



Australian Capital Territory

Planning and Development (Symonston Mental Health Facility) Amendment Act 2014

A2014-26

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J2014-214

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Planning and Development (Symonston Mental Health Facility) Amendment Act 2014

A2014-26

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

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

J2014-214

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Planning and Development (Symonston Mental Health Facility) Amendment Act 2014*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the *Planning and Development Act 2007*.

Note This Act also amends other legislation (see sch 1).

4 Part 5.3 heading

substitute

Part 5.3 Variations of territory plan other than special variation or technical amendments

**5 How territory plan is varied under pt 5.3
Section 57 (1)**

before

technical

insert

special variation or

6 Section 57 (1), note

substitute

Note 1 For [territory plan](#) variations that are special variations, see pt 5.3A.

Note 2 For [territory plan](#) variations that are technical amendments, see pt 5.4 and pt 5.5.

7 Section 57 (8)

substitute

- (8) Different provisions apply to plan variations that are special variations and technical amendments, including future urban areas.

Note 1 For [territory plan](#) variations that are special variations, see pt 5.3A.

Note 2 For [territory plan](#) variations that are technical amendments, see pt 5.4, pt 5.5 and s 95.

8 Section 59

substitute

59 Application—pt 5.3

This part does not apply to variations of the [territory plan](#) that are—

- (a) special variations under part 5.3A; and
- (b) technical amendments under part 5.4.

9 **New part 5.3A**

insert

Part 5.3A **Special variation—Symonston
mental health facility**

Division 5.3A.1 **Preliminary**

85A **Definitions—pt 5.3A**

In this part:

mental health facility—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

Symonston mental health facility means a mental health facility at the Symonston site.

Symonston site means the area outlined in bold on the plan in schedule 6.

Division 5.3A.2 Special variation—consultation requirements

85B Preparation of draft Symonston mental health facility variation

- (1) The planning and land authority must prepare an instrument to make a draft variation of the [territory plan](#) in relation to the Symonston mental health facility (the *draft special variation*).

Example

The planning and land authority prepares a variation to the [territory plan](#) to state that development of the Symonston mental health facility is assessable in the merit assessment track.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The draft special variation must—
 - (a) identify the Symonston site; and
 - (b) include any [territory plan](#) variations that are required to implement the special variation; and
 - (c) state how the special variation would meet the criteria in section 85I (When Executive may make special variation).

85C Consultation on draft special variation

- (1) The planning and land authority must give written notice inviting comment on the draft special variation under section 85B to the national capital authority.
- (2) The planning and land authority must also consult with the public in accordance with section 85D.

85D Public consultation—notification

- (1) Before giving the draft special variation to the Executive under section 85G, the planning and land authority must prepare a notice (the *consultation notice*)—
 - (a) stating that copies of the draft special variation are available for public inspection and purchase during a stated period of not less than 15 working days (the *consultation period*) at stated places; and
 - (b) inviting people to give written comments (*consultation comments*) about the draft special variation to the authority at a stated address during the consultation period; and
 - (c) stating that copies of consultation comments, or comments received from the national capital authority, will be made available for public inspection for a period of at least 15 working days starting 10 working days after the day the consultation period ends, at stated places.
- (2) The planning and land authority may by notice (an *extension notice*) extend or further extend the consultation period.

Note The planning and land authority may extend the consultation period after the end of the period being extended (see [Legislation Act](#), s 151C (3)).

- (3) The following are notifiable instruments:
 - (a) the consultation notice;
 - (b) any extension notice.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (4) If a notifiable instrument under subsection (3) does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

- (5) The planning and land authority must also publish the consultation notice and any extension notice in a daily newspaper and on the authority website.

Note **Authority website**—see the dictionary.

85E Public consultation—availability of draft special variation

The planning and land authority must make copies of the draft special variation mentioned in the consultation notice available for public inspection and purchase during office hours during the consultation period and at the places stated in the consultation notice.

85F Public inspection of comments on draft special variation

The planning and land authority must make copies of any consultation comments made on the draft special variation available for public inspection during office hours during the consultation period at the place mentioned in the consultation notice.

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

85G Draft variation to be given to Executive

- (1) This section applies if the consultation process for the draft special variation has ended.
- (2) The planning and land authority must give the draft special variation to the Executive, together with a written report setting out—
- (a) comments received from the national capital authority; and
 - (b) details of the public consultation; and
 - (c) the issues raised in any consultation about the draft special variation.

- (3) The Executive may return the draft special variation to the planning and land authority and direct the authority to do 1 or more of the following:
 - (a) conduct further stated consultation in accordance with this division;
 - (b) withdraw the draft special variation.
- (4) If the Executive directs the withdrawal of the draft special variation by the planning and land authority under subsection (3) (b), the authority must prepare a notice stating that the draft special variation is withdrawn.
- (5) The following are notifiable instruments:
 - (a) a direction under subsection (3) (b);
 - (b) a notice under subsection (4).
- (6) If a notifiable instrument under subsection (5) does not state when the instrument expires, the instrument expires 6 months after the day it is notified.
- (7) The planning and land authority must also publish the notice under subsection (4) in a daily newspaper and on the authority website.

Note A notifiable instrument must be notified under the [Legislation Act](#).

Note **Authority website**—see the dictionary.

Division 5.3A.2 Special variation

85H Executive may make special variation

- (1) The Executive may make an instrument to vary the [territory plan](#) in relation to the Symonston mental health facility (the *special variation*).
- (2) The special variation must—
 - (a) identify the Symonston site; and
 - (b) include any [territory plan](#) variations that are required to implement the special variation; and
 - (c) state how, in the Executive’s opinion, the area meets the special variation criteria in section 85I; and
 - (d) include the consultation report on the draft special variation prepared by the planning and land authority under section 85G.
- (3) The special variation is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

85I When Executive may make special variation

- (1) The Executive may only make the special variation under section 85H if—
 - (a) the planning and land authority has consulted the national capital authority and the public about the draft special variation in accordance with the requirements in section 85C; and
 - (b) the Executive has considered the planning and land authority’s consultation report provided to the Executive by the authority under section 85G; and

- (c) the Executive considers—
 - (i) the special variation will facilitate the Symonston mental health facility at the Symonston site; and
 - (ii) there is no substantive public policy reason for the development of the Symonston mental health facility not to proceed.
- (2) However, the Executive may make the special variation in a revised form to the draft special variation if, having regard to the report of the planning and land authority under section 85G, the Executive considers it appropriate to do so.

85J Effect of special variation—variations to territory plan

- (1) A variation to the [territory plan](#) that is included in the special variation takes effect on the day the special variation commences.
 - (2) The planning and land authority must publish in a daily newspaper and on the authority website details of—
 - (a) each variation to the [territory plan](#) made by the special variation; and
 - (b) where copies of the plan variation may be inspected or purchased.
- Note* **Authority website**—see the dictionary.
- (3) The planning and land authority must make copies of the plan variation available for inspection or purchase during office hours at the places, and during the period, published in the newspaper under subsection (2) (b).

85K Special variation—time limit on bringing court proceedings

A person may not start a proceeding in a court in relation to the special variation more than 60 days after the variation is made.

Note Section 104 limits challenges to the validity of [territory plan](#) provisions more generally.

85L Time limit on proceedings in relation to Symonston mental health facility

- (1) This section applies to a development proposal for the development of the Symonston mental health facility if the Executive makes a special variation.
- (2) A person may not start a proceeding in a court in relation to a decision under chapter 7, chapter 8 or chapter 9—
 - (a) if the decision is in relation to the development proposal; and
 - (b) more than 60 days after the day the decision is made.
- (3) This section expires 5 years after the day this section commences unless the period that this section is in force is extended by regulation.
- (4) The period may not be extended under subsection (3) by more than 5 years.

Note The [Legislation Act](#), s 84 (1) (a) provides that the repeal of a law does not revive anything not in force or existing when the repeal takes effect.

**10 Restrictions on public availability—comments, applications, representations and proposals
New section 411 (1) (aa)**

insert

- (aa) a person who makes consultation comments on a draft special variation; or

11 Section 411 (2), definition of *relevant document*, new paragraph (aa)

insert

- (aa) in relation to a person who makes consultation comments on a draft special variation—the consultation comments; or

**12 Restrictions on public availability—security
Section 412 (5), definition of *relevant document*, new paragraphs (ba) and (bb)**

insert

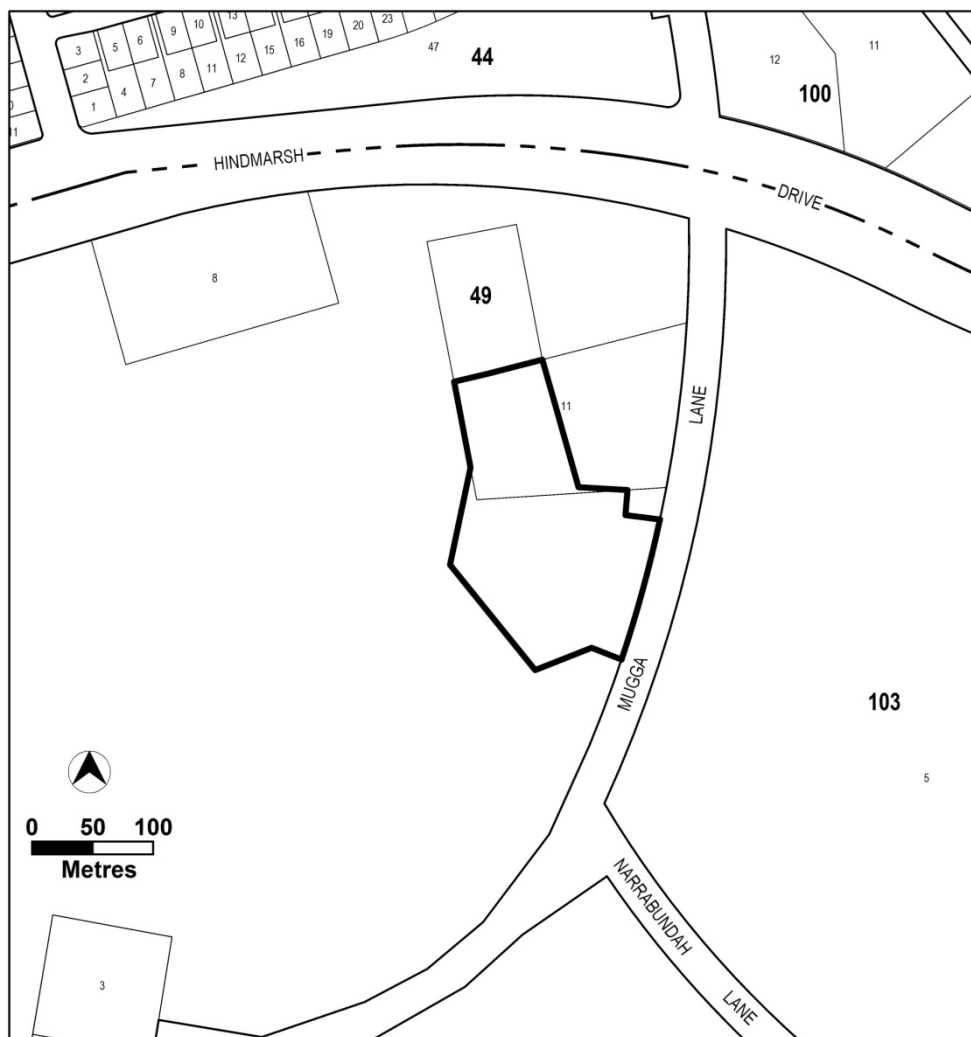
- (ba) a draft special variation;
(bb) consultation comments on a draft special variation;

13 New schedule 6

insert

Schedule 6 Symonston site

(see s 85A)



14 Dictionary, definition of *background papers*

before

technical

insert

special variation or

15 Dictionary, definitions of *consultation comments*, *consultation notice* and *consultation period*

substitute

consultation comments—

- (a) for part 5.3 (Variations of [territory plan](#) other than special variation or technical amendments)—see section 63 (1) (b); and
- (b) for part 5.3A (Special variation—Symonston mental health facility)—see section 85D (1) (b).

consultation notice—

- (a) for part 5.3 (Variations of [territory plan](#) other than special variation or technical amendments)—see section 63 (1); and
- (b) for part 5.3A (Special variation—Symonston mental health facility)—see section 85D (1).

consultation period—

- (a) for part 5.3 (Variations of [territory plan](#) other than special variation or technical amendments)—see section 63 (1) (a); and
- (b) for part 5.3A (Special variation—Symonston mental health facility)—see section 85D (1) (a).

16 Dictionary, definition of *corresponding plan variation*

before

technical

insert

special variation or

17 Dictionary, new definitions

insert

draft special variation—see section 85B (1).

mental health facility, for part 5.3A (Special variation—Symonston mental health facility)—see section 85A.

18 Dictionary, definitions of *plan variation* and *public availability notice*

before

technical

insert

special variation or

19 Dictionary, new definitions

insert

special variation—see section 85H.

Symonston mental health facility, for part 5.3A (Special variation—Symonston mental health facility)—see section 85A.

Symonston site, for part 5.3A (Special variation—Symonston mental health facility)—see section 85A.

Schedule 1 Other amendments

(see s 3)

Part 1.1 Administrative Decisions (Judicial Review) Act 1989

[1.1] Schedule 1, item 15, column 3

after 2nd dot point, insert

- a decision making, or forming part of the process of making, or leading up to the making of, a special variation
- a decision under chapter 7, chapter 8 or chapter 9 in relation to a development proposal to which section 85L applies

Part 1.2 Planning and Development Regulation 2008

[1.2] Schedule 3, part 3.2, new item 15

insert

15 A development in relation to the Symonston mental health facility.

[1.3] Schedule 3, part 3.3, new item 2

insert

2 A development in relation to the Symonston mental health facility.

[1.4] Dictionary, note 3

insert

- Symonston mental health facility (see s 85A)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 15 May 2014.

2 Notification

Notified under the [Legislation Act](#) on 12 June 2014.

3 Republications of amended laws

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

I certify that the above is a true copy of the Planning and Development (Symonston Mental Health Facility) Amendment Bill 2014, which was passed by the Legislative Assembly on 3 June 2014.

Clerk of the Legislative Assembly

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