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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Planning and Development Amendment Bill 2017

EXPLANATORY STATEMENT

Presented by

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EXPLANATORY STATEMENT

This explanatory statement relates to the Planning and Development Amendment Bill 2017 (the bill) as presented to the ACT 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 Assembly.

The statement is to be read in conjunction with the bill. It is not, and is not 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 implements three measures pursuant to the final report from the investigation into the 2011 Mitchell chemical fire, operational experience in the implementation of the *Planning and Development Act 2007* (the Act) and the Parliamentary Agreement for the 9th Legislative Assembly.

Specifically, the bill:

- provides a planning assessment framework for the storage of hazardous materials (dangerous substances) above certain quantities;
- For development proposals on contaminated sites, the bill permits the proponent to apply for an environmental significance opinion (ESO) from the planning and land authority and if the authority provides an ESO to the effect that the proposal will not have a significant environmental impact then the proposal is removed from the impact track; and
- implements an item of the Parliamentary Agreement for the 9th Assembly for the Australian Capital Territory by amending the Act to require all draft territory plan variations to be referred to the planning committee of the Legislative Assembly with a decision to be made by the Committee within 15 working days as to whether it will conduct an inquiry into the draft plan variation.

Storage of dangerous substances

The Act is the principal piece of planning legislation in the ACT. The Act sets out, among other things, how land can be used, how environmental matters are managed and how development proposals are assessed. The bill makes amendments to the Act to provide a planning assessment framework for the storage of dangerous substances as recommended by the Lloyd's Review of the 2011 Mitchell chemical fire (released in 2013).

Under the current planning assessment framework, the storage of dangerous substances may commence on a site without the need for a planning assessment and approval. For example, a warehouse may transition from storing soft drinks to storing dangerous substances, as defined in section 10 of the *Dangerous Substances Act 2004* (the DS Act), without consideration of suitability of storing these substances on this particular site and in relation to its surroundings. As there is no planning approval required, the planning and land authority (the authority) is not notified of the commencement of storing dangerous substances and this type of activity does not fall under the planning assessment framework.

This is because, in this instance, the current planning approval process only applies to physical on-site works or changes to a lease, such as the actual construction of a warehouse or the addition of a new use, i.e. storage, to a lease.

There are over 800 leases in industrial zones of the ACT that permit warehousing and storage. There are also leases in other zones, such as commercial zones, that allow these uses. There is potential for the storage of dangerous substances to commence at any of these sites without requiring planning approval. Some of the industrial sites are within 100 metres of residential areas and community uses, such as childcare centres. There is, therefore, the need to proactively and appropriately regulate the storage of dangerous substances from a planning perspective to ensure that storage sites are appropriate located and to prevent loss of life or injury.

Contaminated Sites

Section 21A of the *Environment Protection Act 1997* (EP Act) establishes the register of contaminated sites. Section 123 of the Act provides that the impact assessment track applies to a development proposal if it is a kind mentioned in Schedule 4 of the Act. Item 7 in Part 4.3 of Schedule 4 of the Act lists a 'proposal involving land on the register of contaminated sites under the [EP Act]'. Therefore, any development proposal on land on the register must be assessed in the impact track and have an EIS prepared, regardless of the proposal's potential impact or whether it engages the contaminated part of the land. The Act does allow for an EIS exemption to be applied for where a recent study has already assessed the proposed impacts, negating the need for an EIS in some circumstances.

An EIS is the highest level of impact assessment under the Act and could be disproportionate to the relatively minor issues that can arise from consideration of development on a contaminated site. For example, a development proposal to erect a sign on a block containing contaminated land is automatically placed into the impact track by operation of the Schedule 4 trigger and requires an EIS to be prepared. The sign may only be a very minor development and may not even impact on that part of the site which contains the contamination. In this case, an EIS could be an unnecessary regulatory burden.

The bill provides for a more flexible approach when considering development proposals on contaminated sites.

Draft Territory Plan variations

The final set of amendments in the bill give effect to an item in the Parliamentary Agreement for the 9th Assembly for the Australian Capital Territory relating to Legislative Assembly review of draft Territory Plan variations. The bill amends the Act to require all draft territory plan variations to be referred to the planning committee of the Legislative Assembly with a decision to be made by the Committee within 15 working days as to whether it will conduct an inquiry into the draft plan variation.

Overview of bill

Storage of dangerous substances

Clause 14 of the bill amends schedule 4 to require a development approval (DA), assessable in the impact track and subject to an EIS, for the storage of dangerous substances on sites that are *registrable premises* under the DS Act, unless the planning and land authority produces an environmental significance opinion (ESO) to say the proposal is not likely to have a significant adverse environmental impact. Registrable premises under the DS Act are those premises required to be registered because they contain at least a certain quantity of dangerous substances (known as the *placard quantity* under the Dangerous Substances (General) Regulation 2004, schedule 1 (the DS Regulation)). Registrable premises must comply with rules on handling and storage of dangerous substances under the DS Act. If an ESO is provided by the planning and land authority, the proposal is to be assessed in the merit track and an EIS is not required (DA exemptions are not available under the Act and regulation for storage of dangerous substances).

The storage of dangerous substances below the placard quantity will continue to be regulated under the DS Act and will not require a DA. It is considered that this is an appropriate level of regulatory oversight for the risk factors associated with the storage of lesser quantities of dangerous substances. Storage of dangerous substances below the placard quantity has a lower level of regulation under the DS Act and is not required to also be captured under the planning assessment framework.

The planning and land authority must not provide an ESO unless it has consulted certain entities as set out in clause 13 of the bill. Relevantly, these entities include the work safety commissioner, EPA, the emergency services commissioner and the Director-General of the Health Directorate to ensure that all relevant advice is taken into account when assessment the potential impacts of a proposal to store dangerous substances. An ESO is a notifiable instrument, which ensures transparency in the environmental impact assessment process (see s138AD of the Act).

It should also be noted that section 138AD (7) provides that giving an environmental significance opinion does not limit any power the relevant agency has under this Act or any other territory law. This means, for instance, that the planning authority may act inconsistently with an ESO if after giving the ESO, environmental circumstances change or information becomes available that would have caused the authority to make a different decision.

By operation of section 134 of the Act, those people known to be already storing dangerous substances in at least the placard quantity at the commencement of the bill will not be captured by the new provisions. People will be known to be storing the placard quantity because they will be on the placard quantity register. These sites will be continuing an authorised use on the site and will not require development approval to continue storing the placard quantity of a dangerous substance. This is because these storage sites are already appropriately regulated as they are known sites registered under the DS Act. This approach also avoids any issues of retrospectivity in applying the new provisions in the bill.

The bill does, however, capture the storage of certain quantities of dangerous substances prospectively by amending s 134 of the Act. Section 134 provides that if a lease authorises a use and a lessee begins that use, the development is exempt from requiring development approval. The bill removes this exemption in the circumstance when a lessee wants to begin storing a dangerous substance in a quantity that will make the site registrable premises even if the lease already authorises storage. For example, where a lease has an authorised use of “storage” and stores soft drinks on the site if the use is changed to storing a dangerous substance in a placard quantity so that the premises are registrable premises under the DS Act, a development approval will be required to store the dangerous substance. This allows the site, such as a warehouse in an industrial area, to be assessed from a planning perspective as to the suitability of the premises being used to store a dangerous substance rather than soft drinks.

Clause 17 of the bill inserts definitions from the DS Act into the Planning and Development Act to support the amendments above.

Contaminated sites

Clause 15 of the bill provides for a development proposal involving contaminated land to be taken out of the impact track if the planning and land authority provides an environmental significance opinion (ESO) that the proposal is not likely to have a significant adverse environmental impact. If the ESO is provided, the development will be assessed in the merit track or may even be exempt development (if the criteria is met). This process is the same as applies in other impact track matters.

This is a red tape reduction measure. An ESO is a less onerous and quicker process than preparing an EIS but it is considered a process that provides for proper and adequate oversight of the environmental impacts of a proposed development on contaminated land. The authority will be required to consult a number of entities in preparing the ESO including the Environment Protection Authority.

It is considered that removing the impact track trigger when the proposed development is not likely to have an adverse environmental impact is a more appropriate regulatory response and removes an unnecessary regulatory burden of having to produce an EIS.

An ESO is a notifiable instrument, which ensures transparency in the environmental impact assessment process (see s138AD of the Act). It should also be noted that section 138AD (7) provides that giving an environmental significance opinion does not limit any power the relevant agency has under this Act or any other territory law. This means, for instance, that the planning authority may act inconsistently with an ESO if after giving the ESO, environmental circumstances change or information becomes available that would have caused the authority to make a different decision.

It is important to note that development proposals on contaminated sites could still require assessment in the impact track if they trigger any of the other items in schedule 4 of the Act. For example, a development proposal might require an EIS if it was likely to result in significant impacts on protected matters, such as a matter of national environmental significance. Likewise, if a particular recycling facility was proposed, it might also be captured by one of the waste management triggers in schedule 4 and require an EIS.

Draft Territory Plan Variations

In accordance with the Parliamentary Agreement, the bill amends section 73 of the Act to remove the Minister's discretion under the Act to refer a draft variation (DV) to the appropriate Legislative Assembly committee. This is replaced by a requirement in clause 4 of the bill that the Minister must refer the DV to the appropriate committee within five working days after the day the public availability notice for the DV is notified. The committee will then have 15 working days in which to decide whether to prepare a report on the proposed DV.

If the committee decides not to report, or does not notify the Minister of its decision to decide to conduct an inquiry by the end of the 15 working days, the Minister must take action under section 76 (see clauses 5 and 7 of the bill). If the committee notifies the Minister it will be doing a report on the DV, the Minister is not permitted to take action in relation to the DV until either the committee reports on the DV or six months has passed since the DV was referred to the committee whichever is earlier, as is currently the case (see clause 7 of the bill).

The obligation to refer DVs to the committee does not apply to technical amendments under Part 5.4 of the Act, as these amendments are minor in nature. Nor does the bill apply to special variations under Part 5.3A of the Act.

Human Rights

Contaminated sites

It could be argued that clause 15 of the bill engages the human right to life (*Human Rights Act 2004* (HRA) s 9), fair trial (s 21 HRA) and participation in public life (s 17 HRA). This is on the basis that the proposed changes will result in some development proposals no longer being assessed in the impact track and instead being assessed under other provisions of the Act which will remove the right to comment on a draft EIS and depending on the nature of the proposal could remove the right of third parties to seek ACAT merit review.

To the extent that the proposal does engage human rights as noted above, it is suggested that the proposals are justified and proportionate, consistent with s 28 of the HRA, that is, the limits are reasonable and justified.

The right to life

It could be argued that the bill engages the human right to life because it provides for less regulation of development on contaminated land. However, it is suggested that the limitation is justifiable on the basis that activity on contaminated sites will continue to be adequately regulated through the ESO process. While an EIS may not be required, an ESO will provide a full and proper assessment of any contamination issues that may be relevant to the development proposal. In this sense, contamination will still be considered and assessed through the ESO, with referrals to the EPA. This will be done on a case-by-case assessment, rather than applying a blanket approach to requiring an EIS for all proposals on sites on the contaminated sites register, regardless of the potential for impacts.

The existing law requires all development on land identified in the contaminated sites register to be assessed in the impact track with an EIS. This is unwarranted red tape given that this assessment will be required no matter how minor the development and no matter whether it physically affects the contaminated site. This then is an arbitrary requirement which does not permit a level of assessment commensurate with the level of risk involved.

The bill provides a more flexible and appropriate approach. Depending on the nature of the development, it will be assessed in the impact track (including if it meets other triggers) or the merit track or may even be exempt development if the criteria is met. Typically, the development will be assessed under the merit track which means it will be assessed under the standard provisions of the Act, that is, public notification and assessment of environmental impacts and the suitability of the site for the particular proposal will be required. Merit track development applications are referred to the EPA and the Territory Plan Codes, such as the Residential Zones Development Code (rule 14.6) and the Industrial Zones Development Code (rule 6.5) require assessment of contamination issues in accordance with Government policies and plans, and endorsement from the EPA.

Existing safeguards for the community in relation to contaminated land will remain. The EPA has a Contaminated Sites Environment Protection Policy and can require proponents to undertake contamination investigations and remediation works.

In summary, the bill ensures that development proposals on contaminated land are appropriately regulated with scrutiny of the actual impacts of the proposal through the ESO process and merit track assessment rather than an arbitrary application of the impact track assessment process as currently applies.

Right to fair trial and participation in public life

The bill means some proposals will no longer be assessed in the impact track which will remove the right to comment on a draft EIS. However, as indicated above, a development proposal on contaminated land will still be assessed through the ESO process and typically, the merit assessment track. Merit track assessment requires public notification of the proposal and the community is able to comment on the proposal.

The change from impact track to merit track does not affect the requirement to give public notice of a development application and does not alter the community's right to comment on development proposals. The community will instead be able to comment on a merit track DA, rather than an EIS under the impact track process.

It may be however, that the provision of an ESO may result in a proposal on a contaminated site being DA exempt if the proposal otherwise meets exemption criteria and this will impact on the ability to comment on such development. It is the government's view that such an impact is justified in all the circumstances.

Under the Act, section 133, the *Planning and Development Regulation 2008* may prescribe those things that do not require development approval (refer section 20 and Schedule 1). Development that does not require development approval is DA exempt development. Section 20 and Schedule 1 of the regulation exempt specified development from requiring a development approval. There is no public notification process for DA exempt development as it does not require development approval.

Exempt development does not have a public notification requirement because during the development of the Act, subsequent DA exemption regulations and the relevant Territory Plan Codes, extensive public consultation was conducted. Therefore, the resultant rules around exempt development are designed to deliver acceptable community outcomes i.e. they do not create any material detriment. The DA exempt framework continues to provide 'black and white' criteria easily understood by the community and industry and of a nature so as to not invoke adverse community comment. There has been limited public complaint about DA exemptions and the types of things which are exempt, and industry (that works daily with exempt developments) has acknowledged the benefits that DA exempt development offers.

Before a proposed development on contaminated land can possibly be DA exempt, the planning authority has to provide an ESO that the development is not likely to have an adverse significant environmental impact. This together with the strict criteria for exemption provided by Schedule1 of the Planning and Development Regulation means only appropriate proposals can be DA exempt.

Storage of dangerous substances

It could be argued that the amendments made by the bill relating to the storage of dangerous substances engage the human right to life (*Human Rights Act 2004* (HRA) s 9). To the extent that the amendments do interact with this human right, it is suggested that they support rather than limit the right to life.

The bill requires a development approval, assessable in the impact track and subject to an EIS, for storage of hazardous substances on sites that are *registrable premises* under the DS Act. Registrable premises are those required to be registered because they contain at least a certain quantity of dangerous substances (known as the *placard quantity* under the DS Regulation).

While it is acknowledged that the amendments increase regulation for those people storing dangerous substances, by requiring development approval for future activities, it is considered that this positively advances the public's right to life and personal safety. This is done by ensuring that dangerous substances, that have the potential to cause loss of life or injury if not stored correctly or if there is an accident, are only able to be stored at appropriate sites in the ACT. This additional regulation positively advances public safety outcomes and is a necessary protection of the right to life.

Consistency with Scrutiny of Bills Committee Principles

The following addresses the Scrutiny of Bills Committee principles.

(a) unduly trespass on personal rights and liberties;

The three measures proposed in the bill do not unduly trespass on personal rights and liberties. The amendments relating to storage of dangerous substances impose an additional layer of regulation for those people wishing to store dangerous chemicals. The threshold introduced in the bill for requiring a development approval for storage of dangerous substances is done by reference back to limits in the DS Act. Those people who will captured under the new provisions inserted by the bill will be those people who are currently in contravention of the DS Act by not having registered the premises where they are storing above the threshold quantity of a dangerous substance, and those people who may commence storing above the threshold quantity in the future.

In both instances, the amendments in the bill consider the need to protect the personal safety of members of the public from potential impacts of dangerous substances to outweigh the rights of people to go about their business of storing dangerous substances.

The amendments relating to contaminated sites alter the way in which development proposals on these sites are assessed. While there is a change to the way in which the community can comment and engage with the planning process on these proposals, as they will now be typically assessed in the merit track as opposed to the impact track, there is still an ability for the community to have a right established by legislation to comment on these development proposals. The impact on previously held legislative rights under the impact track process is not considered to be significant, as it is replaced in most cases by a similar legislative right to comment through the merit track process.

It may be however, that the provision of an ESO may result in a proposal on a contaminated site being DA exempt if the proposal otherwise meets exemption criteria and this will impact on the ability to comment on such development. It is the government's view that such an impact is justified in all the circumstances.

Under the Act, section 133, the *Planning and Development Regulation 2008* may prescribe those things that do not require development approval (refer section 20 and Schedule 1). Development that does not require development approval is DA exempt development. Section 20 and Schedule 1 of the regulation exempt specified development from requiring a development approval. There is no public notification process for DA exempt development as it does not require development approval.

Exempt development does not have a public notification requirement because during the development of the Act, subsequent DA exemption regulations and the relevant Territory Plan Codes, extensive public consultation was conducted. Therefore, the resultant rules around exempt development are designed to deliver acceptable community outcomes i.e. they do not create any material detriment. The DA exempt framework continues to provide 'black and white' criteria easily understood by the community and industry and of a nature so as to not invoke adverse community comment.

There has been limited public complaint about DA exemptions and the types of things which are exempt, and industry (that works daily with exempt developments) has acknowledged the benefits that DA exempt development offers.

Before a proposed development on contaminated land can possibly be DA exempt, the planning authority has to provide an ESO that the development is not likely to have an adverse significant environmental impact. This together with the strict criteria for exemption provided by Schedule1 of the Planning and Development Regulation means only appropriate proposals can be DA exempt.

The amendments relating to territory plan variations do not impact on personal rights and liberties.

(b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

As noted above, the amendments in the bill engage with existing and well-established processes under the Act. There are clearly defined legislative processes and include the right to provide representations (comments) on development proposals under the Act.

Further, the amendments relating to dangerous substances also refer back to the legislative process used in the DS Act, which has established an enforceable registration system.

The amendments do not make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

(c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

The proposal to permit development proposals for the storage of dangerous substances and proposals involving contaminated sites to be assessed in the merit track in particular circumstances (that is, an ESO states there will be no significant adverse environmental impact) does not unduly affect review rights. Development approval decisions in the merit track are reviewable, just as those in the impact track are.

The proposal to require development approval for the storage of dangerous substances places these proposals into the impact track. The impact track development approval process has appeal rights for applicants for development approvals where there is a refusal decision or a decision to approve with conditions.

The amendments do not make rights, liberties or obligations unduly dependent upon non-reviewable decisions.

d) inappropriately delegate legislative powers;

The bill does not delegate legislative powers.

(e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

The amendments in the bill do not insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The amendments in the bill enhance the role of the Assembly through mandatory referrals of draft territory plan variations to the appropriate Assembly committee to determine if a report will be prepared. This enhances the role of the Assembly in the variation process compared to the current provisions where the Minister has discretion on whether to refer a draft variation.

The two matters relating to planning approvals processes (that is, dangerous substances and contaminated land) tie in to existing statutory powers of the planning and land authority to undertake development assessment and issue approvals. These powers are well-established powers of the independent statutory authority and have been given to the authority through previous Acts of the Assembly.

Outline of Provisions

Clause 1 Name of bill

Names the Act as the *Planning and Development Amendment Act 2017.*

Clause 2 Commencement

States that the Act, except sections 9 to11 and 14 and 17 commence on the day after its notification day. Sections 9-11 and 14 and 17 will commence on a day fixed by the Minister by written notice.

Clause 3 Legislation amended

States that the Act amends the *Planning and Development Act 2007.*

Clause 4 Section 73

Substitutes a new section 73. New section 73 requires the Minister when he is given draft territory plan variation documents to refer them to the appropriate committee of the Legislative Assembly within 5 working days. The 5 working day period begins after the day the public availability notice for the draft plan variation is notified (for public availability notices see s70 of the Act). If the draft plan variation is related to light rail, the Minister can include a request for the committee to prepare any report it decides to do within the time frame of not less than 3 months and not more than 6 months.

Under new s 73 (3) the committee must tell the Minister within 15 working days after the day the draft territory plan variation (DV) is referred to the committee whether or not it will prepare a report on the DV. If the committee has not told the Minister within that 15 day period whether it will prepare a report, the committee is taken to have decided not to prepare a report. Under new section 73A (inserted by clause 5 of the bill) if the committee decides or is taken to have decided not to prepare a report, the Minister must take action in accordance with s76 that is, approve the DV or return the DV to the planning and land authority.

New s73 (4) sets out what the committee may include in a report. New s73 (5) clarifies that ***draft plan variation documents*** means both the draft plan variation and the documents mentioned in s69(2) that relate to the DV.

Clause 5 New section 73A

Inserts a new section 73A. Under new section 73A, if the committee decides or is taken to have decided not to prepare a report, the Minister must take action in accordance with s76 that is, approve the DPV or return the DPV to the planning and land authority.

Clause 6 Committee reports on draft plan variations
Section 74(1)

Substitutes a new s74 (1). This is consequential to amendments made by clause 4 above. Section 74 (1) is amended to clarify that it applies to the situation when the Minister has referred a DV to the committee and the committee has decided to prepare a report on the DV. Under s74(2) the Minister must not take action under s 76 of the Act until the committee has reported unless s75 of the Act applies (a report has not been provided after 6 months); and once the committee reports the Minister must take action under s76.

Clause 7 Section 75

Substitutes a new s75. This is consequential to amendments made by clause 4 above. New section 75 clarifies that it applies to the situation when the Minister has referred a DV to the committee and the committee has decided to prepare a report on the DV and the committee has not reported within 6 months or within the period requested by the Minister. In these circumstances, the Minister may take action under s76 even though the committee has not reported on the DV (s75(2)).

Clause 8 Minister's powers in relation to draft plan variations
Section 76 (1) and (2)

Substitutes a new s76 (1). This is consequential to amendments made by clause 4 above. New section 76(1) clarifies that the section applies if the Minister is given a DV and either the committee has decided or is taken to have decided, not to report on the DV, or the Minister decides to take action under s75 because the committee has not provided a report within a certain time period. As already provided, the section also applies if the

Minister is given a DV under s78 (3) or (4) or the Minister revokes the approval of a DV (see s77). Existing s76(2) is deleted because the amendments made by clause 4 of the bill mean all DVs will now be referred to the committee and the situation envisaged by s76(2) cannot occur.

Clause 9 Exempt development – authorised use
New section 134 (3A)

Inserts new s134 (3A) which provides that beginning the use of 'storage' is not exempt from requiring development approval even though it may be an authorised use on the lease if the storage involves storing a dangerous substance in at least the placard quantity. The only exception to this will be those premises that on the commencement day of the relevant sections of the bill are already registered on the placard quantity register. If premises are not on the placard quantity register on commencement day, beginning the use of storage of at least a placard amount of a dangerous substance will require a DA even if the lease authorises the use.

Also, if on commencement day, at least the placard amount of a dangerous substance is being stored on premises and the premises are *not* on the placard quantity register then the storage will require a development approval (DA) even if the use is authorised by the lease. Clause 9 ensures proper regulation of dangerous substances even when a lease already authorises the use. Even if a lease authorises the storage, a DA will be required to store at least the placard amount of a dangerous substance unless the premises are on the placard quantity register at the time of commencement of the bill. A DA is not required if the premises are on the register because it is considered the premises are adequately regulated by the dangerous substances legislation. Clause 17 below provides definitions of ***dangerous substance***, ***placard quantity*** and ***placard quantity register***.

Clause 10 Section 134 (8), new definition of *commencement day*

Inserts new section 134 (8). This is consequential to the amendments made by clauses 9 and 14. It provides a definition of the term ***commencement day*** which is used in new sections 134(3A) and new item 11, part 4.2 of schedule 4. Commencement day means the day the Planning and Development Amendment Act 2017, section 9 commences.

Clause 11 Impact track proposals if not likely to have significant adverse environmental impact Section 138AA (1) (a)

Inserts the words “or item 11” after the words “item 3(c) or (d)”. This is consequential to the amendments made by clause 14 and allows for an environmental significance opinion (ESO) to be applied for in relation to schedule 4, part 4.2, item 11, being the new impact track trigger inserted by clause 14 below.

Clause 12 Section 138AA (1)(b)

Substitutes a new section 138AA (1)(b) to include the words “item 7” in section 138AA(1)(b). This is consequential to the amendment made by clause 15 and allows for an environmental significance opinion (ESO) to be applied for in relation to schedule 4, part 4.3, item 7 which is amended by clause 15 of the bill.

Clause 13 New section 138AA(3)and (4)

Inserts new section 138AA (3) and (4). This clause lists the entities the planning and land authority must consult if it is the relevant agency for an application for an ESO.

Clause 14 Development proposals in impact track because of need for EIS Schedule 4, part 4.2, new item 11

Inserts new item 11 in schedule 4, part 4.2. The bill amends schedule 4 to require a development approval (DA), assessable in the impact track and subject to an Environmental Impact Statement (EIS), for the storage of dangerous substances on sites that are *registrable premises* under the *Dangerous Substances Act 2004* (the DS Act) unless the planning and land authority produces an ESO to say the proposal is not likely to have a significant adverse environmental impact. *Registrable premises* are those required to be registered because they contain at least a certain quantity of dangerous substances (known as the *placard quantity* under the Dangerous Substances Regulation Schedule 1 (the DS Regulation)). Registrable premises must comply with rules on handling and storage of dangerous substances under the DS Act. If an ESO is provided by the planning and land authority, the proposal is assessed in the merit track and an EIS is not required.

The storage of dangerous substances below the placard quantity will continue to be regulated under the DS Act and will not require a DA. It is considered that this is an appropriate level of regulatory oversight for the risk factors associated with the storage of lesser quantities of dangerous substances.

The planning and land authority must not provide an ESO unless it has consulted certain entities as set out in 13 of the bill. An ESO is a notifiable instrument (see s138AD of the Act).

Those people known to be already storing dangerous substances above the placard quantity (i.e. premises that are on the placard quantity register) at the commencement of the relevant sections of the bill will not be captured by the new provisions. This is because these storage sites are already appropriately regulated as they are known sites registered under the DS Act. There is therefore no issue of retrospectivity about the bill.

The bill does, however, capture the storage of certain quantities of dangerous substances prospectively by amending s134 of the Act (see clause 9 above). Section 134 provides that if a lease authorises a use and a lessee begins that use, the development is DA exempt. The bill removes this exemption in the circumstance when a lessee wants to begin storing a dangerous substance in a quantity that will make the site registrable premises even if the lease already authorises storage. For example, a lease has an authorised use of “storage” and stores soft drinks on the site. If the use is changed to storing not soft drinks but a dangerous substance in a placard quantity so that the premises are registrable premises, a DA will be required to store the dangerous substance. This allows the site to be assessed from a planning point of view as to the suitability of the premises being used to store a dangerous substance rather than soft drinks.

Clause 15 Schedule 4, part 4.3, item 7

Amends schedule 4 part 4.3 item 7 to provide that the impact track does not apply to a development proposal involving contaminated land if the planning and land authority produces an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact.

Section 21A of the *Environment Protection Act 1997* (EP Act) establishes the register of contaminated sites. Section 123 of the Planning and Development Act provides that the impact track applies to a development proposal if it is a kind mentioned in Schedule 4. Item 7 of Part 4.3 of Schedule 4 of the Act lists 'proposal involving land on the register of contaminated sites under the [EP Act]'. Therefore, any development proposal on land on the register, regardless of the proposal's potential impact or whether it engages the contaminated land, must be assessed in the impact track and an EIS prepared, unless an EIS exemption applies.

An EIS is the highest level of assessment under the Act and could be considered disproportionate to the relatively minor issues that can arise from consideration of development on land that is on the register. For example, a simple proposal to erect a sign on contaminated land would be in the impact track and an EIS would be required.

Clause 15 provides for a proposal involving contaminated land to be taken out of the impact track if the planning and land authority provides an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact. If the ESO is provided, the development will be assessed in the merit track or may even be exempt development (if the criteria is met). This process is the same as applies in other impact track matters.

This is a red tape reduction measure. An ESO is a less onerous and quicker process than preparing an EIS but it is considered a process that provides for proper and adequate oversight of the environmental impacts of a proposed development on contaminated land. The authority will be required to consult a number of entities in preparing the ESO including the Environment Protection Authority (see clause 13).

It is important to note that development proposals on contaminated sites could still require assessment in the impact track if they trigger any of the other items in schedule 4 of the Act. For example, a development proposal might require an EIS if it was likely to result in significant impacts on protected matters, such as a matter of national environmental significance. Likewise, if a particular recycling facility was proposed, it might also be captured by one of the waste management triggers in schedule 4 and require an EIS.

Clause 16 Dictionary, note 2

Inserts emergency services commissioner, planning and land authority and work safety commissioner to note 2 of the Dictionary. This is consequential to clause 13 above

Clause 17 Dictionary, new definitions

Inserts new definition of ***dangerous substance*** by reference to the dictionary of the *Dangerous Substances Act 2004.* This is consequential to clauses 9 and 14 above. Also inserts new definitions of ***placard quantity*** and ***placard quantity register*** with reference to the *Dangerous Substances (General) Regulation 2004*. This is consequential to clauses 9 and 14 above.

Clause 18 Dictionary, definition of *relevant agency*

Substitutes a new definition of ***relevant agency*** in the Dictionary to include subparagraph (b) and (e) consequential to amendments made by clause 14 and 15.