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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2016 (No 2)

EXPLANATORY STATEMENT

Presented by
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EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2016 (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.

The Statement must be read in conjunction with the Bill. It is not, and is meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

The Bill forms an important part of maintaining and enhancing the standard of ACT building, environment and planning law. An omnibus planning, building and environment legislation amendment bill (PABELAB) enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. This ensures that the government can be responsive and agile to changing circumstances and legislation remains up-to-date.

Overview of the Bill

The Bill proposes minor policy amendments to:

- the *Climate Change and Greenhouse Gas Reduction Act 2010*
- the *Planning and Development Regulation 2008*
- the *Utilities (Technical Regulation) Act 2014*.

The Bill also proposes to a number of technical and editorial amendments to the following legislation:

- the *Environment Protection Act 1997*
- the *Nature Conservation Act 2014*
- the *Nature Conservation Regulation 2015*
- the *Planning and Development Act 2007*
- the *Planning and Development Regulation 2008*
- the *Utilities (Technical Regulation) Act 2014.*

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Overview of minor policy amendments

Minor policy amendment to the Climate Change and Greenhouse Gas Reduction Act 2010

Section 10 of the *Climate Change and Greenhouse Gas Reduction Act 2010* (CCGGR Act) requires the Minister to determine energy efficiency targets for the per person use of electricity in the ACT.

The Bill proposes to remove section 10 as it is no longer needed because energy efficiency targets are now provided for in the *Energy Efficiency (Cost of Living) Improvement Act 2012* (EEI Act). The energy efficiency targets considered in the CCGGR Act are now mandated by the EEI Act and the CCGGR Act requirement is no longer required to ensure that energy efficiency improvements are made (see clause 4 of the Bill).

Minor policy amendment to the Planning and Development Regulation 2008

Section 138AE of the *Planning and Development Act 2007* requires community consultation to be undertaken for certain development proposals. These prescribed development proposals are listed in s 20A of the *Planning and Development Regulation 2008* (P&D Regulation). The policy intent of this provision is to require major developments to undergo community consultation prior to a development application being lodged.

Section 20A(1)(b) of the P&D Regulation prescribes a development proposal relating to a building with a gross floor area of more than 5000 square metres. The provision only refers to a single building of more than 5000 square metres. Where a development concerns multiple buildings that when combined are greater than the 5000 square metre limit, no community consultation is mandated. This means that some major developments are not required by the Act to undertake pre application public consultation if no one building is greater than 5000 square metres.

The amendment to s 20A of the P&D Regulation will ensure that the provision functions as intended, and considers the size of the development as a whole as the determining factor, rather than the size of an individual building. The amended provision will have the effect that public consultation is required for development proposals for more than one building, where the buildings have a combined gross floor area of more than 7000 square metres. The provision does not currently make specific provision for a development with multiple buildings.

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This will ensure that major developments of single buildings over 5000 square metres, or multiple buildings totalling over 7000 square metres, are also captured by the pre-DA community consultation requirement (see clause 17).

Minor policy amendment to the Utilities (Technical Regulation) Act 2014

The *Utilities (Technical Regulation) Act 2014* (UTR Act) provides for the technical regulation of regulated utility services. Regulated utility services include, in relation to electricity, small or medium scale electrical generators, such as solar installations.

Section 9(2) of the UTR Act defines *small or medium scale generation* as the capacity to generate 30kW or more but less than 30MW of power that is connected to an electricity network. The current lower limit of 30kW means that large residential solar installations that are feeding in to the electricity grid are captured by the definition of a regulated utility service.

The effect of falling under the definition is that the person must obtain an operating certificate under the UTR Act in order to provide that service. An operating certificate can be applied for under the UTR Act and requires the technical regulator to be satisfied that the service will be safe, reliable and appropriately maintained. This imposes a regulatory burden and is necessary for large installations, but not necessary for smaller residential installations.

In the circumstances where a small residential generator (30kW to 200kW) has been installed in compliance with the *Electricity Safety Act 1971*, completed by ACT licensed electricians and who have submitted certificates of electrical safety, the additional requirement for an operating certificate is unnecessary regulation. All of the risk elements of the work are appropriately covered by the requirements of the electrical safety legislation.

The amendment to s 9(2) of the UTR Act allows for the lower and upper limits in the definition of *small or medium scale generation* to be prescribed by regulation. A new regulation is included to prescribe a new and lower limit of 200kW. The upper limit is prescribed at the same level as previously in place, 30MW. The move to have the limits prescribed by regulation is to ensure that the UTR Act is responsive to changing regulation and policy settings in this evolving sector and to ensure that the Act is targeted to regulate the appropriate part of the utilities sector.

As a result of this amendment, generators from 30kW to 200kW will not be required to hold an operating certificate. This aligns the legislation with current industry standards for what is considered to be small scale generation (see clauses 25, 28 and 29).

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A consequential amendment is also be made to s 95(g) which contains the definition of utility infrastructure work for the purposes of issuing stop work notices. This provided is amended to allow for the lower limit of what is considered to be utility infrastructure work to be prescribed by regulation, with a new regulation prescribing this limit as 200kW. This limit is appropriate to ensure that the UTR Act is targeted to regulating utilities and residential solar installations are not captured by this part of the ACT (see clauses 27 and 29).

Overview of technical amendments

Technical amendment to the Nature Conservation Regulation 2015

Section 169 of the *Nature Conservation Act 2014* defines reserves for the purposes of land management planning. The definition of reserves means areas listed in s 169, as well as any other area of public land that is (a) reserved in the territory plan under the *Planning and Development Act 2007* (s 315); and (b) prescribed by regulation to be a reserve (see s 169(1)(b)(ii)).

The *Nature Conservation Regulation 2015* (NC Regulation) prescribes special purpose reserves as set out in the table in schedule 1, part 1.1 and the maps in part 1.2.

The amendment alters the boundaries of the Woodstock and Woodstock West Special Purpose Reserve as prescribed in part 1.1 and division 1.2.16 of part 1.2 of schedule 1 to the NC Regulation. These changes are merely consequential amendments to reflect substantive changes made in Territory Plan Variation 351 (West Belconnen Urban Development), which commenced on 22 July 2016. As a result of the territory plan variation, the majority of the Woodstock and Woodstock West Special Purpose Reserve has become a nature reserve. While most of this area previously prescribed as special purpose reserve has become nature reserve, a small disconnected strip of land will be retained as special purpose reserve. This area will continue to carry the name Woodstock West Special Purpose Reserve (see clauses 8 and 9).

Technical amendments to the Planning and Development Act 2007

A number of amendments are made to sections 178-180 of the *Planning and Development Act 2007* (P&D Act). Section 178 sets out when a development approval (DA) subject to ACAT review takes effect. This section is silent on when a DA commences where an application for review is made to the ACAT but is subsequently withdrawn, dismissed or struck out.

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The first amendment is made to section 178(1) to provide that the section applies to the situation where an application for review of a DA decision is made to the ACAT and either the ACAT confirms, varies or substitutes the decision, or, the application is withdrawn, dismissed or struck out (see clause 11).

The next amendment to s 178(2) inserts some additional wording to provide for the circumstance in which an application for review to ACAT is made, but is subsequently withdrawn. The amendment provides that the original DA decision takes effect on the day after the day the application for review is withdrawn, dismissed or struck out. This addresses the current gap in the legislation (see clauses 12 and 13).

Minor editorial amendments are also made to the subsequent sections 179 and 180 to improve the drafting of the provisions. As these provisions are currently drafted, sections 179(1) and 180(1) set out when the provisions apply. Sections 179(2) and 180(2) provide for when DAs take effect in different circumstances. However, sections 179(2) and 180(2) currently have a gap in the drafting. While sections s179(2)(c)(ii) and 180(2)(c)(ii) purport to provide for when a DA commences that is subject to an application for review to ACAT which is subsequently withdrawn, dismissed or struck out, the drafting of subsection (2) only provides for approvals of applications for review to ACAT that are subsequently confirmed, varied or substituted by ACAT. The wording of subsection (2) in both sections 179 and 180 does not provide for the circumstance in which an application for review has been made to ACAT and the application is subsequently withdrawn, dismissed or struck out.

To address this gap, the amendments make minor editorial changes to sections 179(2) and 180(2). The amendments provide that when an application for review is made to ACAT, and the application is subsequently withdrawn, dismissed or struck out, then the original DA decision (the approval) takes effect on the day after the day the application for review is withdrawn, dismissed or struck out (see clauses 14 and 15).

A final technical amendment to the P&D Act concerns the power in section 395B in which the planning and land authority can request contact information for lessees from the Commissioner for Revenue. Currently, this information can be requested no more than once every three months. The amendment changes this to allow for a request for information once every month to ensure that the authority has up to date information for lessees to be able to notify them of planning processes in their area, such as development applications and territory plan variations (see clause 16).

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Technical amendment to the Utilities (Technical Regulation) Act 2014

Section 29 of the *Utilities (Technical Regulation) Act 2014* outlines the requirement for the reporting of notifiable incidents by regulated utilities. Section 28 provides a list of notifiable incidents that must be reported if they occur including the death of a person, a dangerous incident (also defined in s 28) and where there is serious damage to property or the environment.

Section 29 provides that it is an offence if a notifiable incident occurs and the regulated utility fails to tell the technical regulator about the incident, by telephone, within 24 hours after they become aware of the incident.

The amendment allows regulated utilities to provide notification of incidents by email (see clause 26). The requirement to report, and the timeframe in which to do so, will both remain unchanged.

Overview of editorial amendments

Section 12 of the *Environment Protection Act 1997* (EP Act) is amended to fix an incorrect reference to the objects stated in section 2. Following amendments to the EP Act, the objects are now provided for in section 3C (see clause 5).

Section 51(5) of the *Nature Conservation Act 2014* is amended to fix an incorrect reference to a draft *plan* when it should in fact refer to a draft *strategy* (see clause 6).

Section 100A of the *Nature Conservation Act 2014* provides for the Minister to decide when an action plan is needed for an applicable species. Section 100A(4) allows for the Minister to decide that an action plan is not required if the Minister is satisfied that (a) the species does not occur in the ACT or occurs infrequently; and (b) having no plan will not increase the risk of extinction of the species (see clause 7). The amendment substitutes the word *and* between subsections (a) and (b) and replaces it with an *or*. The current construction of the provision is a drafting error and the second element (b) is redundant if the species does not occur in the ACT. The explanatory statement for the recent Nature Conservation Amendment Bill 2016 in which this provision was introduced provides that this section was inserted to ensure that actions plans are directed to the species most at risk in the ACT. The provision should state that the Minister may decide that an action plan is not required if the species does not occur in the ACT, or, for a species that may or does occur in the ACT, having no plan will not increase the risk of extinction.

Section 96 of the *Planning and Development Act 2007* (P&D Act) is amended to remove unnecessary duplication where this provision and the definition of a term within it both require consistency with the Territory Plan. Specifically, s 96(2)(c) of the P&D Act allows the planning and land authority to vary the territory plan (through a technical amendment under s 89 of the P&D Act) to include *ongoing provisions*

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that formed part of the approved estate development plan. The ongoing provisions in estate development plans govern future development in these areas. Section 96(4) of the P&D Act states that for this section, *ongoing provision* has the meaning given in s 94(3)(g). Section 94(3)(g) defines *ongoing provision* as ‘a provision, which is consistent with the territory plan, that is proposed to apply to the ongoing development of a block in the estate...’.

In allowing an ongoing provision to vary the territory plan, s 96(2)(c) also states that the provision must be consistent with the territory plan. Therefore, both the definition of the term *ongoing provision* and the power to use it, both state it must be consistent with the territory plan. This is unnecessary duplication and the reference to being consistent with the territory plan in s 96(2)(c)(ii) has been removed (see clause 10).

Section 25 of the *Planning and Development Regulation 2008* (P&D Regulation) provides for when a survey certificate is not required for development applications. Section 25 of the P&D Regulation refers back to s 139(2)(j) of the P&D Act, which provides the circumstances in which a survey certificate is required to be provided with a development application. The first editorial amendment is to correct an error in the title of s 25 of the P&D Regulation, which incorrectly refers to s 139(2)(j) of the P&D Act when it should refer to s 139(2)(l). The second amendment is to s 25(2) of the P&D Regulation. This section states that a survey certificate is not required with a DA for land leased for residential development if the proposed development is an addition to an existing building or structure. This provision intentionally limits the exemption from providing a survey certificate to extensions only (i.e. where an addition is attached to an existing dwelling). The amendment includes explicit wording that an extension or addition be *attached* to an existing building or structure to qualify for the exemption (but not a new structure or dwelling that is not attached) (see clauses 18 and 19).

Section 1.41 of schedule 1 of the P&D Regulation concerns exempt development for class 10 buildings and structures within a boundary clearance area. Section 1.41(2) exempts a 2nd class 10 building or structure in a boundary clearance area if there is already an existing class 10 building or structure in the area and certain requirements are met. It does this by reference to the relevant cross-section area of a building or structure. The definition of ‘relevant cross-section area’ refers to the ‘largest cross-section’. This has proven to be confusing to members of the public and industry. An amendment is proposed to the drafting of the provision to improve its readability. The amendment proposes to clarify this provision by replacing the term ‘largest cross-section’ with the term ‘largest vertical cross-section’. New examples are also provided to illustrate how this applies in particular circumstances (see clauses 20 to 22).

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Schedule 1 of the P&D Regulation outlines matters that are exempt from development approval. Sections 1.100A(1)(b) and 1.100AB(1)(b) of the P&D Regulation allow for the authority to make an *exemption declaration* that a dwelling or alteration does not stop being an exempt development because of a non-compliance with the defined rules identified in the declaration. At present, there is some confusion about whether an exemption declaration can be granted in respect of a mandatory rule. The amendments insert a note into both sections 1.100A(1)(b) and 1.100AB(1)(b) to make it clear that an exemption declaration cannot be granted in respect of a mandatory rule, because the declaration would then be inconsistent with the P&D Act and the relevant code. For example, s 119 states that development approval in the merit track must not be given unless the proposal is consistent with the relevant code. The Single Dwelling Housing Development Code states that non-compliance with a mandatory rule will result in the refusal of the development application (see clauses 23 and 24).

Human Rights Impacts

None of the proposed amendments negatively impact human rights.

It may appear that the right to privacy and reputation in section 12 of the *Human Rights Act 2004*, is impacted by clause 16 which allows more frequent access to contact information for leases. However, this is not the case. The amendment simply changes the frequency with which information can be accessed so that the information will be more accurate and up to date. It does not allow access to any additional information.

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Provisions in detail

Part 1 Preliminary

Clause 1 Name of Act

This clause names the Act as the *Planning, Building and Environment Legislation Amendment Bill 2016 (No 2)*.

Clause 2 Commencement

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

Clause 3 Legislation amended

This clause lists the Acts and regulations that are amended by the Bill.

Part 2 Climate Change and Greenhouse Gas Reduction Act 2010

Clause 4 Energy efficiency targets
Section 10

This clause removes section 10 of the *Climate Change and Greenhouse Gas Reduction Act 2010* which provides for energy efficiency targets. Section 10 is no longer needed because energy efficiency targets are now provided for in the *Energy Efficiency (Cost of Living) Improvement Act 2012*. This amendment removes unnecessary duplication of having two Acts requiring similar efficiency targets to be set and met.

Part 3 Environment Protection Act 1997

Clause 5 Authority's functions
Section 12 (2)

This clause amends section 12(2) of the *Environment Protection Act 1997* to fix an editorial error by substituting an incorrect reference to *section 2* with the correct reference to *section 3C*. This amendment corrects an error that arose when new objects were provided for in section 3C and the old objects in section 2 were repealed.

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Part 4 Nature Conservation Act 2014

Clause 6 Draft nature conservation strategy–public consultation Section 51(5)

This clause amends section 51(5) of the *Nature Conservation Act 2014* to replace the word *plan* with *strategy*. This editorial amendment clarifies that section 51 makes provision for public consultation for the draft nature conservation *strategy* rather than a plan.

Clause 7 Minister to decide if action plan needed Section 100A (4) (a)

This clause amends s 100A(4) of the Nature Conservation Act to substitute the word *and* between subsections (a) and (b) and replaces it with an *or*, so that the provision applies if either, rather than both, of the stated criteria are met.

Section 100A(4) allows for the Minister to decide that an action plan is not required if the Minister is satisfied that (a) the species does not occur in the ACT or occurs infrequently; and (b) having no plan will not increase the risk of extinction of the species. It was intended that the provision could apply, and therefore a plan would not be required, if either the species does not occur in the ACT, or not having an action plan would not increase its risk of extinction. However, the section is currently worded with "and" between these two criteria and therefore, has the effect that the provision only applies if both the criteria are met. The current construction of the provision is a drafting error and the second element (b) is redundant if the species does not occur in the ACT.

Part 5 Nature Conservation Regulation 2015

Clause 8 Reserves Schedule 1, part 1.1, item 16

This clause makes an editorial amendment to item 16 in the table in part 1.1 of schedule of the Nature Conservation Regulation. The amendment substitutes the new name for the Woodstock West Special Purpose Reserve and provides that it is located in the district of Stromlo. This amendment is linked to the amendment in clause 9 below, which alters the boundaries of the Woodstock West Special Purpose Reserve with the effect that it now contained within the district of Stromlo.

Clause 9 Schedule 1, division 1.2.16

This clause substitutes a new map defining the area of Woodstock West Special Purpose Reserve. This clause is linked to clause 8 above.

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Under s 169 of the *Nature Conservation Act 2014* the definition of reserves includes areas prescribed by regulation to be reserves. The *Nature Conservation Regulation 2015* prescribes special purpose reserves. Division 1.2.16 of schedule 1 defines the area of Woodstock and Woodstock West Special Purpose Reserve. As a result of Territory Plan Variation 351 (TPV) (West Belconnen Urban Development), which commenced on 22 July 2016, the majority of this area has now been designated as nature reserve in the Territory Plan and so does not also need to be prescribed as a special purpose reserve. These are merely consequential amendments as a result of the TPV and substitute a new map showing a smaller boundary area for the Woodstock West Special Purpose Reserve, which does not overlap with the nature reserve overlay in the Territory Plan. The reserve is also renamed the Woodstock West Special Purpose Reserve.

Part 6 Planning and Development Act 2007

Clause 10 Effect of approval of estate development plan Section 96(2)(c)(ii)

This clause omits s 96(2)(c)(ii).

Section 96 of the *Planning and Development Act 2007* (P&D Act) provides for variations to the territory plan to incorporate ongoing provisions. Specifically, s 96(2)(c) of the P&D Act allows the planning and land authority to vary the territory plan (through a technical amendment under s 89 of the P&D Act) to include *ongoing provisions* that formed part of the approved estate development plan and which govern future development in the area. The term *ongoing provision* is defined in s 96(4) as having the meaning given in s 94(3)(g). Section 94(3)(g) defines *ongoing provision* as ‘a provision, which is consistent with the territory plan, that is proposed to apply to the ongoing development of a block in the estate...’

Section 96(2) (c) provides that the planning and land authority can incorporate an *ongoing provision* if a number of requirements are met, one being that the ongoing provision is consistent with the territory plan (s 96(2)(c)(ii)). This requirement is unnecessary duplication because consistency with the territory plan is already part of the definition of an ongoing provision in s 94(3)(g).

Clause 11 When development approvals take effect–ACAT review Section 178(1)(b)

This clause substitutes a new s 178(1)(b) and (ba). Section 178(1)(b) of the P&D Act is amended to address a gap in the provision for when a development approval takes effect that was the subject of an application for review to ACAT which is subsequently withdrawn, dismissed or struck out.

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Section 178(1) sets out when this provision applies. At present, the provision only applies where an application is made to ACAT and ACAT subsequently confirms or varies the decision, or makes a substitute decision. This section does not provide for when a development approval takes effect that was the subject of an application for review to ACAT that was subsequently withdrawn, dismissed or struck out.

The substituted provision provides that the section now applies where an application is made to the ACAT for review of the decision to approve the application; and either the ACAT confirms or varies the decision, or makes a substitute decision, or the application is withdrawn, dismissed or struck out.

This amendment is linked to the amendments in clauses 12 and 13 below.

Clause 12 Section 178(2)

This clause inserts additional wording into s 178(2) of the P&D Act to ensure that the provision provides for when a development approval that is the subject of an application for review to ACAT that is subsequently withdrawn, dismissed or struck out takes effect.

The amendment adds the words *or the approval* into s 178(2) to make it clear that the provision applies to both the original development approval, or the approval as confirmed, varied or substituted by ACAT. This is necessary because when an application for review is made to ACAT and is subsequently withdrawn, dismissed or struck out, then the original development approval stands. The present wording of the provision limits the provision to only providing for a development approval as confirmed, varied or substituted by ACAT. This is a consequential amendment that ties in with the amendment made in clause 11 above.

Clause 13 New section 178(2)(c)

This clause inserts a new s 178(2)(c) that provides that a development approval that was the subject of an application for review to ACAT that was subsequently withdrawn, dismissed or struck out takes effect on the day after the day the application for review is withdrawn, dismissed or struck out.

This amendment is linked to clauses 11 and 12.

Clause 14 When development approval takes effect–activity not allowed by lease
Section 179(2)

This clause amends section 179(2) to ensure that the provision provides for when a development approval that is the subject of an application for review to ACAT that is subsequently withdrawn, dismissed or struck out takes effect.

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The amendment adds the words *the approval, or* into s 179(2) to make it clear that the provision applies, where an application for review has been made, to both the original development approval, or the approval as confirmed, varied or substituted by ACAT. This additional wording is necessary because when an application for review is made to ACAT and is subsequently withdrawn, dismissed or struck out, then the original development approval stands. This provision then provides a day for that original approval to take effect. This is a similar amendment to that made to s 178(2) by clause 12 above, and to s 180(2) by clause 15 below.

Clause 15 When development approval takes effect–condition to be met Section 180(2)

This clause inserts additional wording into s 180(2) of the P&D Act to ensure that the provision provides for when a development approval that is the subject of an application for review to ACAT that is subsequently withdrawn, dismissed or struck out takes effect.

The amendment adds the words *the approval, or* into s 180(2) to make it clear that the provision applies, where an application for review has been made, to both the original development approval, or the approval as confirmed, varied or substituted by ACAT. This additional wording is necessary because when an application for review is made to ACAT and is subsequently withdrawn, dismissed or struck out, then the original development approval stands. This provision then provides a day for that original approval to take effect. This is a similar amendment to that made to s 178(2) by clause 12 above, and to s 179(2) by clause 14 above.

Clause 16 Authority may ask for information about leases from commissioner for revenue Section 395B(3)(a)

This clause amends s 395B of the P&D Act by substituting the term *once every three months* with the term *once every month*. This is to allow the planning and land authority to obtain contact information about leases from the Commissioner for Revenue every month rather than once every three months.

At present, the planning and land authority can request name and address details for leases from the Commissioner for Revenue once every three month. This information is necessary to notify residents of development applications, territory plan variations and other planning matters in their area. The change to allow this information to be requested once every month will ensure that the planning and land authority has access to the most up to date information lessee contact information and can notify the current landholder.

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Part 7 Planning and Development Regulation 2008

Clause 17 Prescribed development proposal for community consultation-Act, s138AE New section 20A(1)(ba)

This clause inserts new section 20A(1)(ba) to prescribe a development proposal that is for more than 1 building, where the buildings have a total gross floor area of more than 7000 square metres.

Section 138AE of the *Planning and Development Act 2007* requires community consultation for certain types of development prescribed by regulation. Section 20A (1)(b) of the *Planning and Development Regulation 2008* prescribes listed categories of development proposals. The effect of this amendment is that development proposals concerning more than one building that have a combined total gross floor area of more than 7000 square metres will be required to undertake pre-DA community consultation. This amendment ensures that developments of a size considered to be major, and involving more than one building, will be required to undergo pre-DA community consultation. The provision does not currently make specific provision for a development with multiple buildings.

Clause 18 Section 25 heading

This clause amends the heading of s 25 of the P&D Regulation to correct a section reference error. The amendment substitutes the incorrect reference to section 139(2)(j) with the correct reference to section 139(2)(l).

Clause 19 New section 25(2)(c)

This clause inserts new s 25(2)(c) to clarify that the reference to an addition to a building in the section means an addition that is *attached* to a existing building or structure.

Section 25 of the P&D Regulation that a survey certificate is not required with a DA for land leased for residential development if the proposed development is an addition to an existing building or structure. This provision intentionally limits the exemption from providing a survey certificate to extensions only. The amendment includes explicit wording to ensure that the exemption applies to an extension or addition *attached* to an existing building or structure (but not to a new structure or dwelling that is not attached).

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Clause 20 Exemptions for requirement for development approval Schedule 1, section 1.41(1), definition of *relevant cross-section area*

This clause substitutes the term *largest cross-section* with the term *largest vertical cross-section* in section 1.41(1) of schedule 1 of the P&D Regulation.

Section 1.41 of schedule 1 of the P&D Regulation concerns exempt development for class 10 buildings and structures within a boundary clearance area. Section 1.41(2) exempts a 2nd class 10 building or structure in a boundary clearance area if there is already an existing class 10 building or structure in the area and certain other requirements are met. Section 1.41 uses *relevant cross-section area* as a key term within the provision. The definition of this term refers to the area of the *largest cross-section*. This has proven a difficult term to interpret. This has been replaced with the term *largest vertical cross-section* and a number of new examples have also been inserted by clause 21 below to help the reader understand the operation of the provision.

Clause 21 Schedule 1, section 1.41(1), definition of *relevant cross-section area*, new examples

This clause inserts new examples into section 1.41(1) of schedule 1 of the P&D Regulation. The examples are included to help the reader understand what constitutes a relevant cross-section area. The three examples consider different scenarios of buildings or structures occurring in a boundary clearance area and how to calculate the relevant cross-section area.

Clause 22 Schedule 1, section 1.41(2), note 3

This clause omits note 3 from section 1.41(2) of schedule 1 of the P&D Regulation as this note is now included in with the examples inserted by clause 21 above. This note is a legislative drafting note and states that an example is part of the regulation.

Clause 23 Schedule 1, section 1.100A(1)(b), new notes

This clause inserts two new notes into s 1.100A(1)(b) of schedule 1 of the P&D Regulation.

The first note states that an exemption declaration must not be granted in relation to non-compliance with a mandatory rule. This is because the exemption declaration would then be inconsistent with the P&D Act, the territory plan and the relevant code. The P&D Act states that an approval must not be given unless the proposal is consistent with the relevant code (see for example, s 119). Therefore, as codes contain mandatory rules that must be complied with, an exemption declaration cannot be issued for non-compliance with a mandatory rule.

The second note provides that the term *mandatory rule* is defined in s 94(4) of the P&D Act.

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The same notes are inserted into 1.100AB by clause 24 below.

Clause 24 Schedule 1, section 1.100AB(1)(b), new notes

This clause inserts two new notes into s 1.100AB(1)(b) of schedule 1 of the P&D Regulation.
The same notes are inserted into 1.100AB by clause 23 above.

Part 8 Utilities (Technical Regulation) Act 2014

Clause 25 Meaning of *regulated utility service* Section 9(2), definition of *small or medium scale generation*

This clause substitutes a new definition of *small or medium scale generation* into s 9(2) of the *Utilities (Technical Regulation) Act 2014* (UTR Act). The new definition substantially replicates the previous definition, but now provides for the numerical limits in the definition to be prescribed by regulation. A new regulation is then inserted by clause 29 below.

Further discussion on this amendment is included at clause 29.

Clause 26 Offence–reporting of notifiable incidents be regulated utility Section 29

This clause amends section 29 of the UTR Act to allow for email reporting of notifiable incidents in addition to the current method of telephone reporting.

Section 29 of the UTR Act outlines the requirements on regulated utilities for reporting notifiable incidents. The section requires that incidents be reported by telephone within 24 hours after the utility becomes aware of the incident. The amendment will allow notifiable incidents to be reported by email as well as telephone. This is to provide increased flexibility for the regulated utility while still requiring notification of serious incidents in a timely manner to the technical regulator. Email reporting will also allow for easy access to written records of reports of notifiable incidents.

Clause 27 Meaning of *utility infrastructure work*–div 9.5 Section 95(g)

This clause amends s 95(g) of the UTR Act which contains the meaning of *utility infrastructure work* to provide for the lower limit of what constitutes *utility infrastructure work* to be prescribed by regulation. The amendment aligns this definition with the changes to the definition of *small or medium scale generation* made by clauses 25 and 29.

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The definition of *utility infrastructure work* currently includes an installation that has the capacity to generate at least 30kW of electricity. Consistent with clause 25, this lower limit is now prescribed by regulation and will be initially prescribed at 200kW (see clause 29).

Clause 28 New section 113

This clause inserts new section 113 into the UTR Act. This section provides the mechanism to introduce a new regulation through an Act and transitions the new regulation to the UTR ACT. New section 113 gives effect to the new regulation being inserted by clause 29 below.

New section 113 provides that the provisions set out in the new schedule 2 (inserted by clause 29) are taken to be a regulation made under s 112 of the UTR Act (the power to make regulations). The regulation is taken to have been made by the Executive through the usual regulation making process, and be amended or repealed by the Executive. The section is self repealing and provides for the expiry of the schedule. It will not appear in the Act after the amendment is made, but will exist as an ongoing and separate regulation made under the Act.

Clause 29 New schedule 2

This clause inserts new schedule 2 into the UTR Act. Schedule 2 is the new *Utilities (Technical Regulation) Regulation 2016*. The new regulation is inserted as a schedule to the UTR Act as per the mechanism outlined in clause 28.

The Regulation prescribes the limits referred to in the definition of *small or medium generation* in s 9 of the UTR Act. The lower and upper limits are prescribed as 200kW and 30MW respectively. The upper limit is the same as it was in the previous definition and the lower limit has been increased from 30kW to 200kW. This increase in the lower limit is made to reflect changing industry capacity and to ensure that the UTR Act is targeted appropriately, given the additional regulation that it imposes. The increase in the lower limit ensures that the majority of residential rooftop solar systems are not captured by the UTR Act. The Act is then targeted to commercial-scale solar generators where the level of regulation imposed by the Act is appropriate.

Specifically, the increase in the lower limit has the effect of not requiring solar generators up to 200kW to obtain an operating certificate under the UTR Act. This is a red-tape reduction measure and easing of the regulatory burden. However, these generators are not completely deregulated and must still comply with the requirements set out in the *Electricity Safety Act 1971.*

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The regulation also prescribes the limit for what constitutes *utility infrastructure work* under s 95(g) of the UTR Act, as described in clause 29 above.

The Regulation contains the following clauses:

Clause 1 Name of regulation
This clause names the regulation as the *Utilities (Technical Regulation) Regulation 2016*.

Clause 2 Meaning of *small or medium generation*–Act, s 9(2)
This clause prescribes the lower limit as 200kW and the upper limit as 30MW.

Clause 3 Meaning of *utility infrastructure work*-Act, s95(g)
This clause prescribes the amount of electricity generated as 200kW.

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