a development application is approved under s162 (Deciding development applications). This note makes it clear that an estate development plan is approved through the development application processes. This note is similar to the note provided at section 94(1), and assists the proponent to understand that the estate development plan is assessed as a development application.

Section 96(2) now provides further detail about the variation of the Territory Plan by the planning and land authority following the approval of an estate development plan.

The planning and land authority must, within a reasonable time after the approval of the estate development plan, vary the Territory Plan as a technical amendment. If the land is in a future urban area, this technical amendment must identify the zones that will apply to the land consistent with the estate development plan.

The technical amendment must also incorporate any ongoing provision that was included in the estate development plan under section 94(3)(h), which the planning and land authority determined should be incorporated into the Territory Plan.

The technical amendment must also incorporate any ongoing provision that was not included in the estate development plan under section 94(3)(h), but was imposed by the planning and land authority. This must also be a provision that is consistent with the Territory Plan and which the planning and land authority determined should be incorporated in the Territory Plan.

Section 96(3) confirms that if the Territory Plan is varied in accordance with section 96(2), the land dealt with by the estate development plan will cease to be in a future urban area.

New section 96(4) inserts a cross-reference to section 94(3)(h), which defines ongoing provisions.

**Clause 19 — Form of development applications, Section 139(2)(n), new note**

This clause inserts a new note into section 139(2)(n).

This note provides that matters that must or may be included in an estate development plan are set out in section 94. This provides a useful cross-reference for development proponents.

**Part 3 – Planning and Development Regulation 2008**

**Clause 20 — Public notification period – Act, s157, def *public notification period*, par a, Section 28(a) and (b)**

This clause amends section 28(a) and section 28(b).

Section 28 of the Planning and Development Regulation prescribes public notification periods for development applications. This clause amends section 28 to address estate development plans with ongoing provisions. This amendment also increases the public notification period for estate development plans.

Section 28(a) prescribes public notification periods for development applications notified in accordance with section 152(1)(a) of the Planning and Development Act (the Act). Section 152(1)(a) of the Act applies to an application for a development proposal in the merit track that is prescribed by regulation. Section 28(a) has been amended to provide that if the development application is for an estate development plan with an ongoing provision included under section 94(3)(h) of the Act, it must be publicly notified for 20 working days. In any other case, the development application is notified for 10 working days.

Section 28(b) prescribes notification periods for development applications notified in accordance with section 152(1)(b) of the Act. Section 152(1)(b) of the Act applies to any other application for a development proposal. Section 28(b) has been amended to provide that if the development application is for an estate development plan with an ongoing provision included under section 94(3)(h) of the Act, it must be publicly notified for 20 working days. In any other case, the development application is publicly notified for 15 working days.

These amendments maintain the status quo for public notification of development applications that are not for an estate development plan.