

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**LAND (PLANNING AND ENVIRONMENT) (UNIT  
DEVELOPMENTS) AMENDMENT BILL 2004**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Kerrie Tucker MLA**

**Land (Planning and Environment) (Unit Developments) Amendment Bill 2004**

**EXPLANATORY MEMORANDUM**

**Outline**

This bill sets up a mechanism for ensuring that new major multi-unit developments (defined as having more than 20 residences) will include some public housing or other form of affordable housing, or in some situations, that the developer will contribute to affordable housing through a reasonable financial contribution.

The basic concept of this bill, requiring contributions from private developments towards the community's stock of public and affordable housing, has been adopted in various forms in NSW, and was canvassed by the ACT Affordable Housing Taskforce in 2002.

**Clause 1**

The name of the Act

**Clause 2**

This is a technical clause, setting out the standard commencement provision.

**Clause 3**

This is a technical clause setting out the Acts amendment. The principal Act amended is the *Land (Planning and Environment) Act 1991*, but there will also be consequential amendments to the *Unit Titles Act 2001*, listed in schedule 1 of this bill.

**Clause 4**

Clause 4 inserts definitions for *affordable housing*, *major unit development*, and *unit*, into section 159, which is effectively the dictionary for part 5 of the Act.

The definition of *affordable housing* is drawn from the standard definition for unaffordable housing, or housing stress, used by, among others, the ACT Affordable Housing Task Force in 2002 (ref Background Paper number 4), and by the Affordable Housing National Research Consortium.

The definition of *major unit development* sets the threshold for triggering the requirements of this bill at developments consisting of at least 20 units, or a unit development prescribed under the regulations for this section. The aim is to avoid setting a requirement that would make a small development unviable.

The definition of *unit* refers readers to the definition at section 9 of the *Unit Titles Act 2001*, which states that:

- (1) A unit is a part of a parcel shown in a unit title application or a units plan as a unit.
- (2) After a units plan is registered, a unit of the units plan includes any unit subsidiary shown on the units plan as annexed to the unit.

### **Clause 5**

Clause 5 inserts a new subsection (2A) into section 161 of the *Land (Planning and Environment) Act*. This will put the main purpose of the bill into effect in situations where a new lease is to be granted for a major unit development. In this situation, the government, through the planning and land authority, would be setting the conditions for inclusion of affordable housing from the beginning of the life of the lease.

This section would establish that the planning and land authority may only grant a lease authorising use of land for a major unit development if a provision has been made to dedicate at least 10% of the development to affordable housing, and the lease includes a provision requiring compliance with the agreement.

The affordable housing may be dedicated in one of two ways. First, by transferring the dedicated percentage, on completion of the development, to the commissioner for housing. Or, alternatively, the dedicated percentage of the development may be otherwise used, after completion of the development, for affordable housing. This clause also requires that the dedicated percentage of the development continue to be used for the purpose of affordable housing.

Transferral to the commissioner for housing would simply add to the stock of public housing. This may be the most straightforward option for some developers.

The alternative option in subsection 161 (2A) (ii), could be met in a number of ways. For example, it could be made available for social housing rental, or head leasing, by the commissioner for public housing; the units could be managed by a community housing provider; the required number of units could be privately rented at a level, and to tenants, to meet the definition of affordable housing. These are just a few examples, and do not limit the way the requirement could be met - it will be up to the developer to assess the best way for their particular development, and market, to satisfy the requirement.

### **Clause 6**

Clause 6 is technical, regarding renumbering of subsections when the Act is next republished under the *Legislation Act*.

### **Clause 7**

Clause 7 inserts into section 222, effectively the dictionary for part 6, the same definitions inserted into part 5 by clause 4 of this bill.

## **Clause 8**

This clause would establish a new condition for approval of major unit developments that are essentially the same as the requirements for new leases for relating major unit developments, as would be established by Clause 5. However, an additional option is provided for developers in this clause, in recognition of the difference between setting conditions for a new lease of land, and an approval for a change of use on an existing lease. The developer may, instead of setting aside a dedicate percentage of the development for affordable housing, choose to pay the Territory an affordable housing contribution.

The amount of the contribution would be determined by the relevant authority under new section 245AA, at a reasonable level, having regard to the matters set out in subclause 4: the extent of the need for affordable housing in the area; the scale of the development; whether the proposed development is likely to reduce the availability of affordable housing; and any dedication or contribution previously made by the applicant under the section or section 161 (granting of leases) in relation to the area.

This condition of approval would not apply if the relevant lease is already subject to the requirements of section 161 (2A).

The choice of contributing affordable housing, or a monetary affordable housing contribution, is modelled on the NSW developer contributions system, for example SEPP 70, which is described in the Affordable Housing Taskforce report.

These requirements will only apply to applications received after the commencement date of the Bill; it will not apply to applications made, but not yet approved at that point.

Proposed new clause 245AB would require the territory to apply any affordable housing contribution under 245AA to the purpose of providing affordable housing within a reasonable time after the contribution is made.

Also, the commissioner for housing must use units transferred under section 161 (2A) or 245AA in the exercise of the commissioner's functions in relation to programs and arrangements for providing affordable housing. This task is consistent with sections 8 and 9 of the *Housing Assistance Act 1987*, where the functions and powers of the commissioner are set out.

## **Schedule 1**

Schedule 1 sets out the consequential amendments to the *Unit Titles Act 2001*.