

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Caroline Le Couteur)

Planning and Development (Public Notification) Amendment Bill 2012

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Planning and Development (Public Notification) Amendment Bill 2012

A Bill for

An Act to amend the *Planning and Development Act 2007*, the *Planning and Development Regulation 2008*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning and Development (Public Notification)*
4 *Amendment Act 2012*.

5 **2 Commencement**

6 (1) This Act (other than schedule 1) commences on a day fixed by the
7 Minister by written notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see Legislation Act, s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see Legislation
12 Act, s 77 (1)).

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 period (see Legislation Act, s 79).

16 (2) Schedule 1 commences on the later of—

17 (a) the commencement of section 20; and

18 (b) the commencement of the *Planning and Building Legislation*
19 *Amendment Act 2011 (No 2)*, section 7.

20 **3 Legislation amended**

21 This Act amends the *Planning and Development Act 2007* and the
22 *Planning and Development Regulation 2008*.

23 *Note* This Act also amends the *Building (General) Regulation 2008* (see
24 sch 1).

Part 2 Planning and Development Act 2007

4 Public consultation—notification New section 63 (5A)

insert

(5A) If the draft plan variation is a variation in relation to a zone (other than a technical amendment), the planning and land authority must also give a copy of the consultation notice and any extension notice to the lessee of each lease that is within 500 metres of the perimeter of the zone to which the variation relates.

Note For how documents may be given, see the Legislation Act, pt 19.5.

5 New section 63 (7)

insert

(7) In this section:

lessee—see section 234.

6 Code track—notification, right of review, governmental consultation and reconsideration Section 117 (a)

substitute

(a) if a development proposal is in the code track, the application for development approval for the proposal must be publicly notified under division 7.3.4 (Public notification of development applications and representations); and

- 1 **7 Declaration by Public Health Act Minister affects**
2 **assessment track**
3 **Section 125 (1) (c), note**
- 4 *omit*
- 5 **8 What is *publicly notifies* for ch 7?**
6 **New section 152 (1) (aa)**
- 7 *insert*
- 8 (aa) for an application for a development proposal in the code track
9 that is prescribed by regulation—the authority notifies the
10 application under section 153; or
- 11 **9 New section 152 (1) (b) (iii)**
- 12 *before note 1, insert*
- 13 (iii) if the development proposal is, or includes, a lease
14 variation of a concessional lease to remove its
15 concessional status—section 154A.
- 16 **10 Section 152 (2) (a) and (b)**
- 17 *substitute*
- 18 (a) under section 155 (Major public notification) and—
- 19 (i) if the development proposal is or includes a lease
20 variation—section 154 (Public notice to registered
21 interest-holders) (if applicable); or
- 22 (ii) if the development proposal is, or includes, a lease
23 variation of a concessional lease to remove its
24 concessional status—section 154A (Public notice—
25 concessional lease variation);

- (b) under section 153 (Public notice to adjoining premises) and—
- (i) if the development proposal is or includes a lease variation—section 154 (if applicable); or
 - (ii) if the development proposal is, or includes, a lease variation of a concessional lease to remove its concessional status—section 154A.

11 New section 154A

insert

154A Public notice—concessional lease variation

- (1) This section applies in relation to an application for development approval to vary a lease granted as a concessional lease if the application is for or includes the removal of its concessional status.
- (2) The planning and land authority must give written notice of the making of the application to the lessee of each lease (a *local place*) that is within 500 metres of the perimeter of the place to which the application relates.
- Note* For how documents may be given, see the Legislation Act, pt 19.5.
- (3) The planning and land authority must give a new written notice under subsection (2) if, before the public notification period ends, the authority—
- (a) becomes aware that the original notice is defective because its contents are incorrect, incomplete or include misleading information; and
 - (b) is satisfied that the defect is likely to—
 - (i) unfavourably affect a person's awareness of the timing, location or nature of the development proposal in the application; or

1 (ii) deny or restrict the opportunity of a person to make
2 representations about the application under section 156.

3 (4) However, the planning and land authority need not give public
4 notice under subsection (2) or (3) in relation to a local place that is
5 leased by the applicant or a person for whom the applicant has been
6 appointed to act as agent.

7 *Note* This section is subject to s 411 and s 412.

8 (5) The validity of a development approval is not affected by a failure
9 by the planning and land authority to comply with this section.

10 (6) In this section:

11 *lessee*—see section 234.

12 **12 Regulation-making power**
13 **New section 426 (6)**

14 *insert*

15 (6) Subject to any disallowance or amendment under the Legislation
16 Act, chapter 7, a regulation commences—

17 (a) if there is a motion to disallow the regulation and the motion is
18 negated by the Legislative Assembly—the day after the day
19 the disallowance motion is negated; or

20 (b) the day after the 6th sitting day after the day it is presented to
21 the Legislative Assembly under that chapter; or

22 (c) if the regulation provides for a later date or time of
23 commencement—on that date or at that time.

1	13	Reviewable decisions, eligible entities and interested
2		entities
3		Schedule 1, item 4, column 2
4		<i>after</i>
5		s 153
6		<i>insert</i>
7		or s 154A,

1 **Part 3** **Planning and Development**
2 **Regulation 2008**

3 **14** **Exempt developments—Act, s 133, def *exempt***
4 ***development*, par (c)**
5 **Section 20 (6) (c)**

6 *substitute*

7 (c) the requirement under schedule 1, section 1.100 (Compliant
8 single dwellings—new residential land) that there be not more
9 than 1 dwelling on a block.

10 **15** **New section 27A**

11 *insert*

12 **27A** **Public notification of code track development**
13 **applications—Act, s 152 (1) (aa)**

14 An application for a development proposal in the code track if the
15 application is for the building of a single dwelling on a block, if
16 another dwelling has previously been built on the block.

17 **16** **When development approvals do not require**
18 **amendment—Act, s 198C (2)**
19 **Section 35 (4) (c)**

20 *substitute*

21 (c) the requirement under schedule 1, section 1.100 (Compliant
22 single dwellings—new residential land) that there be not more
23 than 1 dwelling on a block.

1	17	Schedule 1, section 1.100 heading
2		<i>substitute</i>
3	1.100	Compliant single dwellings—new residential land
4	18	Schedule 1, section 1.100 (1)
5		<i>substitute</i>
6	(1)	The building of a single dwelling on a block if—
7		(a) another dwelling has not been built on the block; and
8		(b) if the block is a preliminary block—the dwelling is built by the
9		lessee of the holding lease; and
10		(c) the dwelling complies with—
11		(i) the relevant rules in any relevant precinct code; and
12		(ii) to the extent that they are not inconsistent with the
13		relevant rules in a relevant precinct code—the relevant
14		rules in the Residential Zones Single Dwelling House
15		Development Code.
16	<i>Note 1</i>	Relevant rules , for a development proposal—see the Act,
17		dictionary. See also s (3).
18	<i>Note 2</i>	The general exemption criteria are not applied because the
19		relevant rules in the territory plan include requirements to similar
20		effect as the criteria.
21	<i>Note 3</i>	Other territory laws, including the <i>Heritage Act 2004</i> , must be
22		complied with (see s 1.4 and s 1.14).
23	19	Schedule 1, section 1.100 (4), definition of <i>prescribed</i>
24		<i>general exemption critieria</i>
25		<i>omit</i>

20 Schedule 1, section 1.100A*substitute***1.100A Otherwise non-compliant single dwellings—new residential land**

- (1) Building a single dwelling (the *dwelling*) or altering a single dwelling (the *alteration*) on a block if——
- (a) another dwelling has not been built on the block; and
 - (b) if the block is a preliminary block—the dwelling is built by the lessee of the holding lease; and
 - (c) the dwelling or alteration does not comply with the defined rules; and
 - (d) each non-compliance relates to the encroachment of the dwelling or alteration—
 - (i) beyond the front, side or rear setback required under the defined rules; or
 - (ii) beyond the building envelope that applies, under the defined rules, to the block where the dwelling or alteration is being built; or
 - (iii) into the minimum private open space required under the defined rules; and
 - (e) the planning and land authority declares (an *exemption declaration*) that the building of the dwelling or alteration does not stop being an exempt development because of a non-compliance under paragraph (c) identified in the declaration.

Note 1 Relevant rules, for a development proposal—see the Act, dictionary.

- 1 (5) However, the planning and land authority must not make an
2 exemption declaration in relation to a non-compliant dwelling or
3 alteration unless satisfied that—
- 4 (a) the non-compliance is minor; and
- 5 (b) building the dwelling or alteration other than in accordance
6 with the defined rules—
- 7 (i) will not adversely affect someone other than the
8 applicant; and
- 9 (ii) will not increase the environmental impact of the
10 dwelling more than minimally.
- 11 (6) In this section:
- 12 **block**—see section 1.100 (4).
- 13 **defined rules** means—
- 14 (a) the relevant rules in any relevant precinct code that would
15 apply if the dwelling or alteration were not exempt; or
- 16 (b) the relevant rules in the Residential Zones—Single Dwelling
17 Housing Development Code that would apply if the dwelling
18 or alteration were not exempt.
- 19 **preliminary block**—see section 1.100 (4).
- 20 **setback**—see the territory plan (13 Definitions).

1 **Schedule 1** **Consequential amendment—**
2 **Building (General)**
3 **Regulation 2008**

4 (see s 3)

5 **[1.1] New section 30A (c) (viiia)**

6 *insert*

7 (viiia) if the building work is for a development mentioned in
8 the *Planning and Development Regulation 2008*,
9 schedule 1, section 1.100 or 1.100A—where a copy of
10 the plans for the development may be inspected;

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 28 March 2012.

2 **Notification**

Notified under the Legislation Act on 2012.

3 **Republications of amended laws**

For the latest republication of amended laws, see www.legislation.act.gov.au.
