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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2014 (No 2)

EXPLANATORY STATEMENT

Presented by
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Minister for Planning

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2014 (No 2)* (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

Planning, building and environment legislation has historically been amended by a number of methods, as follows:

- the usual Act amendment process;
- by modification using regulation (commonly referred to as a 'Henry the Eighth' amendment);
- through the Statute Law Amendment Bill process; and
- as a consequence of other legislation. For example, the *ACT Civil Administrative Tribunal Legislation Amendment Act 2008* made consequential amendments to the *Building Act 2004*.

These ways of amending legislation in the Planning Portfolio, while effective, can be confusing for community, industry and government users of the legislation. An omnibus planning, building and environment legislation amendment bill enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. It provides greater flexibility in drafting amendments to planning, building and environment legislation and helps to minimise costs associated with keeping the legislation up-to-date.

Under guidelines approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non controversial, or reflect only a minor policy change. During development of the bill, relevant government Directorates are consulted and when necessary, industry and the community may be consulted.

The bill forms an important part of maintaining and enhancing the standard of ACT building, environmental and planning law. It enables legislative amendments and repeals to be made that would generally not be of sufficient importance to justify separate legislation. The amendments are also inappropriate to be made as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments).

This is the seventh planning, building and environment legislation amendment bill. The first bill was passed by the Assembly in June 2011 and through that bill eight individual Acts were amended. The second bill was passed in December 2011 and delivered two key outcomes: pre-DA community consultation and the requirement to have a sign about building work on the building site. The third bill was passed in May 2012 and delivered a number of key outcomes, including clarifying estate development plans and allowing consolidation of rural leases. The fourth bill was passed in May 2013 and delivered two minor policy outcomes, amendment of the environmental impact statement exemption process and the addition of a gas

clearance to the certificate of occupancy process. The fifth bill was passed in October 2013 and delivered two minor policy outcomes, amendment of the Environment Protection Authority (EPA) delegation process to allow for delegation of EPA powers to environment protection officers in other Australian jurisdictions, and amendment of the *Public Place Names Act 1989* to provide for the preparation of guidelines on the naming of public places as notifiable instruments. The sixth bill was passed in May 2014 and delivered six minor policy outcomes including changes to building certifiers reporting obligations to the Construction Occupations Registrar; an expansion of the planning and land's authority to consent to transfer of leases when a holding lease is involved; ensuring the University of Canberra lease is subject to the provisions of the Planning and Development Act; removing the requirement under the *Unit Titles Act 2001* to superimpose buildings in dual occupancy developments; adding two items to the list of developments in the merit track which require minor public notification only; and clarifying when a survey certificate is required for a development application.

This demonstrates the effectiveness of the omnibus bill process as a tool that collates amendments to legislation relative to planning, building and the environment. Without this bill process, these amendments could have been spread over a number of amendment bills and possibly delayed. In this way, this omnibus bill helps to effectively maintain the statute book. Previous bills can be accessed on the ACT Legislation Register at www.legislation.act.gov.au.

This bill and future such bills help to keep laws as up-to-date as possible, and to respond to technological and societal change.

Overview of Bill

The bill makes minor policy and editorial amendments to the:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*

Planning and Development Act - Minor policy amendments

1. Amending a development approval decided by the Minister under call-in powers

This amendment relates to provisions concerning the power of the Minister to "call in" and decide a development application. Section 159 of the *Planning and Development Act 2007* (the Act) specifies the circumstances in which the Minister can "call in" a development application. Basically, there needs to be a major policy issue, an issue affecting the object of the territory plan or an assessment that the approval (or refusal) of the development application would provide a substantial public benefit.

The Bill amends the Act to permit the Minister to amend a development approval that was originally decided by the Minister under the call-in powers in ss158-161.

Under section 197 of the Act, an application can be made to amend a DA that has been decided by the planning and land authority. However, there is presently no

specific power in the Act to amend a DA decided by the Minister under the call in powers. This can be a problem when a proponent requests only very minor amendments to be made to development applications approved by the Minister.

The Bill amends the Act to allow the Minister to amend a DA. The planning and land authority may prepare a report for the Minister in relation to the application on anything the authority considers relevant. The Minister may, in deciding to amend or refuse to amend a DA, consider the report prepared by the planning and land authority. The Minister may also delegate the decision to amend or refuse to amend the DA to the planning and land authority.

The criteria for assessment of an application for amendment by the Minister are the same as for assessment of amendment applications by the authority currently included in section 198 of the Act. The Minister must consider the application as if the development originally approved had been completed and the application was an application for approval of a development proposal to change the completed development to give effect to the amendment. The Minister must refuse to amend if amendment results in a change in the assessment track or would be in breach of a court imposed condition. The Minister must also refuse to amend unless satisfied the amended approval will be substantially the same as the originally approved development.

A decision by the Minister under the call in power is itself not subject to ACAT merit review (ss407, 408 of the Act). This approach recognises that the Minister in making this development approval decision takes account of the wider public interest and is accountable for the decision to the Legislative Assembly and the wider electorate. Specifically, section 161 of the Act requires the Minister to notify the Legislative Assembly of the details of such decisions.

Consistent with this legislative framework, the proposed power for the Minister to decide applications for amendments to the development approval will also not be subject to ACAT merit review. Refer also to “Human Rights issues” below.

2. Notification requirements for Environmental Significance Opinion

If the proponent of a development proposal wants the application for development approval assessed in the merit track rather than the impact track on the grounds that the proposal is not likely to have a significant adverse environmental impact, the proponent can apply to the relevant agency for an environmental significance opinion (ESO). If the relevant agency rejects the application, it must notify the applicant and the authority in writing under section 138AB(5). The authority presently processes applications from proponents for an ESO and an opinion is frequently given by the Conservator of Flora and Fauna.

For administrative efficiency, the Bill amends the notification requirements in s138AB(5). Rather than the relevant agency notifying the applicant, it is proposed that the authority will notify the applicant after the authority has been notified by the relevant agency.

3. Notice of direct sale

Under section 242(1), the planning and land authority must give the Minister, within 5 working days after the end of a calendar quarter, a notice about the number of

single dwelling house leases granted by direct sale during the quarter (s242(1)). The Bill amends section 242(1) to extend this time period from 5 to 10 working days. This change has been made to provide the authority with additional time to produce the notice and associated documents and to ensure the Minister receives the notice. This amendment ensures that the authority continues to meet statutory timeframes.

Building Act and Regulation – Minor policy amendment

Background

The proposed amendments to the *Building Act 2004* (the Act) and the *Building (General) Regulation 2008* (the Regulation) are being made to strengthen documentation requirements relating to assessments by certifiers under the Act as to whether relevant development is exempt from the need to obtain development approval under the *Planning and Development Act 2007*. Corresponding amendments are made to documentation requirements relating to similar assessments by building surveyors and works assessors under the Planning and Development Act.

Under the Act, a building certifier can only issue a building approval if satisfied on reasonable grounds that the plans meet each applicable approval requirement under s29 and is not prevented from being issued under section 30 or section 30A. Section 30 provides that a building approval cannot be issued if approval would result in the contravention of the Act or any other ACT law because of design and siting of a building, the material used in the building, the proposed use of the building or the number of buildings on the land. For example, under the Planning and Development Act 2007, s247, leased land must not be used for a purpose other than a purpose authorised by the lease. A lease provides that the land may only be used for a single dwelling. If the application for building approval contains plans for 2 dwellings, a certifier cannot issue the building approval. Section 30A requires a certifier not to approve a building approval application that would be inconsistent with the advice of an entity.

If after receiving an application for building approval, the certifier is satisfied on reasonable grounds that the plans meet the approval requirements under s29 and is not prevented from being issued under s30 or s30A, the certifier must prepare a notice (the ***building approval certificate***) certifying what approval requirements apply to the application and why the building approval is not prevented from being issued (s28(2)(b)).

The proposed amendments concern development that would normally require development approval (DA) under the *Planning and Development Act 2007* but is exempted from the need to comply with this requirement. The exemption provisions are in section 20 and schedules 1, 1A of the Planning and Development Regulation, made under section 133(1)(c) of the Planning and Development Act. This explanatory statement refers to such development as “DA exempt”.

The proposed amendments also apply to the concept of “site work” under the Act. “Site work” is an umbrella term defined in section 7A of the Act. Under this section 7A, in summary, site work is work that includes the main building work for which

building approval is sought but also includes work separate to the building work site that is still physically related to or near and connected to the building work. For example, external work to put up safety fencing or remove a tree could be site work even though it is not part of the main building work ie is not part of the construction of the relevant building.

The proposed amendments also relate to an "exemption assessment D notice" issued under the Planning and Development Act. Under the Planning and Development Act (s138B(1)) a land owner can apply to a works assessor or building surveyor for an "exemption assessment D notice" (D notice). The D notice is to indicate whether the proposed development is DA exempt in the view of the works assessor or building surveyor. The obtaining of a D notice is entirely optional and is a process that is separate to and independent of the building approval or development approval processes.

Section 29(1)(g) of the Act sets out building approval requirements in relation to site work that involves development that is or might be DA exempt. Under this section if the building plans with the application for building approval show site work that might be DA exempt under the Planning and Development Act, then the:

- plans must show all the information necessary to establish that the site work will be exempt (so the certifier can establish if it is exempt development);
- site work must be covered by an exemption assessment D notice affirming the work is DA exempt (and this must be attached to the building approval application); or
- site work must have development approval (and this must be attached to the application).

The effect of section 29(1)(g) is that the certifier must be satisfied that the site work is covered by a development approval or an exemption assessment D notice affirming that the development is DA exempt. Alternatively if the site work is not covered by these the certifier must assess whether the site work is DA exempt. If the certifier determines that the site work is not DA exempt ie it requires development approval, then the certifier cannot issue a building approval, refer to s28(2)(b) and s30 of the Act.

A proponent may proceed with a development without obtaining development approval on the basis that an exemption assessment D notice or a building approval has been issued and the notice affirms that the proposed development is DA exempt. In rare cases it may turn out that the D notice or building approval were issued incorrectly because the relevant development was in fact not DA exempt. In this case there is a risk that the proponent may have unwittingly committed the offence of conducting development without development approval (s199(4) of the Planning and Development Act). However relying on a D notice and building approval in this situation is a defence to a prosecution (s199(6)(a) and (6)(b)) provided the proponent was not aware and could not reasonably have been aware that the relevant notice was incorrect. These defence provisions remain unchanged by the amendments in this bill.

Details – strengthened documentation requirements

In summary, the proposals apply to the scenario where the application for building approval includes plans relating to site works that are not covered by a development approval but might be DA exempt. In this scenario as noted above the certifier cannot grant the building approval unless satisfied the site works are DA exempt (s29(1)(g) of the Act).

The proposed amendments to the Act strengthen and clarify documentation requirements relating to the assessment by a certifier under the Act that site work involved in an application for building approval is DA exempt.

The proposals require the certifier to include with the building approval certificate required by s28(2)(b), a separate document, a "site work notice", which sets out the basis on which the certifier concluded that the site work is DA exempt. This is an assessment process which the certifier is already required to undergo under the Act, s29(1)(g). Best practice would require a level of documentation underpinning this assessment already. In this sense, the notice does not add red tape but makes it clear what the documentation requirements for this existing assessment process are.

The proposed amendments to the Regulation will provide guidance about what is to be included in the site work notice. The regulation provisions require the certifier to identify those provisions of the Planning and Development Regulation 2008 and the Territory Plan codes the certifier applied to be satisfied that the work was DA exempt. The amendments address documentation requirements without overburdening certifiers with paperwork.

As noted above, under the Planning and Development Act a land owner has the option of applying to a works assessor or building surveyor for a certificate ("exemption assessment D notice") confirming whether proposed works are DA exempt. The Bill amends the *Planning and Development Regulation 2008* to ensure the revised content requirements for site work notices also apply to these optional exemption assessment D notices as appropriate.

The Planning and Development Act continues to provide that a lessee who has an exemption assessment D notice under the Planning and Development Act or building approval under the Act may not be prosecuted for conducting development without approval (see section 199(6)).

The proposed amendments on documentation requirements described above also address concerns of the Auditor-General relating to lack of documentation provided in certain instances by certifiers assessing the DA exempt status of proposed works. These concerns are set out in the Auditor-General Performance Audit Report Single Dwelling Development Assessments Environment and Sustainable Development Directorate May 2014 (Single Dwelling Report) at pp 64-65.

In the Single Dwelling Report, the Auditor-General suggested lack of documentation in some instances made it difficult to assess whether an accurate DA exemption assessment had been made by the certifier. The Auditor-General recommended (Recommendation 5, p65 of the report):

> "The Environment and Sustainable Development Directorate should require building surveyors and works assessors (certifiers) to submit a minimum level of

documentation, such as a checklist, in relation to Development Application exemption assessments."

Human Rights

The bill has been assessed against the *Human Rights Act 2004* and no issues identified other than the following.

As noted above, a decision by the Minister under the call in power is itself not subject to ACAT merit review. This is because the Minister in making this development approval decision takes account of the wider public interest and is accountable for the decision to the Legislative Assembly and the wider electorate. Consistent with this framework, the proposed power for the Minister to decide applications for amendments to the development approval will also not be subject to ACAT merit review. In contrast, decisions by the Planning and Land Authority on amendments of development approvals is subject to ACAT merit review.

In this connection it is important to note that the Minister in deciding an amendment application is limited by the criteria currently included in section 198 of the Planning and Development Act which essentially means that the amendment cannot be approved unless the development approval remains substantially the same. This means that the development approval as amended will still be substantially the same as the DA decision notified to the Assembly under section 161 of the Planning and Development Act.

The *Human Rights Act 2004* section 21 (right to a fair trial) recognises certain rights that arguably may be affected by the proposed amendments to permit the Minister to amend a DA approved by the Minister under the call in power. To the extent that the bill limits any rights afforded by the Human Rights Act, these limitations must meet the proportionality test of section 28 of that legislation.

It would appear that case law indicates that human rights legislation does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. In two ACAT[1] cases (*Thomson v ACT Planning and Land Authority* [2009] ACAT p38 and *Tran v ACT Planning and Land Authority & Ors* [2009] ACAT p46) ACAT agreed that some limitation on third party appeal rights is warranted when it delivers certainty and predictability for proponents. Specifically the Commissioner (in Thomson) commented that "...providing certainty and predictability for applicants for development approval, and the need to ensure a timely approval process are sufficiently important objectives to justify some constraints on third party review rights.[2]"

In *Tran*, the Tribunal agreed with the approach in *Thomson*. Further in (Tran) the Tribunal noted: "Certainly it is not unusual in Australian planning law for the rights of third party objectors to be limited or removed by legislation or other instruments.''

[1] ACAT cases can be accessed at http://www.acat.act.gov.au/decisions.php

[2] Extract of Commissioner's comments. *Thomson v ACT Planning and Land Authority* [2009] ACAT 38 at para 99

The limitation of ACAT merit review rights is not new to the Planning and Development Act. The Planning and Development Act and Regulation already exempts certain DA decisions from third party ACAT merit review as well as decisions of the Minister under the call in power. This includes an exemption from third party merit review of merit track development in the city centre and town centres, for example (refer section 350 and schedule 3 of the Regulation).

In all the circumstances, it is contended that the proportionality test in section 28 of the Human Rights Act is met.

Editorial amendments

The remaining amendments to the Planning and Development Act are editorial and include amendments to correct section references, improve readability and remove superfluous words. The Planning and Development Regulation is amended to remove an obsolete reference to the Territory Plan as well as to clarify requirements for exemption assessment D notices.

The bill has been assessed against the *Human Rights Act 2004* and no issues identified.

Outline of Provisions

Part 1 – Preliminary

Clause 1 — Name of Act
This clause names the Act as the *Planning, Building and Environment Legislation Amendment Act 2014 (no2).*

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

Clause 3 — Legislation amended
This clause names the legislation that the bill amends. The bill amends:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*

Part 2 – Building Act 2004

In summary, Part 2 makes amendments to the Building Act to:

- establish a new type of notice (a site work notice) to be issued by a certifier to confirm site work indicated in an application for building approval is exempt from the requirement for a development approval (DA);
- provide that the certifier will not be able to issue a building approval for proposed building work under the Building Act unless the relevant work is covered by (a) a development approval, or (b) an exemption assessment D notice under the Planning and Development Act that the work is DA exempt,

or (c) an exemption declaration by the planning and land authority or (d) a site work notice issued by the certifier affirming that the works are DA exempt.

Clause 4 – New section 25AA
This clause inserts new section 25AA. New section 25AA defines "site work notice". New section 25AA is related to:

- new section 28(2)(1A) in the Building Act (clause 5)
- new section 28A(4)(a)(iia) in the Building Act (clause 6);
- new section 28A(4)(b) (iiia) in the Building Act (clause 7);
- new section 29(1)(g) in the Building Act (clause 8);
- new definition of *site work notice* in the Dictionary (clause 9);
- new section 9A of the Building (General) Regulation (clause 10); and
- new section 24(2) of the Planning and Development Regulation 2008 (clause 32).

The "site work notice" relates to "site work". "Site work" is an umbrella term defined in section 7A of the Building Act. In summary, site work is work that includes the main building work for which building approval is sought but also includes work separate to the building work site that is still physically related to or near and connected to the building work. For example, external work to put up safety fencing or remove a tree could be site work even though it is not part of the main building work.

New section 25AA sets out certain content requirements for the site work notice. There are additional more specific content requirements in new section 9A of the Building (General) Regulation 2008 inserted by clause 10.

Clause 5 – Issue of building approvals New section 28 (1A)
This clause inserts new s28(1A) which applies to a building certifier who is assessing an application for building approval. New section 28(1A) is related to clause 4 and clauses 6 -10 and 32.

The new section 28(1A) requires the certifier to issue a "site work notice" in certain circumstances. This requirement does not apply if the site works are already covered by a development approval or an exemption assessment D notice under the Planning and Development Act or an exemption declaration made by the planning and land authority under the Planning and Development Regulation schedule 1, section 1.100A(1)(b) or section 1.100AB(1)(b). Further, before the certifier can issue a site work notice, the certifier must be satisfied on reasonable grounds that:

a) there is sufficient information in the plans to assess whether the relevant site works are DA exempt; and
b) the relevant site works are in fact DA exempt.

The above includes reference to an "exemption declaration" made by the planning and land authority under the Planning and Development Regulation schedule 1, section 1.100A(1)(b) or section 1.100AB(1)(b). This declaration applies to applications to the planning and land authority under the Regulation for a declaration that a proposed single dwelling or alteration of a single dwelling is DA exempt notwithstanding minor non-compliance with relevant rules in the relevant Territory Plan codes. The declaration can only be made if the Authority is satisfied the

non-compliant elements would not adversely affect anyone and would not increase environmental impacts more than minimally and that the proposal is otherwise DA exempt. Including exemption declarations in this provision ensures the certifier can make use of all the statutory documents potentially available that can be used to ascertain if the development is DA exempt. There is no point in requiring a certifier to issue a site work notice if the relevant works are already covered by such an exemption declaration.

Clause 6 – Marking building approval New section 28A (4)(a)(iia)
This clause inserts new section 28A (4)(a)(iia). This clause is related to the following new sections inserted in the Building Act: new section 25AA inserted by clause 4, new section 28(1A) inserted by clause 5 and new section 28A(4)(b)(iiia) inserted by clause 7.

New section 28A (4)(a)(iia) applies when the certifier has issued a building approval. After issuing the approval, the certifier must give a copy of the approval and other documents to the applicant for the approval (section 28A(4)(a)). This new section requires the certifier to give a copy of the site work notice, if there is one, to the applicant when giving the applicant the building approval and related documentation.

Clause 7 – New section 28A (4)(b)(iiia)
This clause inserts new section 28A (4)(b)(iiia). New section 28A (4)(b)(iiia) applies when the certifier has issued a building approval. After issuing the approval, the certifier must give a copy of the approval and other documents to the construction occupations registrar (section 28A(4)(b)). This new section requires the certifier to give a copy of the site work notice, if there is one, to the construction occupations registrar when giving the registrar a copy of the building approval and related documentation.

Clause 8 – Approval requirements Section 29 (1)(g)
This clause substitutes new section 29(1)(g). New section 29(1)(g) is related to:

- new section 25AA in the Building Act (clause 4);
- new section 28(1A) in the Building Act (clause 5)
- new section 28A(4)(a)(iia) in the Building Act (clause 6);
- new section 28A(4)(b) (iiia) in the Building Act (clause 7);
- new definition of *site work notice* in the Dictionary in the Building Act (clause 9);
- new section 9A of the Building (General) Regulation (clause 10); and
- new section 24(2) of the Planning and Development Regulation 2008 (clause 32).

New section 29(1)(g) applies when an application for building approval has been made to the certifier and the certifier is considering issuing the approval. The certifier cannot issue the building approval unless, among other things, all of the approval requirements in section 29 of the Building Act have been met (refer to s28(2)(b)). New section 29(1)(g) is a revision of an existing approval requirement which refers to the proposed “site work notice”.

New section 29(1)(g) requires the site work indicated in the plans attached to a building application to be covered by one of the following instruments before a building approval can issue. The site work must be covered by:

- development approval issued under the Planning and Development Act; or
- an exemption assessment D notice issued under the Planning and Development Act affirming that the works are DA exempt; or
- an exemption declaration made by the planning and land authority under the Planning and Development Regulation schedule 1, section 1.100A(1)(b) or section 1.100AB(1)(b); or
- a site work notice issued under new s28(1A) inserted by clause 5.

This new section 29(1)(g) effectively ensures that a building approval cannot issue unless the site works are covered by a development approval or a notice affirming that the works are DA exempt and documenting why the works are DA exempt.

The above includes reference to an "exemption declaration" made by the planning and land authority under the Planning and Development Regulation schedule 1, section 1.100A(1)(b) or section 1.100AB(1)(b). This declaration applies to applications to the planning and land authority under the Regulation for a declaration that a proposed single dwelling or alteration of a single dwelling is DA exempt notwithstanding minor non-compliance with relevant rules in the relevant Territory Plan codes. The declaration can only be made if the Authority is satisfied the non-compliant elements would not adversely affect anyone and would not increase environmental impacts more than minimally and that the proposal is otherwise DA exempt. Including exemption declarations in this provision ensures the certifier can make use of all the statutory documents potentially available that can be used to ascertain if the development is DA exempt. There is no point in requiring a certifier to issue a site work notice if the relevant works are already covered by such an exemption declaration.

Clause 9 – Dictionary, new definition of *site work notice*

This clause inserts into the Dictionary a new definition of *site work notice.* The new definition refers to new section 25AA inserted by clause 4.

Part 3 – Building (General) Regulation 2008

Part 3 includes relevant regulations setting out what information is to be included in the site work notice.

Clause 10 – New section 9A

This clause inserts new section 9A into the Building (General) Regulation. New section 9A is primarily related to new section 25AA inserted in the Building Act by clause 4.

New section 9A requires the proposed "site work notice" to include the specified content. In particular, new section 9A requires the site work notice to identify the provisions of the Planning and Development Regulation 2008 and the Territory Plan codes relevant to the certifier's assessment that the site works indicated in the application for building approval are DA exempt. This content requirement in conjunction with other amendments is to ensure that the reasons behind the decision of the certifier as to the DA exempt status of site works is clear and accessible.

As noted above, under section 138B of the Planning and Development Act, a land owner has the option of applying to a works assessor or building surveyor for a certificate ("exemption assessment D notice") confirming whether proposed works are DA exempt. The requirement to identify relevant provisions and Territory Plan codes is also applicable to exemption assessment D notices. New section 24(2) of the Planning and Development Regulation 2008 inserted by clause 32 applies these requirements to exemption assessment D notices.

Part 4 – Planning and Development Act 2007

Clause 11 — Public consultation – notification Section 63 (2) except note

This clause corrects a typographical error in section 63 (2).The amendment corrects the placement of the parentheses. The section presently reads "The planning and land authority may (by an extension notice)…" The section is amended to read "the planning and land authority may by notice (an extension notice)…"

Clause 12 – Impact track applicability Section 123 (b), note

This clause amends section 123 (b) note to correct a typographical error. The note incorrectly referred to s138A (2) when it should refer to section 138AA (2).

Clause 13 – Deciding environmental significance opinion applications Section 138AB (5)

This clause amends section 138AB (5) and inserts a new section (5A).If the proponent of a development proposal wants an application for development approval assessed in the merit track rather than the impact track on the grounds that the proposal is not likely to have a significant adverse environmental impact, the proponent can apply to the relevant agency for an environmental significance opinion (ESO) (s138AA). If the relevant agency rejects the application, it must notify the applicant and the authority in writing under s 138AB (5). The authority presently processes applications from proponents for an ESO and an opinion is frequently given by the Conservator of Flora and Fauna. It is therefore proposed, for administrative convenience, to change the notification requirements in s138AB (5). Rather than the relevant agency notifying the applicant, it is proposed that the authority will notify the applicant after the authority has been notified by the relevant agency.

Clause 14– New section 195A

This clause inserts a new section 195A in Division 7.3.11 of the Planning and Development Act. New section 195A provides a new definition of 'decision-maker' for a development approval for the purposes of Div 7.3.11. If the planning and land authority has approved a development application under section 162 of the Act, the decision-maker is the planning and land authority. If the Minister has approved a development application, the decision-maker is the Minister.

Clause 15 – Applications to amend development approvals – Section 197(1) and (2)

This clause amends sections 197(1) and 197(2) of the Planning and Development Act. This amendment is related to amendments in clauses 14, 16-24, 30 of the Bill.

Section 197 applies to situations in which a development approval has been granted, and the development proposal changes. This section prescribes circumstances in which the approval holder may apply for an amendment to the development approval so that it applies to the changed development proposal. Sections 197(1) and 197(2) previously referred to development approval by the planning and land authority. This clause amends these sections to refer to approval by the 'decision-maker'.

This amendment means that the approval holder may apply for a change to the development approval if it has been made by the planning and land authority or the Minister.

Clause 16 – Deciding applications to amend development approvals – Section 198(1)

This clause amends section 198(1) of the Planning and Development Act. This amendment is related to amendments in clauses 14, 15, 17-24, 30 of the Bill.

Section 198 imposes requirements for deciding an application to amend a development approval in accordance with an application under section 197. Section 198(1) previously referred to the consideration of the application by the planning and land authority. This clause amends section 198(1) to refer to consideration of the application by the 'decision-maker'.

This amendment means that the planning and land authority or the Minister may decide whether to amend a development approval in accordance with an application under section 197.

Clause 17 – Section 198(1), note (1)

This clause substitutes a new note 1 into section 198 of the Planning and Development Act. This amendment is related to amendments in clauses 14-16, 18-24, 30 of the Bill.

New note 1 provides that an application for amendment of a development application approved by the planning and land authority may be reconsidered under part 7.3.10 of the Planning and Development Act, and that the approval holder may apply for review of a decision to refuse to amend the approval.

Clause 18 – Section 198(1), note (3)

This clause amends note 3 in section 198(1) of the Planning and Development Act. This amendment is related to amendments in clauses 14-17, 19-24, 30 of the Bill.

Note 3 previously provided that the planning and land authority must decide whether to amend the development approval as soon as possible. This clause removes the reference to the planning and land authority and amends note 3 to provide that the decision-maker must decide whether to amend the development approval as soon as possible.

This means that the note now refers to a decision by the planning and land authority or the Minister.

Clause 19 – Section 198(1), new note

This clause inserts a new note 4 into section 198(1) of the Planning and Development Act. This amendment is related to amendments in clauses 14-18, 20-24, 30 of the Bill.

New note 4 provides that the Minister may delegate the decision to the planning and land authority and cites section 254A of the *Legislation Act 2001*.

Clause 20 – New section 198(2A) and (2B)

This clause inserts new sections 198(2A) and (2B) into the Planning and Development Act. This amendment is related to amendments in clauses 14-19, 21-24, 30 of the Bill.

These sections apply to decisions made by the Minister on applications to amend a development approval under section 197.

New section 198(2A) provides that if the decision-maker is the Minister, the planning and land authority may prepare a report for the Minister in relation to the application on anything the Minister considers relevant.

New section 198(2B) provides that the Minister may, in deciding to amend or refuse to amend a development approval, consider the report prepared by the planning and land authority.

Clause 21 – Section 198(3) and (4)

This clause amends sections 198(3) and 198(4) of the Planning and Development Act. This amendment is related to amendments in clauses 14-20, 22-24, 30 of the Bill.

Sections 198(3) and (4) prescribe circumstances in which an application to amend a development approval must be refused. These include where the changed development proposal would be in a ‘higher’ assessment track (such as a change from merit to impact track) or the changed proposal would not be substantially the same as the development for which approval was originally given.

These sections previously referred to amendment of the approval by the planning and land authority. This clause changes this to a reference to the ‘decision-maker’.

This means that sections 198(3) and 198(4) now apply to decisions by the planning and land authority and the Minister.

Clause 22 – Exception to referral requirement under s 198(1)(b) – Section 198A(1)(c) and (2)

This clause amends sections 198A(1)(c) and 198A(2) of the Planning and Development Act. This amendment is related to amendments in clauses 14-21, 23, 24, 30 of the Bill.

Section 198A provides an exception in situations where a development application was referred to an entity under division 7.3.3 and an application for an amendment of the development approval to which the application related must be referred to the entity under section 198(1)(b). Section 198A previously stated that if the planning and land authority was satisfied that the application for amendment did not affect any part of the development approval in which the entity made a comment, the planning and land authority did not need to refer the application for amendment to the entity.

This clause changes the reference from the planning and land authority to the decision-maker. This means that section 198A applies to applications for amendment of development approvals being considered by the planning and land authority and the Minister.

Clause 23 – Waiver of notification requirement under section 198(1)(b) – Section 198B

This clause amends section 198B of the Planning and Development Act. This amendment is related to amendments in clauses 14-22, 24, 30 of the Bill.

Section 198B previously provided that the planning and land authority may waive the requirement to publicly notify an application for amendment of a development approval if satisfied that no-one other than the applicant will be adversely affected by the amendment and the amendment will do no more than minimally increase the environmental impact of the development.

This clause changes the reference from the planning and land authority to the decision-maker. This means that section 198B applies to applications for amendment of development approvals being considered by the planning and land authority and the Minister.

Clause 24 – When development approvals do not require amendment – Section 198C

This clause amends section 198C of the Planning and Development Act. This amendment is related to amendments in clauses 14-23, 30 of the Bill.

Section 198C prescribes circumstances in which development approvals do not require amendment.

This section provides that amendment of the development approval is not required if a circumstance prescribed by regulation applies to the changed development proposal.

Section 198C previously referred to a development approval by the planning and land authority. Clause 24 amends section 198C to refer to a development approval by the decision-maker. This means that section 198C applies to development approvals by the planning and land authority and the Minister.

Clause 25 – Development applications for developments undertaken without approval Section 205 (4)

This clause corrects a typographical error in section 205 (4). The section incorrectly refers to section 139 (2) (i) when it should refer to section 139 (2) (j).

Clause 26 – Notice of direct sale Section 242 (1)
This clause amends section 242(1) to extend the time period in which the required notice must be provided to the Minister. The planning and land authority must give the Minister within 5 working days after the end of a quarter a notice about the number of single dwelling house leases granted by direct sale during the quarter (s242(1)).

This clause amends section 242(1) to extend this time period from 5 to 10 working days.

Clause 27 – Meaning of *s276E chargeable variation* and *s277 chargeable variation* – div 9.6.3 Section 276A (1), definition of *s276E chargeable variation*, paragraph (c) (i) and (ii)
This clause amends section 276A(1) (c) (i) and (ii) to reverse their order. Section 276A (1) provides the meaning of a ***s276E chargeable variation*** of a nominal rent lease. Subparagraphs (1) (c) (f) and (g) describe certain criteria. The two criteria are the same and refer to the number of dwellings and the increase in gross floor area. However, the order in which the 2 criteria are listed is different in subparagraph(c) to subparagraphs (f) and (g). For consistency reasons, this clause amends subparagraph (c) to reverse the order of the two criteria so that the criteria appear in the same order in all 3 subparagraphs (c) (f) and (g).

Clause 28 – Chargeable variation of nominal rent lease – lease variation charge Section 276B (1)
This clause omits an incorrect reference to s278A and inserts a reference to s278 which is the correct section. Section 276B(1) states that the authority must not execute a chargeable variation of a nominal rent lease unless the lessee has paid the lease variation charge for the variation less any remission under s278A to s278E. Changes made to the Planning and Development Act mean that section 278 also provides for remissions. It seems the required editorial change to s276B was missed when the changes to section 278 onwards were made and this clause corrects this oversight.

Clause 29 – Information requirements section 395 (1)(a)
This clause amends section 395(1) (a) to remove the words “knowledge of” as they are superfluous. The amended section will read “This section applies if the planning and land authority suspects … that a person (a) has information (the ***required information***)…” rather than “that a person (a) has knowledge of information.”

Clause 30 – Dictionary, definition of *decision-maker*
This clause substitutes a new definition of decision-maker in the Dictionary of the Planning and Development Act. This amendment is related to amendments in clauses 14-24 of the Bill.

The new definition clarifies the definition of ***decision maker*** in the Planning and Development Act. It provides that for division 7.3.11 (Correction and amendment of development approvals) for a development approval, decision maker is defined by section 195A and for chapter 13 (Review of decisions), by section 407.

Part 5 – Planning and Development Regulation 2008

Clause 31 – Section 24 heading
This clause changes the heading to section 24 of the Planning and Development Regulation as a consequence of new section 24(2) inserted by clause 32.

Clause 32 – Section 24 (2)
This clause substitutes new section 24(2) into the *Planning and Development Regulation 2008*. New section 24(2) is primarily related to:

- new section 25AA in the Building Act (clause 4);
- new section 28(1A) in the Building Act (clause 5)
- new section 29(1)(g) in the Building Act (clause 8);
- new definition of *site work notice* in the Dictionary of the Building Act (clause 9); and
- new section 9A in the Building (General) Regulation (clause 10).

New section 24(2) is made to ensure that the content requirement for exemption assessment D notices issued under the Planning and Development Act are consistent with the requirements for the new site work notice set out in new section 9A of the Building (General) Regulation inserted by clause 10. New section 9A requires the site work notice to identify the provisions of the Planning and Development Regulation 2008 and the Territory Plan codes relevant to the certifier's assessment that the site works indicated in the application for building approval are DA exempt. This requirement to identify relevant provisions and Territory Plan codes is also applicable to exemption assessment D notices but was not included in previous section 24. New section 24(2) requires the exemption assessment D notice to identify the provisions of the Planning and Development Regulation and the Territory Plan codes relevant to the building surveyor's or works assessor's assessment that the development is exempt development.

Clause 33 – Section 24 (2) example
This clause corrects an incorrect reference to an exemption assessment B notice.

Clauses 34 and 35 –Compliant single dwellings – old residential land - Schedule 1, section 1.100 (1) (c) (ii) and Compliant single dwellings – new residential land - Schedule 1, section 1.100AA (1) (d) (ii)
These clauses remove a redundant reference to the Territory Plan in sections 1.100 and 1.100AA of schedule 1 of the Planning and Development Regulation.

Certain compliant single dwellings on old and new residential land can be DA exempt provided they meet the criteria set out in sections 1.100 and 1.100AA of schedule 1 of the Planning and Development Regulation. One of the criteria is that the dwelling complies with the Single Dwelling Housing Development Code of the Territory Plan other than rule 33 and rule 66. This clause deletes the words "other than rule 33 and rule 66" from ss1.100 and 1.100AA because those rules are no longer relevant as a result of changes made to the Single Dwelling Housing Development Code by Territory Plan Variation no. 306 in 2013. As a result of that variation, Rule 66 no longer exists and rule 33 has changed in content and there is no equivalent to old rules 33 and 66 in the Code. The amendment ensures the legislation is correct and up to date.