Australian Capital Territory

Planning Act 2023

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About this republication

The republished law

This is a republication of the *Planning Act 2023* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2024. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 January 2024.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

Australian Capital Territory

Planning Act 2023

Contents

Page

Chapter 1 Preliminary

1 Name of Act 2
3 Dictionary 2
4 Notes 2
5 Offences against Act—application of Criminal Code etc 2
6 Application of Act 3

Chapter 2 Object, principles and important concepts

Part 2.1 Object and key elements

7 Object of Act 4
8 Key elements of Act 6
9 Meaning of *ecologically sustainable development* 7

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Page

Part 2.2 Planning principles

10 Principles of good planning 10
11 Principles of good consultation 15
12 Good consultation guidelines 17
13 Consultation in accordance with Act taken to meet principles of good consultation 17

Part 2.3 Important concepts

14 Meaning of *development* and *exempt development* 18
15 Meaning of *use* 19

Chapter 3 Territory planning authority and chief planner

Part 3.1 Territory planning authority

16 Establishment of authority 20
17 Authority represents the Territory 20

Part 3.2 Functions of territory planning authority

18 Authority functions 21
19 Authority to comply with directions 22

Part 3.3 Operations of territory planning authority

20 Ministerial directions to authority 23
21 Assembly may recommend directions to authority 23
22 Provision of planning services to others—Ministerial approval 24
23 Reports by authority to Minister 24
24 Authority's role in cohesive urban renewal and suburban land development 24
25 Delegation by authority 25

Part 3.4 Chief planner

26 Appointment of chief planner 26
27 Chief planner's conditions of appointment 26
28 Chief planner must avoid conflict of interest 27
29 Chief planner must not do inconsistent work etc 27

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

Page

30 Functions of chief planner 27
31 Suspending chief planner's appointment 27
32 Ending chief planner's appointment 29

Part 3.5 Authority staff and consultants

33 Authority's staff 30
34 Arrangements for staff 30
35 Authority consultants 30

Chapter 4 Strategic and spatial planning

Part 4.1 Strategic and spatial planning—general

36 Planning strategy 31
37 Consideration of planning strategy 32
38 District strategy 33
39 Planning and response report 33
40 Amendment of district strategy 34
41 Review of planning and district strategies 34
42 Statement of planning priorities 35

Part 4.2 Subdivision design applications

43 Subdivision design applications 36
44 Effect of approval of subdivision design application 37

Chapter 5 Territory plan

Part 5.1 Establishment, object, key components and effect

45 Territory plan 38
46 Object of territory plan 38
47 Territory plan to give effect to strategic planning outcomes 38
48 Contents of territory plan 39
49 Format of territory plan and supporting material 39
50 Design guides 40

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

Page

51 Technical specifications 40
52 Effect of territory plan 40

Part 5.2 Territory plan—major plan amendments

Division 5.2.1 Preliminary

53 Outline of major plan amendment process 41
54 Application—pt 5.2 42
55 Definitions—pt 5.2 42
56 Meaning of *interested person*—pt 5.2 45

Division 5.2.2 Initiation of major plan amendments

57 Proponent-initiated amendment—application 45
58 Proponent-initiated amendment—consideration of application 46
59 Proponent initiated amendment—acceptance of application 47
60 Authority or Minister-initiated amendments 47
61 Supporting report for draft major plan amendment 48

Division 5.2.3 Consultation

62 Draft major plan amendments—consultation 48
63 Public consultation—notification and availability of draft major plan amendments etc 48
64 Public consultation—notice of interim effect etc 50
65 Public inspection of comments on draft major plan amendments 52

Division 5.2.4 Action after consultation about draft major plan amendments

66 Revision and withdrawal of draft major plan amendments 52

Division 5.2.5 Draft major plan amendments given to Minister

67 Draft major plan amendments to be given to Minister etc 53
68 Public notice of documents given to Minister 54
69 Public availability notice—notice of interim effect etc 55

Division 5.2.6 Consideration of draft major plan amendments by relevant Assembly committee

70 Certain draft major plan amendments given to Minister under s 67—action by Minister 56
71 Consideration of draft major plan amendments by relevant Assembly committee 56
72 Committee decides not to report 57

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

Page

73 Committee reports on draft major plan amendments 58
74 Committee fails to report promptly on draft major plan amendments 58

Division 5.2.7 Ministerial and Legislative Assembly action on draft major plan amendments

75 Minister's powers in relation to draft major plan amendments 60
76 Return of draft major plan amendments to authority 62
77 Presentation of major plan amendments to Legislative Assembly 62
78 Assembly may reject major plan amendments completely or partly 63
79 Effect of dissolution etc of Legislative Assembly 63

Division 5.2.8 Commencement and publication of major plan amendments

80 Commencement and publication of major plan amendments 64
81 Rejection of major plan amendments by Legislative Assembly 65

Division 5.2.9 Limitations on challenge to validity of territory plan provisions

82 Limitations on challenge to validity of territory plan provisions 66

Part 5.3 Territory plan—minor plan amendments

83 Definitions—pt 5.3 67
84 What is a *minor plan amendment* and is consultation needed? 67
85 Making minor plan amendments 69
86 Limited consultation 69
87 Rezoning—boundary changes 70
88 Rezoning—development encroaching on adjoining land 71
89 Minor plan amendments—future urban areas 72

Part 5.4 Review of territory plan

90 Consideration of whether review of territory plan necessary 73
91 Review of territory plan 74
92 Action after consultation about draft review report 75
93 Draft review report to be given to Minister etc 76

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

Page

Chapter 6 Significant development

Part 6.1 Preliminary

94 Meaning of *significant development* 77

Part 6.2 Design review panel

95 Establishment of design review panel 78
96 Functions of design review panel 78
97 Members of design review panel 78
98 Rules for design review panel 79
99 Design principles 80
100 When design review panel consultation is required 80
101 Advice of design review panel 80

Part 6.3 Environmental impact assessment

Division 6.3.1 Outline and key concepts

102 Outline of environmental impact assessment 82
103 Outline of EIS process 82
104 Meaning of *significant* adverse environmental impact 84

Division 6.3.2 EIS requirements

105 When EIS is required 84
106 EIS—declaration by Minister 85
107 Effect of declaration made after development application 86
108 Designated proponents for certain EIS decisions 86

Division 6.3.3 Scope of EIS

109 Application for EIS scoping document 87
110 Contents of scoping document 87
111 Time to provide scoping document 88

Division 6.3.4 Drafting EIS

112 Preparing draft EIS 89
113 Recent studies to support draft EIS 89

Division 6.3.5 Consultation on EIS

114 Public notification of draft EIS 91
115 Representations about draft EIS 91

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

		Page
116	Publication of representations about draft EIS	92
117	Entity consultation on draft EIS	92
Division 6.3.6	**Revision of EIS**	
118	Revision of draft EIS	93
119	Public notification of revised EIS	93
Division 6.3.7	**Consideration of EIS**	
120	Rejection of EIS before consideration	94
121	Authority consideration of EIS	94
122	Chance to address unaddressed matters	95
123	Rejection of EIS after consideration	95
124	Cost recovery	96
125	Giving EIS to Minister	97
126	EIS assessment report	97
127	Notice of no action on EIS	98
Division 6.3.8	**Finalisation and expiry of EIS**	
128	When EIS is *finalised*	98
129	When public health EIS is *finalised*	98
130	Publication of finalised EIS	100
131	When EIS expires	100
Division 6.3.9	**EIS inquiry panels**	
132	When to establish inquiry panel	101
133	How to establish inquiry panel	101
134	Time for reporting by inquiry panels	102
135	Inquiry panel findings and report to be independent	102
136	Protection of people on inquiry panels from liability	103
137	Recovery of inquiry panel costs	103
Division 6.3.10	**Environmental significance opinions**	
138	Application for environmental significance opinion	103
139	Environmental significance opinions given by authority	104
140	Deciding environmental significance opinion application	104
141	Costs of environmental significance opinion	106
142	Notice of environmental significance opinion	106

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

Page

Chapter 7 Development assessment and approvals

Part 7.1 Outline and important concepts

143 Outline—ch 7 108
144 Meaning of *decision-maker*—ch 7 108

Part 7.2 Exempt development

Division 7.2.1 Preliminary

145 Meaning of *exempt development* 110
146 Meaning of *authorised use*—pt 7.2 111
147 Exempt development—authorised use 111
148 Authorised use that is not exempt 112
149 Effect of s 148 on development approval 113

Division 7.2.2 Exempt development and approvals

150 Exempt development—no need for approval 114

Division 7.2.3 Exemption assessments

151 Application for exemption assessment 115
152 Exemption assessment and notice 115
153 Effect of exemption assessment D notice 116

Part 7.3 Prohibited development

Division 7.3.1 Applications for prohibited development—general

154 Meaning of *prohibited development* 117
155 Development applications prohibited except in stated circumstances 117
156 Applications for development approval in relation to use for otherwise prohibited development 118
157 Applications in anticipation of major plan amendment 119
158 Declaration for development encroaching on adjoining land if development prohibited 120
159 Applications for development encroaching on adjoining land if development prohibited 122

Division 7.3.2 Prohibited waste facility development applications

160 Object—div 7.3.2 123
161 Certain development applications for waste facilities prohibited 123
162 Compensation—safety net 124

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

Page

Part 7.4 Development in designated areas

163 Development proposal for lease variation in designated area 126

Part 7.5 Assessable development

Division 7.5.1 Pre-application matters

164 Consideration of development proposals 127

165 Advice on development proposals 127

Division 7.5.2 Making a development application

166 Application for development approval 128

167 Development applications—authority may request more information 130

168 Amendment of development application 131

169 Correction of development application 132

Division 7.5.3 Referral of development applications

170 When authority must refer development application 133

171 Further entity referral—more information or amended application 134

172 Entity advice on development applications 135

173 Effect of approvals or advice in development applications 136

Division 7.5.4 Public notification of development applications

174 Definitions—div 7.5.4 138

175 Authority must publicly notify development applications 138

176 Notice of development applications—adjoining land 139

177 Notice of development applications—lease variations 140

178 Further public notification—changed application 140

179 Further public notification—significant development 142

Division 7.5.5 Representations about development applications

180 Making representations about development applications 143

Division 7.5.6 Notice of development applications to registrar-general

181 Notice of development applications 144

Division 7.5.7 Pre-decision advice

182 Authority may give advice 145

Division 7.5.8 Development applications—termination

183 Withdrawal of development applications 145

184 Refusal, rejection or withdrawal of concurrent documents 146

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

Page

Part 7.6 Development approval

Division 7.6.1 Deciding development applications

185 Deciding development applications 147
186 Considerations when deciding development applications 148
187 Conditional approvals 149
188 Essential design elements 153
189 Restrictions on development approval 153
190 Development approval contrary to entity advice 156
191 Referral of matter protected by the Commonwealth 157
192 Time to decide development applications 158
193 Development applications not decided within time 160
194 Lease to be varied to give effect to development approval 161
195 Refusal does not affect existing use 161

Division 7.6.2 Notice of decisions on development applications

196 Notice of decision 162

Division 7.6.3 Reconsideration of decisions on development applications

197 Definitions—div 7.6.3 164
198 Applications for reconsideration 164
199 Reconsideration 165
200 Effect of ACAT application on reconsideration 167
201 Notice of decisions on reconsideration 167
202 No action by authority within time 167

Division 7.6.4 Correction and amendment of development approvals

203 Correcting development approvals 168
204 Revocation of development approvals 168
205 Applications to amend development approvals 168
206 Deciding applications to amend development approvals 170
207 Exception to s 206 (1) (b)—referral requirements 171
208 Exception to s 206 (1) (b)—waiver of notification requirement 172
209 When development approvals do not require amendment 172

Division 7.6.5 Effect and duration of development approvals

210 When development approvals take effect 173
211 End of development approvals generally 178

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

Page

212 End of development approvals for lease variations 179
213 End of development approvals for use 180
214 Development approval continues unless ended 182

Part 7.7 Development applications for development undertaken without approval

215 Development applications for development undertaken without approval 183

Chapter 8 Territory priority projects

216 Meaning of *territory priority project* 184
217 Meaning of *related to light rail* 184
218 Declaration of territory priority projects 185
219 Presentation of declaration to Legislative Assembly 186
220 Time limits on proceedings—territory priority projects 187

Chapter 9 Offsets

Part 9.1 Important concepts

221 Meaning of *protected matter* 188
222 Meaning of *matter protected by the Commonwealth* 188
223 Meaning of *offset* 189
224 Meaning of *offsets policy* 189

Part 9.2 Offsets policy

Division 9.2.1 Preliminary

225 Meaning of *Minister*—pt 9.2 191

Division 9.2.2 Initial offsets policy

226 Initial offsets policy 191

Division 9.2.3 Revised offsets policy

227 Offsets policy—monitoring and review 191
228 Draft revised offsets policy—Minister to prepare 192
229 Draft revised offsets policy—public consultation 192
230 Draft revised offsets policy—revision 193

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

		Page
231	Draft revised offsets policy—final version and notification	193
232	Offsets policy—minor amendments	193
Division 9.2.4	**Offsets policy—implementation and guidelines**	
233	Offsets policy—authority to implement	194
234	Offsets policy—guidelines	194
235	Draft offsets policy guidelines	195
236	Draft offsets policy guidelines—public consultation	195
237	Draft offsets policy guidelines—revision	196
238	Offsets policy guidelines—monitoring and review	196
Part 9.3	**Offsets policy—other provisions**	
239	Offsets—consistency with offsets policy	197
240	Offsets—calculating value	197
241	Offsets—form	197
242	Offsets register	197
Part 9.4	**Offset conditions**	
243	Meaning of *decision-maker*—pt 9.4	199
244	Meaning of *offset condition*	199
245	Meaning of *offset management plan*	200
246	Meaning of *offset manager*	201
247	Draft offset management plan—proponent to prepare	201
248	Draft offset management plan—submission to decision-maker	202
249	Draft offset management plan—decision-maker's direction to revise etc	203
250	Offset management plan—unleased land or public land	204
251	Offset management plan—amendment initiated by offset manager	204
252	Offset management plan—amendment initiated by decision-maker	205
253	Offset management plan—reporting	205
254	Offset management plan—expiry if development approval ends	206
255	Offset power must not be delegated	206

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

Page

Chapter 10 Leases and licences

Part 10.1 Preliminary

256 Definitions—ch 10 207
257 Meaning of *lease*—Act 208
258 When is a lease a *concessional lease*—Act 208
259 Meaning of *market value lease*—Act 211
260 Meaning of *possibly concessional*—Act 211

Part 10.2 Grants of leases generally

Division 10.2.1 Grants of leases

261 Effect subject to pt 10.8 212
262 Authority may grant leases 212
263 Granting leases 212
264 Lease conditional on approval for stated development 213
265 Eligibility for grant of lease 214
266 Restriction on direct sale by authority 214
267 Direct sale if single person in restricted class 216
268 Notice of direct sale 216
269 Direct sale leases subject to certain provisions 217
270 Authority need not grant lease 217
271 Report before granting leases 218
272 Lease must provide for access by road etc 218
273 Failure to accept and execute lease 219

Division 10.2.2 Payment for leases

274 Payment for leases generally 220
275 Payment for adjoining concessional leases 221

Division 10.2.3 Use of leased land

276 Use of land for leased purpose 221
277 Authority may authorise temporary use of land for special circumstances 222
278 No right to use, flow and control of water 222

Division 10.2.4 Dealings with leases

279 Leases to which restriction under s 280 applies 223

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

		Page
280	Restriction on transfer, assignment and parting with possession	224
281	Approval to transfer, assign, or part with possession	225
282	Restriction on transfer, assignment and parting with possession—certain University of NSW leases	226
283	Approval to transfer, assign, or part with possession—certain University of NSW leases	227
284	Restriction on subletting of land	228
285	Subletting part of building	230
286	Subletting for siting of mobile homes	230
287	Land leased to be held as undivided parcel	231
288	Leases held by Territory not to be transferred or assigned	231

Part 10.3 Grants of further leases

289	Grant of further leases	232
290	Grant of further lease includes same authorised use	234

Part 10.4 Grants of concessional leases to community organisations

291	Meaning of *community lease* and *community lease use*	235
292	Meaning of *community lease provisions*	236
293	Grant of community lease by direct sale	237
294	Statement of future community land for stated districts	237
295	Grant of community lease by tender	238
296	Community use reports	239
297	Audit of use of community lease land	239

Part 10.5 Concessional leases

Division 10.5.1 Deciding whether leases concessional

298	Application for decision about whether lease concessional	241
299	Decision about whether lease concessional	241
300	Authority may decide if lease concessional on own initiative	242
301	Review of certain decisions about concessional status of lease	243
302	Lodging notice of decision about concessional status of lease	244
303	Concessional status of leases	245
304	Non-concessional status of leases	246

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

		Page
305	Concessional status guidelines	246
Division 10.5.2	**Restrictions on dealings with concessional leases**	
306	Restrictions on dealings with concessional leases	247
307	Approval of dealings with concessional leases	248
Division 10.5.3	**Varying concessional leases to remove concessional status**	
308	Removal of concessional status by variation of lease	249
309	Development application to remove concessional status of lease	249
310	Development approval to remove concessional status subject to condition	251
311	Working out amount payable to remove concessional status	251
312	Uses under leases varied by surrender and regrant to remove concessional status	252
Part 10.6	**Rent variations and relief from provisions of leases**	
313	Application to land rent—pt 10.6	253
314	Variations of rent	253
315	Review of variations of rent	253
316	Reduction of rent and relief from provisions of lease	254
Part 10.7	**Lease variations**	
Division 10.7.1	**Lease variations—general**	
317	Effect subject to pt 10.8	255
Division 10.7.2	**Variation of rental leases**	
318	Variation of rental leases	255
319	Advice of rent payable on variation of lease	256
320	Application for rent payout lease variation	256
321	Decision on rent payout lease variation application	257
322	Policy directions for paying out rent	258
323	Power to decide rent payout applications deemed refused	258
324	Lease to be varied to pay out rent	259
325	No variations to extend term	259
326	No variation of certain leases for 5 years	259

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

Page

Division 10.7.3 Variation of nominal rent leases

Subdivision 10.7.3.1 Preliminary

327 Definitions—div 10.7.3 260

Subdivision 10.7.3.2 Chargeable variations of nominal rent leases

328 Lease variation charge payable for chargeable variation 261
329 Notice of assessment 262
330 More than 1 chargeable variation 263
331 Standard chargeable variations 263
332 Non-standard chargeable variations 264
333 Non-standard chargeable variations—improvements 267
334 Non-standard chargeable variations—working out statement 268
335 Non-standard chargeable variations—application for reconsideration 269
336 Non-standard chargeable variations—requirements for reconsideration application 270
337 Non-standard chargeable variations—reconsideration 271
338 Reduction of lease variation charges 272
339 Increase of lease variation charge 272
340 Lease variation charge—reassessment 273
341 Taxation Administration Act—disclosure of information 273

Subdivision 10.7.3.3 Deferring lease variation charges

342 Application to defer payment of lease variation charges 274
343 Approval to defer payment of lease variation charges 274
344 Conditions of deferral arrangement 275
345 Lease variation charge changed after reconsideration etc 276
346 Certificate of lease variation charge and other amounts 277

Part 10.8 Rural leases

Division 10.8.1 Further rural leases

347 Amount payable for further leases—rural land 279
348 Term of further leases—rural land 279

Division 10.8.2 Exceptions for rural leases

349 Definitions—div 10.8.2 280
350 Land management agreements 280
351 Dealings with rural leases 281

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

Page

352 Exceptions to s 350 and s 351 282
353 Delayed requirement to enter into land management agreement 283
354 Certain dealings in holding period 283

Part 10.9 Leases—improvements

355 Application—pt 10.9 284
356 Definitions—pt 10.9 284
357 Renewing lessee not liable to pay for improvements 285
358 Authority must pay for certain improvements 285
359 Land declared available for further lease 286
360 Lease surrendered or terminated 286
361 Withdrawal of lease or part before end 287
362 Deciding value of improvements 287

Part 10.10 Surrendering and termination of leases

363 Lessee may surrender lease 289
364 Refund on lease surrender or termination 289

Part 10.11 Declared subleases of land

365 Meaning of *declared land sublease* 290
366 Declared leases 290

Part 10.12 Leases—building and development provisions

Division 10.12.1 Preliminary

367 Definitions—pt 10.12 292

Division 10.12.2 Certificates of compliance

368 Certificates of compliance 292
369 Certificates of compliance—Unit Titles Act leases 292

Division 10.12.3 Building and development provisions—transfer of land

370 Transfer of land subject to building and development provision 293
371 Transfer of land subject to building and development provision—approval generally 294
372 Transfer of land subject to building and development provision—approval for first sale 296

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

Page

373 Transfer of land subject to building and development provision—considerations for approval 296

Division 10.12.4 Noncompliance with building and development provisions

374 Fee for noncompliance with building and development provision 296

375 Authority may give notice of new compliance time 297

Part 10.13 Licences for unleased land

376 Criteria for granting licences for unleased land 298

377 Applications for licences for unleased land 298

378 Decision on licence applications for unleased land 298

379 Licences—form etc 299

380 Licences—when not needed 299

Part 10.14 Leases and licences—miscellaneous

381 Reservation of minerals 300

382 How land may be recovered if former lessee or licensee in possession 300

383 Conversion of Commonwealth leases 301

Chapter 11 Public land

Part 11.1 Management of public land

384 Recommendations to authority about public land 303

385 Reserved areas of public land 303

386 Management of public land 304

387 Management objectives for public land 304

Part 11.2 Management plans for public land

Division 11.2.1 Public land management plans

388 Meaning of *public land management plan* 305

Division 11.2.2 Land management plans

389 Draft land management plan—custodian to prepare 306

390 Draft land management plan—public consultation 306

391 Draft land management plan—revision and submission to Minister 307

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

Page

392 Draft land management plan—referral to Legislative Assembly committee 308
393 Draft land management plan—committee to report 308
394 Draft land management plan—Minister to approve, return or reject 309
395 Land management plan—effect of Minister's approval 310
396 Draft land management plan—return to custodian 310
397 Draft land management plan—rejection by Minister 310
398 Land management plan—minor amendments 311
399 Land management plan—custodian to implement 312
400 Land management plan—review 312

Part 11.3 Public land—leases and miners' rights

401 Leases of public land 313
402 Miners' rights in relation to public land 313

Chapter 12 Development offences and controlled activities

Part 12.1 Development offences

403 Offence to develop without approval 314
404 Offence to undertake prohibited development 316
405 Development authorised by approval before prohibition 318
406 Offence to develop other than in accordance with approval 318
407 Development previously exempt—non-use 318
408 Development previously exempt—use 319
409 Development that becomes exempt 320
410 Victimisation 321

Part 12.2 Complaints about controlled activities

411 Meaning of *complainant*—pt 12.2 322
412 Meaning of *controlled activity* 322
413 Complaints about controlled activities 322
414 Form of complaints 323
415 Withdrawal of complaints 323
416 Additional information about complaints 324

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

		Page
417	Investigation of complaints	324
418	Use of information relating to complaints	324
419	Action after investigating complaints	325
420	Guidelines for taking action on complaints	327
421	No further action on complaints under s 419 (1) (a)	327
422	Referral of complaints under s 419 (1) (b)	328

Part 12.3 Controlled activity orders

423	Definitions—pt 12.3	329
424	Controlled activity orders	329
425	Show cause notices	330
426	Time for making controlled activity order	331
427	Decision on proposed controlled activity order	331
428	Ongoing controlled activity orders	332
429	Content of controlled activity orders	333
430	Notice of making of controlled activity orders	335
431	Who is bound by a controlled activity order	336
432	Contravention of controlled activity orders	336
433	Notice of appeal against controlled activity orders	336
434	Ending controlled activity orders	337
435	Notice ending controlled activity orders	337

Part 12.4 Rectification work

Division 12.4.1 Preliminary

436	Meaning of *rectification work*	338

Division 12.4.2 Directions for rectification work

437	Direction to undertake rectification work	338
438	Contravention of direction to undertake rectification work	340

Division 12.4.3 Authorisations for rectification work

439	Authorisation to undertake rectification work	340
440	Obligation and powers of authorised people	341
441	Entry to premises by authorised people	341

Division 12.4.4 Rectification work orders

442	Application for rectification work order	342

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

		Page
443	Decision on application for rectification work order	343
444	Content of rectification work order	344
445	Authorisation by rectification work order	344
446	Remote application for rectification work order	345
447	Documents given after order made on remote application	346
448	Entry under rectification work order—no occupier present	347
449	Entry under rectification work order—occupier present	347
Division 12.4.5	**Liability for rectification work**	
450	Liability for cost of rectification work	348
451	Protection of authorised people from liability	349
Part 12.5	**Prohibition notices**	
452	Giving prohibition notices	350
453	Contravention of prohibition notices	352
454	Ending prohibition notices	352
455	Application for revocation of prohibition notices	353
Part 12.6	**Injunctions and termination of leases and licences**	
456	Injunctions to restrain contravention of controlled activity orders and prohibition notices	354
457	Termination of leases	355
458	Termination of licences	356
459	Notice of termination	357
Chapter 13	**Enforcement**	
Part 13.1	**Preliminary**	
460	Definitions—ch 13	358
Part 13.2	**Inspectors**	
461	Appointment of inspectors	359
462	Identity cards	359

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

Page

Part 13.3 Powers of inspectors

463 Entry to premises 360
464 Remaining at premises 361
465 Consent to entry without authorised person 361
466 Consent to entry with authorised person 362
467 Entry on notice for rectification work and monitoring 363
468 General powers on entry to premises 367
469 Power on entry for rectification work 368
470 Power to require help on entry under warrant 368
471 Power to take samples on entry under warrant 368
472 Power to seize things on entry under search warrant 369
473 Power to require name and address 369

Part 13.4 Information requirements

474 Information requirements 371
475 Treatment of documents provided under information requirement 372
476 When authority may ask for information from commissioner for revenue 372
477 When authority may ask for information about leases from commissioner for revenue 373

Part 13.5 Search warrants

478 Application for search warrant 374
479 Remote application for search warrant 375
480 Documents given after warrant issued on remote application 375
481 Search warrants—announcement before entry 376
482 Details of search warrant must be given to occupier 377
483 Occupier may be present during search 377

Part 13.6 Monitoring warrants

484 Application for monitoring warrant 378
485 Decision on application for monitoring warrant 379
486 Content of monitoring warrant 380
487 Authorisation by monitoring warrant 380
488 Remote application for monitoring warrant 381

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

Page

489 Documents given after warrant issued on remote application 381
490 Entry under monitoring warrant—no occupier present 382
491 Entry under monitoring warrant—occupier present 383

Part 13.7 Return and forfeiture of things seized

492 Receipt for thing seized 384
493 Moving thing to another place for examination or processing under search warrant 384
494 Action in relation to seized thing 385
495 Access to thing seized 386
496 Return of thing seized 386

Chapter 14 Access to information

Part 14.1 Public register

497 Authority to keep public register 388
498 Contents of public register 388
499 Inspection of public register and associated documents 391
500 Contents of public register on authority website 391
501 Meaning of *associated document*—pt 14.1 392

Part 14.2 Restrictions on availability of information

502 Restrictions on information for commercial or safety reasons 395
503 Restrictions on information for security reasons 396

Chapter 15 Notification and review of decisions

504 Definitions—ch 15 398
505 Reviewable decision notices 399
506 Applications for review 399
507 Applications for review by third parties 399
508 ACAT review—time for making application for deemed decisions 400

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

Page

Chapter 16 Miscellaneous

509 Declaration of authority website 401
510 Custodianship map 401
511 Damage etc to be minimised 401
512 Compensation for exercise of enforcement powers 402
513 Enforcement actions unaffected by other approvals etc 403
514 Evidentiary certificates—offsets register 403
515 Evidence of ending of lease 404
516 Basic fences between leased and unleased land 404
517 Rights to extract minerals 405
518 Use and disclosure of protected information 405
519 Ministerial guidelines 407
520 Construction of outdated references 408
521 Expiry of University of NSW lease provisions 408
522 Determination of fees 409
523 Regulation-making power 409
524 Review of Act 410

Chapter 20 Transitional

Part 20.1 Transitional—general

600 Definitions—ch 20 411
601 Transitional regulations 411
602 Expiry—ch 20 412

Part 20.2 Transitional—strategic and spatial planning

603 Planning strategy 413
604 District strategy 413

Part 20.3 Transitional—territory plan

605 Territory plan—preparation 414
606 Draft territory plan to be given to Executive etc 414
607 Territory plan—Executive's powers 415
608 Territory plan to be given to Assembly committee 416

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

		Page
609	Interim territory plan	416
610	Approval or confirmation of territory plan	417
611	Preparation of draft territory plan before commencement	418
612	Expiry—pt 20.3	418

Part 20.4 Transitional—development applications and approvals

613	Development applications made before commencement day	419
614	Development approvals under repealed Act	421
615	Applications to amend development approvals made before commencement day	422
616	Applications to amend development approvals under repealed Act at least 6 months after commencement day	423
617	Declarations for development encroaching on adjoining territory land before commencement day	423

Part 20.5 Transitional—existing rights to use land, buildings and structures

618	Existing rights to use land etc not affected	424

Part 20.6 Transitional—leases and licences

619	Status of leases or licences in force before commencement day	426
620	Continued application of certain repealed Acts and provisions	426
621	Grants of leases commenced but not completed before commencement day	428
622	Applications for grant of further leases	429
623	Applications by community organisations for direct sale before 6 December 2017	429
624	Applications to vary concessional leases made before 2 April 2020	430
625	Applications for licences for unleased land made before commencement day	431

Part 20.7 Transitional—building and development provisions—extension of time to complete works

626	Extensions of time to complete works under repealed Act	432

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

Page

627 Extensions of time to complete works under repealed Act—extension to another stated time 433

Part 20.8 Transitional—environmental significance opinions

628 Applications for environmental significance opinion made before commencement day 434

629 Environmental significance opinions given under repealed Act 434

Part 20.9 Transitional—design review panel

630 Consultation with design review panel before commencement day 436

631 Design review panel consideration before commencement day 436

Part 20.10 Transitional—environmental impact statements

632 Applications for EIS exemption made before commencement day 437

633 EIS exemptions granted under repealed Act 437

634 EIS completed under repealed Act 438

635 Public health-related EIS completed under repealed Act 439

636 EIS processes commenced but not completed before commencement day 439

Part 20.11 Transitional—rent variations and relief from provisions of leases

637 Reduction of rent and relief from provisions of lease approved before commencement day 440

638 Reduction of rent and relief from provisions of lease approved after commencement day 440

Part 20.12 Transitional—land management agreements

639 Land management agreements entered into before commencement day 441

Part 20.13 Transitional—land management plans

640 Land management plans 442

641 Draft land management plans 442

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

Page

Part 20.14 Transitional—controlled activities

642 Controlled activities—construction without development approval 443

Part 20.15 Transitional—review of decisions

643 Applications for review not finally decided 444

Part 20.16 Transitional—administrative

644 Chief planning executive 445

645 Acting chief planning executive 445

646 Inspectors appointed before commencement day 446

Part 20.17 Transitional—exempt development

647 Guidelines for essential work at affected residential premises 447

Schedule 1 Information and documents for certain development applications 448

Part 1.1 Preliminary 448

1.1 Definitions—sch 1 448

Part 1.2 Information and documents for certain development applications 449

Schedule 2 Market value leases and leases that are possibly concessional 451

Part 2.1 Preliminary 451

2.1 Definitions—sch 2 451

Part 2.2 Market value leases 452

Part 2.3 Possibly concessional leases 456

Schedule 3 Management objectives for public land 458

Part 3.1 Preliminary 458

3.1 Definitions—sch 3 458

Part 3.2 Management objectives for areas of public land 459

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

Page

Schedule 4 Controlled activities 461

Schedule 5 Reviewable decisions, eligible entities and interested entities 463

Part 5.1 Preliminary 463

5.1 Meaning of *material detriment*—sch 5 463

Part 5.2 Reviewable decisions, eligible entities and interested entities 464

Schedule 6 Matters exempt from third party ACAT review 475

Part 6.1 Preliminary 475

6.1 Definitions—sch 6 475

Part 6.2 Matters exempt from third party ACAT review 476

Part 6.3 Maps 478

Division 6.3.1 City centre 478

Division 6.3.2 Belconnen town centre 479

Division 6.3.3 Gungahlin town centre 480

Division 6.3.4 Tuggeranong town centre 481

Division 6.3.5 Woden town centre 482

Division 6.3.6 Kingston Foreshore 483

Division 6.3.7 University of Canberra site 484

Schedule 7 Preserved leases 485

7.1 Meaning of *preserved lease* 485

Dictionary 487

Endnotes

1 About the endnotes 505

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

		Page
2	Abbreviation key	505
3	Legislation history	506
4	Amendment history	507
5	Earlier republications	514
6	Modifications of republished law with temporary effect	514

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Australian Capital Territory

Planning Act 2023

An Act about planning and development in the ACT, and for other purposes

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Chapter 1 Preliminary

1 Name of Act

This Act is the *Planning Act 2023*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***district***—see the *Districts Act 2002*, dictionary.' means that the term 'district' is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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6 Application of Act

This Act applies only to territory land.

Note Under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), an area of land in the ACT is territory land unless it is declared to be national land. An area may be declared to be national land if it is, or is intended to be, used by or on behalf of the Commonwealth.

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Chapter 2 Object, principles and important concepts

Part 2.1 Object and key elements

7 Object of Act

(1) The object of this Act is to support and enhance the Territory's liveability and prosperity, protect its natural environment, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that—

(a) is outcomes-focussed; and

(b) promotes and facilitates the achievement of ecologically sustainable development; and

(c) provides a scheme for public participation.

(2) As part of achieving the object mentioned in subsection (1), the planning system is intended to—

(a) be based on policies, processes and practices that are easy to understand; and

(b) promote certainty of processes and consistent and transparent application of policies while at the same time providing scope for innovation in development proposals; and

(c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan; and

(d) engage with other laws to support the efficient, appropriate and effective delivery of other related government policy objectives; and

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(e) promote high standards for the built environment through an emphasis on design quality and universal design for the benefit of people with differing needs and capabilities; and

(f) provide for public participation in relation to the development of planning strategies and policies, and development assessment.

(3) The following matters are integral to achieving the object of this Act:

(a) the ACT's biodiversity values and its landscape setting, including—

(i) the protection and conservation of biodiversity, habitat, ecological processes and natural systems; and

(ii) the integration of natural, built, cultural and heritage elements;

(b) high-quality, people-focussed and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;

(c) the knowledge, culture and tradition of, and cultural and spiritual connections held by, the traditional custodians of the land;

(d) planning for population growth and development of the ACT while protecting those aspects that make the ACT an attractive place in which to live;

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(e) a sustainable and climate-resilient environment that is planned, designed and developed to adapt to climate change, reduce greenhouse gas emissions and achieve a net-zero greenhouse gas future using integrated mitigation and adaptation best practices and considers food and water security.

Note 1 The territory planning authority must exercise its functions, if relevant, in accordance with the object of this Act (see s 18 (3) (a)).

Note 2 The object of this Act must be considered in developing planning strategies, plans and policies (see s 10 (1)) and the planning strategy must be consistent with the object of this Act (see s 36 (1)).

The territory plan must give effect to the planning strategy (see s 47 (b)) and the Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan (see s 52).

8 Key elements of Act

(1) This Act provides a planning regime for the ACT consistent with the responsibilities of the Territory under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

(2) The key elements of this Act are as follows:

(a) the *planning strategy*—setting out the long-term strategic direction and desired future planning outcomes for the Territory;

(b) *district strategies*—setting out the strategic direction and desired future planning outcomes for districts;

(c) the *territory plan*—setting out the desired planning outcomes, land use zones and development assessment provisions;

(d) the *leasing system*—setting out the tenure and use arrangements for land in the ACT;

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(e) the *development assessment and approval system*—setting out the processes for assessing and deciding development applications and promoting desired planning outcomes for the Territory by—

(i) categorising development; and

(ii) providing the application and assessment requirements for different categories of development; and

(iii) providing a process for making, receiving, assessing and deciding development applications; and

(iv) establishing rights and responsibilities in relation to development approvals;

(f) *Ministerial powers*—to identify priority development proposals for progressing through the development approval system;

(g) the *compliance and enforcement framework*—which sets out a variety of offences and enforcement arrangements;

(h) *review processes*—for internally and externally reviewing administrative decisions;

(i) *access to information provisions*—which outline what information is available to the public and how it is accessible.

(3) Subsection (2) is intended only as a guide to readers.

9 Meaning of *ecologically sustainable development*

(1) In this Act:

ecologically sustainable development means development involving the effective integration of the following principles:

(a) the protection and enhancement of ecological processes and natural systems at local, territory and broader landscape levels;

(b) the achievement of economic prosperity;

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(c) the maintenance and enhancement of cultural, physical and social wellbeing of people and communities;

(d) the precautionary principle;

(e) the inter-generational equity principle.

(2) In this section:

achievement of economic prosperity includes achieving a diverse, efficient, resilient and strong territory economy that allows communities to meet their needs without compromising the ability of future generations to meet their needs.

maintenance and enhancement of cultural, physical and social wellbeing of people and communities includes—

(a) creating and maintaining well-serviced, healthy, prosperous, liveable and resilient communities with affordable, efficient, safe and sustainable development; and

(b) conserving or enhancing places of special aesthetic, architectural, cultural, heritage, historic, scientific, social or spiritual significance; and

(c) providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction; and

(d) accounting for the potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development and design.

protection and enhancement of ecological processes and natural systems includes—

(a) conserving, enhancing or restoring the life-supporting capacities of air, ecosystems, soil and water for present and future generations; and

(b) conserving biological diversity and ecological integrity; and

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(c) appropriately valuing and pricing environmental resources.

the inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

the precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

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Part 2.2 Planning principles

10 Principles of good planning

(1) To achieve good planning outcomes, a person must consider the object of this Act and the following principles (the ***principles of good planning***) in developing planning strategies, plans and policies:

(a) activation and liveability principles;

(b) cultural heritage conservation principles;

(c) high-quality design principles;

(d) housing affordability principles;

(e) integrated delivery principles;

(f) investment facilitation principles;

(g) long-term focus principles;

(h) natural environment conservation principles;

(i) sustainability and resilience principles;

(j) urban regeneration principles.

(2) In this Act:

activation and liveability principles means the following:

(a) planning and design should support diverse economic and social activities, including through promoting different but compatible uses for buildings and other areas;

(b) urban areas should include a range of high-quality housing options with an emphasis on living affordability;

(c) urban areas should be designed to promote active travel and convenient and efficient use of public transport;

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(d) districts should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;

(e) policies should support and enhance the quality of life and wellbeing of residents.

cultural heritage conservation principles means the following:

(a) planning and design should promote the unique cultural heritage of the ACT by acknowledging established heritage significance in design and placemaking;

(b) development should—

(i) respect local heritage; and

(ii) avoid direct impacts on heritage or, if a direct impact is unavoidable, ensure that the impact is justifiable and proportionate.

high-quality design principles means the following:

(a) development should be focussed on people and designed to—

(i) reflect local setting and context; and

(ii) have a distinctive identity that responds to the existing character of its locality; and

(iii) effectively integrate built form, infrastructure and public spaces; and

(iv) provide appropriate solar access;

(b) public spaces should be designed to be used, appropriately landscaped and vegetated, and should be designed to contribute to the urban forest;

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(c) built form and public spaces should be designed to be inclusive and accessible to people with differing needs and capabilities, including through the serious consideration of universal design practices;

(d) developments should be planned and designed to be well-connected and integrated with surrounding development in ways that facilitate the safe, secure and effective movement of people within and through them.

housing affordability principles means the following:

(a) planning strategies, plans and policies should support the delivery of reforms that improve housing access, affordability and choice;

(b) planning strategies, plans and policies should support more housing options for people who have a low income;

(c) planning strategies, plans and policies should ensure affordable housing is close to essential services, amenities and affordable transport options, including public and active transport.

integrated delivery principles means the following:

(a) policies relating to planning, including those arising outside the planning system, should be coordinated to efficiently and effectively achieve planning outcomes;

(b) planning, design and development should promote integrated transport connections and equitable access to services and amenities;

(c) infrastructure, public spaces and facilities should be planned to meet future needs and designed to be integrated with related development;

(d) built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with surrounding public spaces.

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investment facilitation principles means the following:

(a) planning and design should be undertaken with a view to strengthening the economic prosperity of the Territory and contributing to diversification of the economy, economic security and growth;

(b) planning outcomes should be achieved by facilitating coordinated approaches that promote public and private investment towards common goals.

long-term focus principles means the following:

(a) policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations;

(b) policy frameworks should be able to respond to emerging challenges and cumulative impacts identified by monitoring, benchmarking and evaluation programs.

natural environment conservation principles means the following:

(a) planning and design should promote healthy and resilient ecosystems by—

(i) avoiding or minimising loss of habitat and other key threatening processes for biodiversity; and

(ii) considering cumulative and incremental environmental impacts;

(b) planning outcomes should support the operation of environmental laws applying in the ACT;

(c) policies, planning and design should integrate and promote—

(i) nature-based solutions to climate change and water security; and

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(ii) the valuation and maintenance of the ecosystem services and amenity provided by a healthy natural environment;

(d) biodiversity connectivity and habitat values should be integrated across urban areas, including through appropriate planning for, and landscaping of, urban open space and travel corridors.

sustainability and resilience principles means the following:

(a) places should be planned, designed and developed to be sustainable and resilient;

(b) effort should be focussed on adapting to the effects of climate change, including through mitigating the effects of urban heat, managing water supplies and achieving energy efficient urban environments;

(c) policies and practices should promote the use, reuse and renewal of sustainable resources, and minimise use of resources.

urban regeneration principles means the following:

(a) growth should be mostly within the existing urban footprint, or in areas close to the existing urban footprint, while maintaining environmental values;

(b) urban regeneration should seek to make the best use (as appropriate) of underlying or latent potential associated with land, buildings and infrastructure.

(3) In this section:

key threatening process—see the *Nature Conservation Act 2014*, section 74.

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11 Principles of good consultation

(1) In undertaking consultation under this Act, a person must consider that consultation should be accessible, balanced, inclusive, meaningful, resourced, respectful, timely, transparent and understandable (***principles of good consultation***).

(2) In this section—

(a) consultation is ***accessible*** if information provided as part of the consultation, and processes for consultation, are easy to access and are presented in a variety of ways to accommodate different stakeholders; and

(b) consultation is ***balanced*** if—

(i) it is undertaken in a way that facilitates and encourages constructive responses from a wide range of stakeholders; and

(ii) community views are considered together with the views of other stakeholders; and

(c) consultation is ***inclusive*** if it is undertaken in a way that—

(i) engages all stakeholders directly affected by the subject of the consultation; and

(ii) aims to engage all other stakeholders affected by the subject of the consultation; and

(d) consultation is ***meaningful*** if—

(i) information provided as part of the consultation is adequate and well-informed to ensure all stakeholders understand the subject of, and issues relating to, the consultation and can give informed responses; and

(ii) it genuinely seeks community feedback; and

(iii) community views are genuinely considered and incorporated into final decisions; and

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(e) consultation is ***resourced*** if the processes are appropriately supported, taking into account the significance, complexity and likely impact of the subject of the consultation; and

(f) consultation is ***respectful*** if it is collaborative, genuine and courteous towards all views expressed; and

(g) consultation is ***timely*** if—

(i) it is undertaken early and at other appropriate times in the planning process; and

(ii) it is undertaken in a way that considers the needs of stakeholders and facilitates participation; and

Example

consultation is undertaken in a way that considers holiday periods or other ACT Government consultations

(iii) it allows sufficient time for stakeholders to engage with other members of their group or organisation to form a collective decision; and

(iv) for a development application for a significant development—it is undertaken as early as possible; and

(h) consultation is ***transparent*** if—

(i) information provided as part of the consultation and processes for consultation are clear and observable; and

(ii) planning decisions are made openly; and

(iii) government and proponents provide reasons for decisions, including how community views have been taken into account; and

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(i) information provided as part of consultation is ***understandable*** if—

(i) it is clear about the overall objective of the consultation, the specific issues on which stakeholders are being consulted and what is not open to consultation or change; and

(ii) it is accurate, written in plain language and presented clearly.

12 Good consultation guidelines

(1) The Minister must make guidelines about principles of good consultation and how the principles are to be implemented.

(2) A person required to undertake consultation under this Act must take the guidelines into consideration when undertaking the consultation.

(3) A guideline is a notifiable instrument.

(4) The Minister must, at least once every 5 years, decide whether the guidelines about principles of good consultation should be reviewed, taking into account whether the principles continue to reflect best practice.

(5) The territory planning authority must publish on the authority website notice of the decision under subsection (4).

13 Consultation in accordance with Act taken to meet principles of good consultation

Consultation for an amendment of the territory plan or a development application is taken to meet the principles of good consultation if it is undertaken in accordance with the consultation requirements that apply to the amendment or application under this Act.

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Part 2.3 Important concepts

14 Meaning of *development* and *exempt development*

(1) In this Act:

development, in relation to land, means the following:

(a) building, altering or demolishing a building or other structure on the land;

(b) undertaking earthworks or other construction work on or under the land;

(c) undertaking work that would affect the landscape of the land;

(d) using the land, or a building or other structure on the land;

(e) subdividing or consolidating the land;

(f) varying a lease relating to the land (other than a variation that reduces the rent payable to a nominal rent);

(g) putting up, attaching or displaying a sign or advertising material other than in accordance with—

(i) a licence issued under this Act; or

(ii) a sign approval under the *Public Unleased Land Act 2013*, section 25 (Approval to place sign on public unleased land); or

(iii) a public unleased land permit under the *Public Unleased Land Act 2013*, part 3.

exempt development—see section 145.

(2) In this section:

consolidation—see section 256 (Definitions—ch 10).

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subdivision—

(a) includes the following:

(i) the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases;

(ii) the subdivision of land under the *Unit Titles Act 2001*;

(iii) the subdivision of land in future urban areas; but

(b) does not include a sublease.

15 Meaning of *use*

In this Act:

use, of land, or of a building or other structure on land, means any of the following:

(a) begin a new use of the land, building or other structure;

(b) continue a use of the land, building or other structure;

Note Development approval is not required for continuing use lawfully commenced (see s 405 and s 408).

(c) change a use of the land, building or other structure, whether by adding a use, stopping a use and substituting another use or otherwise.

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Chapter 3 Territory planning authority and chief planner

Part 3.1 Territory planning authority

16 Establishment of authority

(1) The Territory Planning Authority is established.

(2) The territory planning authority is a corporation.

(3) The chief planner is the territory planning authority.

17 Authority represents the Territory

(1) Anything done in the name of, or for, the territory planning authority or the chief planner in exercising a function of the authority is taken to have been done for, and binds, the Territory.

(2) The territory planning authority has the same status, privileges and immunities as the Territory so far as it represents the Territory.

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Part 3.2 Functions of territory planning authority

18 Authority functions

(1) The territory planning authority has the following functions:

(a) to prepare and administer the territory plan;

(b) to continually review the territory plan, propose amendments and consider amendments initiated by proponents and the Minister, as necessary;

(c) to plan and regulate the development of land;

(d) to advise on planning and land policy, including the broad spatial planning framework for the ACT and the achievement of desired future planning outcomes;

(e) to promote and implement the planning strategy and district strategies;

(f) to promote high-quality design and good planning outcomes;

(g) to maintain the digital cadastral database under the *Districts Act 2002*;

(h) to make available land information;

(i) to grant, administer, vary and end leases on behalf of the Executive;

(j) to grant licences over unleased land;

(k) to decide applications for approval to undertake development;

(l) to make controlled activity orders under part 12.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;

(m) to provide planning services, including services to entities outside the ACT;

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(n) to review its own decisions and participate in external review processes;

(o) to provide opportunities for participation in planning and decision-making processes;

(p) to promote public education about, and understanding of, the planning system, including by providing easily accessible public information and documentation on planning and land use.

(2) The territory planning authority may exercise any other function given to the authority under this Act, another territory law or a Commonwealth law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196).

(3) The territory planning authority must exercise its functions, if relevant—

(a) in accordance with the object of this Act; and

(b) taking into account the principles of good planning; and

(c) taking into consideration the statement of planning priorities made by the Minister.

19 Authority to comply with directions

The territory planning authority must comply with any directions given to the authority under this Act or another territory law.

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Part 3.3 Operations of territory planning authority

20 Ministerial directions to authority

(1) The Minister may give a written direction to the territory planning authority—

(a) about the general policies the authority must follow; or

(b) requiring the authority to prepare an amendment of the territory plan or review the plan.

Note If s 64 or s 69 applies to a draft major plan amendment, the Minister may not do anything under par (b) that would be inconsistent with the territory plan if it were amended in accordance with the major plan amendment.

(2) Before giving a direction, the Minister must—

(a) tell the territory planning authority about the proposed direction; and

(b) give the authority a reasonable opportunity to comment on the proposed direction; and

(c) consider any comment made by the authority.

(3) A direction is a notifiable instrument.

(4) A direction must be published on the authority website.

21 Assembly may recommend directions to authority

(1) The Legislative Assembly may, by resolution, recommend that the Minister give the territory planning authority a stated direction under section 20.

(2) The Minister must consider the recommended direction and either—

(a) direct the territory planning authority under section 20; or

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(b) tell the Legislative Assembly that the Minister does not propose to direct the authority as recommended and give reasons for the decision.

(3) A direction mentioned in subsection (2) (a) may be in accordance with the Legislative Assembly's resolution or as amended by the Minister.

22 Provision of planning services to others—Ministerial approval

The territory planning authority may provide planning services to somebody other than the Territory only with the Minister's written approval.

23 Reports by authority to Minister

(1) The territory planning authority must give the Minister a report, or information about its operations, required by the Minister.

(2) The report must be prepared in the form (if any) that the Minister requires.

(3) This section is in addition to any other provision about the giving of reports or information by the territory planning authority.

24 Authority's role in cohesive urban renewal and suburban land development

The territory planning authority must work with the city renewal authority and suburban land agency to encourage cohesive planning and development of land.

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25 Delegation by authority

(1) The territory planning authority may delegate—

(a) the authority's functions under this Act or another territory law to a public servant or a member of the authority's staff; and

(b) the authority's functions under part 10.13 (Licences for unleased land) in relation to an area of land to the custodian of the land.

(2) The territory planning authority may also delegate the function of granting leases on behalf of the Executive to the following:

(a) the city renewal authority;

(b) the suburban land agency.

Note For laws about delegations, see the Legislation Act, pt 19.4.

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Part 3.4 Chief planner

26 Appointment of chief planner

(1) The Executive must appoint a person as the Chief Planner.

(2) The Executive must not appoint a person as the chief planner unless satisfied that the person—

(a) has the management and planning experience and expertise to exercise the functions of the chief planner; and

(b) either—

(i) has qualifications that are appropriate to exercise the functions of the chief planner; or

(ii) is eligible to be registered with a representative body.

(3) An appointment must be for a term of not longer than 5 years.

(4) An appointment is a notifiable instrument.

Note For laws about appointments, see the Legislation Act, pt 19.3.

(5) In this section:

representative body means an entity that has as a main purpose the promotion of the interests of professionals with qualifications that are appropriate to exercise the functions of the chief planner.

27 Chief planner's conditions of appointment

The chief planner's conditions of appointment are the conditions agreed between the Executive and the chief planner, subject to any determination under the *Remuneration Tribunal Act 1995*.

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28 Chief planner must avoid conflict of interest

If the chief planner has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict, with the functions of the chief planner or the territory planning authority, the chief planner must disclose, in writing, the nature of the interest and the conflict or potential conflict to the Executive.

29 Chief planner must not do inconsistent work etc

The chief planner must not engage in—

(a) any other paid activity without the Minister's written approval; or

(b) any unpaid activity that is inconsistent with the functions of the chief planner or the territory planning authority.

30 Functions of chief planner

The chief planner may exercise the functions given to the chief planner under this Act or another territory law.

31 Suspending chief planner's appointment

(1) The Executive may suspend the chief planner—

(a) for misbehaviour; or

(b) for physical or mental incapacity, if the incapacity affects the exercise of the chief planner's functions; or

(c) for failing, without reasonable excuse, to comply with section 28 (Chief planner must avoid conflict of interest); or

(d) for failing, without reasonable excuse, to comply with section 29 (Chief planner must not do inconsistent work etc); or

(e) if the chief planner is absent, without approval or reasonable excuse, for 14 consecutive days or for 28 days in any 12-month period; or

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(f) if the chief planner is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or

(g) if the chief planner is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

(2) If the Executive suspends the chief planner, the Executive must give the chief planner written notice of the suspension and a copy of the statement of reasons for the suspension.

Note For what must be included in a statement of reasons, see the Legislation Act, s 179.

(3) The suspension takes effect when the notice and statement are given to the chief planner under subsection (2).

(4) The Executive must present to the Legislative Assembly the statement of reasons for the suspension not later than the first sitting day after the day the chief planner is suspended.

(5) The Legislative Assembly may, not later than 6 sitting days after the day the statement is presented to the Assembly, make a resolution requiring the Executive to end the chief planner's appointment.

(6) The chief planner's suspension ends—

(a) if the Executive does not comply with subsection (4)—at the end of the day the Executive should have presented to the Legislative Assembly the statement mentioned in that subsection; or

(b) if the Assembly does not pass a resolution mentioned in subsection (5) before the end of the 6 sitting days—at the end of the 6th sitting day.

(7) The chief planner is entitled to be paid salary and allowances while suspended.

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32 Ending chief planner's appointment

The Executive must end the chief planner's appointment if—

(a) the Legislative Assembly passes a resolution under section 31 (5); or

(b) the chief planner becomes bankrupt or personally insolvent.

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Part 3.5 Authority staff and consultants

33 Authority's staff

(1) The chief planner may employ staff for the territory planning authority on behalf of the Territory.

(2) The territory planning authority staff must be employed under the *Public Sector Management Act 1994*.

Note The *Public Sector Management Act 1994*, div 8.2 applies to the chief planner in relation to the employment of staff (see that Act, s 152).

34 Arrangements for staff

The chief planner may arrange with the head of service to use the services of a public servant.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

35 Authority consultants

(1) The territory planning authority may engage consultants.

(2) However, the territory planning authority must not enter into a contract of employment with a consultant.

(3) The conditions of a consultant's engagement are the conditions agreed between the chief planner and the consultant.

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Chapter 4 Strategic and spatial planning

Part 4.1 Strategic and spatial planning—general

36 Planning strategy

(1) The Executive must make a strategy for the ACT (the ***planning strategy***), consistent with the object of this Act, stating—

(a) the long-term planning policy and goals for the ACT; and

(b) an overarching spatial vision; and

(c) strategic directions and desired future planning outcomes.

Note In making the planning strategy, the Executive must consider the principles of good planning (see s 10).

(2) The planning strategy may include other government strategies and policies if appropriate.

(3) The Executive must undertake public consultation before making the planning strategy.

Note In undertaking consultation under this Act, the Executive must consider the principles of good consultation (see s 11).

(4) The planning strategy is a notifiable instrument.

(5) The planning strategy must be published on the authority website.

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37 Consideration of planning strategy

(1) The planning strategy must be considered by—

(a) the territory planning authority under the following provisions:

(i) section 58 (Proponent-initiated amendment—consideration of application);

(ii) section 85 (3) (Making minor plan amendments);

(iii) section 91 (2) (a) (Review of territory plan); and

(b) the Minister under the following provisions:

(i) section 42 (1) (Statement of planning priorities);

(ii) section 70 (3) (a) (Certain draft major plan amendments given to Minister under s 67—action by Minister);

(iii) section 75 (3) (c) (Minister's powers in relation to draft major plan amendments);

(iv) section 90 (2) (a) (v) (Consideration of whether review of territory plan necessary); and

(c) the Executive under section 41.

(2) The planning strategy is not a relevant consideration for any other decision under this Act by the territory planning authority, the Minister or another entity under any of the following chapters:

(a) chapter 6 (Significant development);

(b) chapter 7 (Development assessment and approvals);

(c) chapter 8 (Territory priority projects).

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38 District strategy

(1) The Executive may make a plan for a district (a ***district strategy***) that states the long-term planning policy and goals for the district, consistent with the planning strategy.

Note In making a district strategy, the Executive must consider the principles of good planning (see s 10).

(2) A district strategy may—

(a) include strategies, spatial policies and desired future planning outcomes for the district to guide and manage change in the district; and

(b) set out principles and policies for development of areas within the district, including future urban areas; and

(c) identify areas within the district for future detailed planning; and

Note Detailed planning may be done through a planning and response report.

(d) include other government strategies and policies applying to the district if appropriate.

(3) The Executive must undertake public consultation before making a district strategy.

Note In undertaking consultation under this Act, the Executive must consider the principles of good consultation (see s 11).

(4) A district strategy is a notifiable instrument.

(5) A district strategy must be published on the authority website.

39 Planning and response report

(1) The territory planning authority may propose amendments to a district strategy in a detailed report for the district or part of the district (a ***planning and response report***).

Note If related amendments to the territory plan are needed, the authority may be required to prepare a supporting report under s 61 (1).

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(2) A planning and response report may also be prepared by a prescribed entity for the territory planning authority's approval.

(3) The entity preparing a planning and response report must undertake consultation on the substance of the report.

(4) A regulation may prescribe additional requirements for preparing a planning and response report.

Examples—additional requirements

1 requirements for planning and response reports generally, including structure and content requirements

2 requirements for planning and response reports at different spatial scales

3 requirements for who may prepare planning and response reports at different spatial scales

40 Amendment of district strategy

The Minister may amend a district strategy by approving an amendment proposed in a planning and response report if satisfied that—

(a) there has been sufficient public consultation on the proposed amendment; and

(b) the amendment is consistent with the planning strategy.

41 Review of planning and district strategies

(1) The Executive must, at least once every 5 years after making the planning strategy or a district strategy, consider whether the strategy should be reviewed.

(2) In deciding whether the strategy should be reviewed, the Executive must consider whether the strategy continues to reflect the long-term planning policy and goals for the ACT.

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(3) After the Executive considers whether the strategy should be reviewed, the Minister must prepare a notice stating—

(a) that the Executive has considered whether the strategy should be reviewed; and

(b) the Executive's decision on whether the strategy should be reviewed; and

(c) the date of the Executive's decision; and

(d) if the Executive decides that the strategy should be reviewed—the scope of the review.

(4) A notice under subsection (3) is a notifiable instrument.

(5) If the Executive decides that the strategy should be reviewed, the Executive must arrange the review.

42 Statement of planning priorities

(1) The Minister may give the territory planning authority a written statement that sets out the priorities arising from the planning strategy (the ***statement of planning priorities***).

(2) The statement of planning priorities must identify the actions to be taken in the short to medium term to achieve the planning priorities.

(3) To remove any doubt, the statement of planning priorities does not authorise a person to whom section 52 (Effect of territory plan) applies to do anything inconsistent with the territory plan.

Example

The statement of planning priorities may include policy material inconsistent with the territory plan, but the plan would have to be amended before the policy could be implemented.

(4) The statement of planning priorities is a notifiable instrument.

(5) The statement of planning priorities must be published on the authority website.

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Part 4.2 Subdivision design applications

43 Subdivision design applications

(1) A development application for a subdivision development proposal (a ***subdivision design application***)—

(a) must include a detailed plan for the proposal that is consistent with the territory plan; and

(b) must identify—

(i) the boundaries of the subdivision and individual blocks within the subdivision; and

(ii) if the subdivision is in a future urban area—the existing and proposed land use zones identified in the territory plan for the area; and

(iii) if the subdivision is not in a future urban area—the existing land use zones in the subdivision.

Note 1 A subdivision design application must also be accompanied by information and documents sufficient to address each provision of the territory plan relevant to the proposed development (see s 166 (2) (c) (i)).

Note 2 A proponent may be required to prepare a subdivision design application at the district or division scale, or at spatial scales within the district scale (ie an area within a suburb proposed for redevelopment and land use change, such as a town centre, or group centre).

(2) A regulation may prescribe matters that may be included in a subdivision design application.

(3) In this section:

subdivision development proposal—

(a) means a development proposal—

(i) to create or consolidate blocks; or

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(ii) to create or remove roads; or

(iii) involving land use zone, design and construction requirements for future development on the land the subject of the application; but

(b) does not include a development proposal that is limited to changing a block boundary or subdividing land under the *Unit Titles Act 2001*.

44 Effect of approval of subdivision design application

(1) The territory planning authority must, within a reasonable time after approving a subdivision design application under section 185 (Deciding development applications), amend the territory plan under section 85 (Making minor plan amendments)—

(a) if the land the subject of the application is in a future urban area—to identify the land use zones that will apply to the land, consistent with the application; and

(b) to incorporate any provision that—

(i) was included in the application under section 43 (2) (g); and

(ii) the authority determined should be incorporated in the territory plan; and

(c) to incorporate any ongoing provision that—

(i) was not included in the application under section 43 (2) (g); and

(ii) the authority determined should be incorporated in the territory plan.

(2) If the territory plan is amended under subsection (1) and the land the subject of the subdivision design application is in a future urban area, the land ceases to be in a future urban area.

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Chapter 5 Territory plan

Part 5.1 Establishment, object, key components and effect

45 Territory plan

(1) There must be a territory plan that applies to the ACT.

Note The territory plan can be amended (see pt 5.2 and pt 5.3).

(2) The territory plan is a notifiable instrument.

46 Object of territory plan

The object of the territory plan is to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.

47 Territory plan to give effect to strategic planning outcomes

The territory plan—

(a) must promote the principles of good planning; and

(b) must give effect to the planning strategy and district strategies; and

Note The object of this Act must be considered in developing planning strategies, plans and policies (see s 10 (1)) and the planning strategy must be consistent with the object of this Act (see s 36 (1)).

(c) must take into account and may give effect to relevant outcomes related to planning contained in other government strategies and policies.

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48 Contents of territory plan

(1) The territory plan must—

(a) include a map that identifies districts and designates land use zones (the ***territory plan map***); and

(b) set out the planning principles and policies for giving effect to the object of the plan, including—

(i) the policy outcomes to be achieved by the plan; and

(ii) requirements and outcomes against which development proposals are assessed; and

(iii) provisions that support compliance with requirements for undertaking development.

(2) The territory plan may include anything else relevant to the object of the territory plan.

(3) The territory plan may apply, adopt or incorporate—

(a) a law of another jurisdiction; or

(b) an instrument as in force from time to time, unless the territory plan provides otherwise.

(4) The Legislation Act, section 47 (6) does not apply to an instrument applied, adopted or incorporated under subsection (3).

Note The instrument does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

49 Format of territory plan and supporting material

(1) In preparing the territory plan, the territory planning authority must endeavour to make the territory plan, and any amendments of the plan, easy for users of the plan to read and understand.

(2) The territory plan may be supported by background material, guides, advisory notes or anything else (the ***supporting material***) that the

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territory planning authority considers will help readers to understand and apply the territory plan.

(3) The supporting material must be published on the authority website.

50 Design guides

(1) The Minister may prepare design guidance for development proposals (a ***design guide***) to support the territory plan.

(2) A design guide is a notifiable instrument.

(3) A design guide must be published on the authority website.

51 Technical specifications

(1) The chief planner may make technical specifications to support design guides and the territory plan.

(2) Technical specifications are a notifiable instrument.

(3) Technical specifications must be published on the authority website.

52 Effect of territory plan

The Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan.

Note The territory plan has no effect to the extent that it is inconsistent with the national capital plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 26).

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Part 5.2 Territory plan—major plan amendments

Division 5.2.1 Preliminary

53 Outline of major plan amendment process

(1) A major plan amendment starts when the territory planning authority prepares a draft major plan amendment—

(a) on application by an interested person (see s 57 (1)); or

(b) on the authority's own initiative (see s 60); or

(c) in accordance with a direction by the Minister under section 20 (see s 60 (2)).

(2) After preparing a draft major plan amendment, the territory planning authority must prepare a consultation notice (see s 63) that invites comments on the draft amendment and, when published on the authority website, may give the draft amendment interim effect (see s 64).

(3) The territory planning authority—

(a) may revise or withdraw a draft major plan amendment after the end of consultation (see s 66); and

(b) unless the draft major plan amendment is withdrawn, must give the draft amendment to the Minister for approval (see s 67).

(4) If the territory planning authority gives a draft major plan amendment to the Minister for approval, the territory planning authority must prepare a public availability notice (see s 68) that states that the draft amendment is available for public inspection and, when published on the authority website, may give the draft amendment interim effect (see s 69).

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(5) After receiving a draft major plan amendment, the Minister may do any of the following (see s 70):

(a) refer the draft amendment to the relevant Assembly committee for a report on the draft amendment;

(b) withdraw the draft amendment;

(c) give the draft amendment to the territory planning authority for further consultation or revision.

(6) After approving a draft major plan amendment, the Minister must present the amendment to the Legislative Assembly (see s 77) and the Assembly may completely or partly reject the amendment (see s 78).

(7) A major plan amendment commences on the day fixed by the Minister (see s 80 and s 81 (5) (a)).

(8) This section is intended only as a guide to readers.

54 Application—pt 5.2

(1) This part does not apply to amendments of the territory plan that are minor plan amendments under part 5.3.

(2) In this section:

minor plan amendment—see section 84.

55 Definitions—pt 5.2

In this part:

background papers, in relation to a draft major plan amendment or major plan amendment—each of the following is a ***background paper*** in relation to the proposed amendment:

(a) a copy of each of the following documents:

(i) any relevant direction of the Minister under section 20;

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(ii) any comment received during consultation under section 63 (1) (c) (Public consultation—notification and availability of draft major plan amendments etc);

(iii) any relevant supporting report for the proposed amendment;

(b) a statement, by the territory planning authority, of the reasons for any inconsistency between the draft plan and any of the following:

(i) a direction mentioned in paragraph (a) (i);

(ii) a recommendation in a supporting report for the proposed amendment;

(c) any other document—

(i) considered by the authority to be necessary or useful in explaining the proposed amendment; or

(ii) designated by the authority, in writing, as a background paper.

consultation comments, in relation to a draft major plan amendment—see section 63 (1) (c) (i).

consultation notice, for a draft major plan amendment—see section 63 (1) (c).

consultation period means a stated period of at least 30 working days.

corresponding major plan amendment, for a draft major plan amendment, means the major plan amendment developed from the draft major plan amendment.

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draft major plan amendment—

(a) in relation to an application for a proponent-initiated amendment—see section 59 (2); and

(b) in relation to an amendment prepared by the territory planning authority on its own initiative or in response to a direction by the Minister under section 20—see section 60 (1).

interested person, in relation to land—see section 56.

major plan amendment means a draft major plan amendment approved by the Minister under section 75 (2) (a) (Minister's powers in relation to draft major plan amendments).

proponent-initiated amendment—see section 57.

public availability notice, for a draft major plan amendment—see section 68 (a).

supporting report, for a proponent-initiated amendment, draft major plan amendment or major plan amendment, means a detailed report setting out all of the following:

(a) the need for the proposed amendment;

(b) the positive and negative impacts of the proposed amendment;

(c) a statement about how the proposed amendment would give effect to the planning strategy and—

(i) any relevant district strategy; or

(ii) for a supporting report prepared for a planning and response report—the proposed district strategy;

(d) a statement about how the proposed amendment would be consistent or inconsistent with relevant planning outcomes contained in other government strategies and policies;

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(e) any consultation undertaken by the interested person who proposed the amendment, including with relevant entities who may have an interest in the proposed amendment.

56 Meaning of *interested person*—pt 5.2

For this part, a person is an ***interested person*** in relation to land if—

(a) the person is the lessee or custodian of the land; or

(b) the person is acting with the consent of the lessee or custodian of the land.

Division 5.2.2 Initiation of major plan amendments

57 Proponent-initiated amendment—application

(1) An interested person in relation to land may apply to the territory planning authority for an amendment of the territory plan (a ***proponent-initiated amendment***) in relation to that land.

(2) The application must—

(a) include—

(i) the applicant's name and address; and

(ii) if the applicant is not the lessee or custodian of the land—the name of the lessee or custodian; and

(b) identify the land that is the subject of the proposed amendment; and

(c) include a description of the change to the territory plan the applicant is seeking from the amendment; and

(d) include a supporting report for the proposed amendment.

(3) The applicant may withdraw the application any time before it is accepted by the territory planning authority.

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58 Proponent-initiated amendment—consideration of application

(1) The territory planning authority must, within 3 months after the day an interested person makes an application for a proponent-initiated amendment under section 57—

(a) accept the application; or

(b) refuse to accept the application.

Note By accepting the application, the authority is not taken to support the application and is not bound to proceed with the amendment (see s 59 (3)).

(2) In considering whether to accept the application, the territory planning authority must have regard to each of the following:

(a) the planning strategy;

(b) any relevant district strategy;

(c) any current or proposed amendments of, or of policies in, the territory plan;

(d) the statement of planning priorities;

(e) anything else the authority considers relevant to the amendment.

(3) The authority may, by written notice, require the applicant to give additional information in relation to the application.

(4) The notice must state the time, at least 20 working days, within which the applicant must give the territory planning authority the additional information.

(5) The territory planning authority may refuse to accept the application if the additional information is not given to the authority within the stated time.

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59 Proponent initiated amendment—acceptance of application

(1) If the territory planning authority accepts an application for a proponent-initiated amendment under section 57, it must publish the following on the authority website when the draft amendment is published under section 63 (1) (Public consultation—notification and availability of draft major plan amendments etc):

(a) the decision to accept the application;

(b) the application;

(c) any additional information, and the request for that information, mentioned in section 58 (3).

(2) After accepting the application, the territory planning authority must prepare a document to amend the territory plan (a ***draft major plan amendment***).

(3) However, the territory planning authority—

(a) is not taken to support the application by preparing the draft major plan amendment; and

(b) must continue to assess the merits of the application; and

(c) is not bound to proceed with the amendment.

60 Authority or Minister-initiated amendments

(1) The territory planning authority may, on the authority's own initiative, prepare a document to amend the territory plan (a ***draft major plan amendment***).

(2) The territory planning authority must prepare a draft major plan amendment if the Minister gives the authority a direction under section 20 (1) (b) (Ministerial directions to authority).

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61 Supporting report for draft major plan amendment

(1) If the territory planning authority prepares a draft major planning amendment (other than a draft amendment mentioned in subsection (2)), the authority must prepare a supporting report for the draft amendment.

(2) If the territory planning authority prepares a draft major planning amendment after accepting an application for a proponent-initiated amendment, the authority must consider the supporting report included with the application for the amendment.

Division 5.2.3 Consultation

62 Draft major plan amendments—consultation

The territory planning authority must consult with each of the following in relation to a draft major plan amendment:

(a) the national capital authority;

(b) the conservator of flora and fauna;

(c) the environment protection authority;

(d) the heritage council;

(e) each referral entity;

(f) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.

63 Public consultation—notification and availability of draft major plan amendments etc

(1) After preparing a draft major plan amendment, the territory planning authority must publish the following on the authority website:

(a) the draft amendment;

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(b) the supporting report for the draft amendment;

(c) a notice that complies with section 64 (a ***consultation notice***)—

(i) inviting people to give written comments (***consultation comments***) about the draft amendment to the authority during the consultation period for the draft amendment; and

(ii) stating the effect of section 65 (Public inspection of comments on draft major plan amendments).

(2) However, the territory planning authority is not required to publish a major draft amendment if satisfied that publication of the draft amendment—

(a) would disclose a trade secret; or

(b) would, or could reasonably be expected to—

(i) endanger the life or physical safety of anyone; or

(ii) lead to damage to, or theft of, property.

(3) The territory planning authority may extend the consultation period for the draft major plan amendment.

(4) If the territory planning authority extends the consultation period for the draft major plan amendment, it must—

(a) publish a notice (an ***extension notice***) on the authority website about the extended consultation period; and

(b) for a draft amendment prescribed by regulation—give a copy of the extension notice to each person prescribed by regulation.

(5) A draft major plan amendment is not invalid only because the territory planning authority has not complied with subsection (4) (b).

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(6) This section does not apply in relation to a draft major plan amendment—

(a) if, in preparing a planning and response report, an entity has undertaken consultation similar to that required under this section in relation to the substance of the draft amendment; or

(b) that has been revised by the territory planning authority in accordance with a request under section 75 (2) (c) (ii) (Minister's powers in relation to draft major plan amendments); or

(c) if, in developing a government policy or strategy, a government entity has undertaken consultation similar to that required under this section in relation to the substance of the draft amendment; or

(d) if the Minister consulted on the draft amendment under section 218 (3) (Declaration of territory priority projects) in relation to a proposed territory priority project declaration.

Examples—par (c)

1 the amendment was included as part of a consultation process undertaken by another government entity as a consequence of consulting on a new climate change strategy

2 the amendment was included in a draft review report prepared by the territory planning authority under s 91 and consulted on in accordance with that section

64 Public consultation—notice of interim effect etc

(1) A consultation notice must state whether or not subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment.

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(2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period or a period stated in the consultation notice, whichever is shorter, do or approve the doing of anything that would be inconsistent with the territory plan if it were amended in accordance with the draft major plan amendment.

Note The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 52).

(3) A consultation notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, must also state—

(a) the effect of subsection (2); and

(b) a period (not longer than 12 months) that is the maximum period during which the draft amendment, or part of the draft amendment, is to have interim effect.

(4) A consultation notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, is a notifiable instrument.

(5) In this section:

defined period, for a draft major plan amendment, means the period—

(a) starting on the day the consultation notice for the draft amendment is notified (the ***notification day***) as required under subsection (4); and

(b) ending on the day the earliest of the following happens:

(i) the day the public availability notice for the draft amendment is published on the authority website as required under section 68;

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(ii) if the draft amendment, or the corresponding major plan amendment, is withdrawn under section 66 (1) (b) (Revision and withdrawal of draft major plan amendments) or section 75 (2) (b) (Minister's powers in relation to draft major plan amendments)—the day it is withdrawn;

(iii) the day that is 12 months after the notification day.

65 Public inspection of comments on draft major plan amendments

(1) This section applies to written comments about a draft major plan amendment—

(a) given to the territory planning authority in response to the invitation in the consultation notice for the draft amendment under section 63 (1) (c) (i) or otherwise; or

(b) received from the national capital authority.

(2) The territory planning authority must publish the comments on the authority website for at least 30 working days, starting 10 working days after consultation period for the draft amendment ends.

Division 5.2.4 Action after consultation about draft major plan amendments

66 Revision and withdrawal of draft major plan amendments

(1) After the end of the consultation period for a draft major plan amendment, the territory planning authority may—

(a) revise the draft amendment; or

(b) withdraw the draft amendment.

(2) In revising or withdrawing a draft major plan amendment, the territory planning authority must consider written comments (including consultation comments) about the draft amendment received from any entity, including the national capital authority.

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(3) The territory planning authority may, at any time before a draft major plan amendment is given, or given again, to the Minister, revise the draft amendment to correct a formal error.

(4) The withdrawal of a draft major plan amendment must include a statement that the interim effect of the draft amendment ends on the day the draft amendment is withdrawn.

(5) The territory planning authority must publish on the authority website notice of the withdrawal of a draft major plan amendment on the same day, or as soon as practicable after, the authority prepares the withdrawal.

Division 5.2.5 Draft major plan amendments given to Minister

67 Draft major plan amendments to be given to Minister etc

(1) This section applies to a draft major plan amendment—

(a) if—

(i) the consultation period for the draft amendment has ended; and

(ii) the territory planning authority has not withdrawn the draft amendment under section 66; and

(b) if the draft amendment has been revised under section 66—as revised.

(2) This section also applies to a draft major plan amendment in relation to which section 63 (Public consultation—notification and availability of draft major plan amendments etc) does not apply.

Note Section 63 (6) provides that s 63 does not apply in relation to certain draft major plan amendments.

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(3) The territory planning authority must give the draft major plan amendment to the Minister for approval, together with the following documents:

(a) the background papers relating to the draft amendment;

(b) a written report about the authority's consultation with the following:

(i) the public;

(ii) the national capital authority;

(iii) the conservator of flora and fauna;

(iv) the environment protection authority;

(v) the heritage council;

(vi) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected;

(c) a copy of written comments (including consultation comments) about the draft amendment received from an entity mentioned in paragraph (b).

Note The Minister must give a copy of the documents given to the Minister under this section to the relevant Assembly committee (see s 70).

(4) The written report mentioned in subsection (3) (b) must include the issues raised in any consultation comments about the draft major plan amendment.

68 Public notice of documents given to Minister

The territory planning authority must publish on the authority website—

(a) a notice stating that the documents mentioned in section 67 (3) (including the draft major plan amendment) are available on the website for public inspection (a ***public availability notice***); and

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(b) for the period stated in the public availability notice—copies of the documents mentioned in section 67 (3).

69 Public availability notice—notice of interim effect etc

(1) A public availability notice must state whether or not subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment.

(2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything that would be inconsistent with the territory plan if it were amended in accordance with the draft major plan amendment.

Note The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 52).

(3) A public availability notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, must also state the effect of subsection (2).

(4) A public availability notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, is a notifiable instrument.

(5) In this section:

defined period, for a draft major plan amendment, means the period—

(a) starting on the day the public availability notice for the draft amendment is notified (the ***notification day***) under subsection (4); and

(b) ending on the earliest of the following days:

(i) the day the corresponding major plan amendment, or part of it, commences;

Note See s 80 (2) and s 81 (5) (a) for when the amendment, or part of it, commences.

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(ii) if the corresponding major plan amendment is rejected by the Legislative Assembly—the day it is rejected;

(iii) if the corresponding major plan amendment is withdrawn in accordance with a requirement under section 75 (2) (b) or section 81 (5) (b)—the day it is withdrawn;

(iv) the day that is 18 months after the notification day.

Division 5.2.6 Consideration of draft major plan amendments by relevant Assembly committee

70 Certain draft major plan amendments given to Minister under s 67—action by Minister

(1) This section applies if the Minister is given a draft major plan amendment under section 67.

(2) Within 5 working days after the day the public availability notice for the draft major plan amendment is published on the authority website, the Minister must refer the draft amendment to the relevant Assembly committee, together with—

(a) the documents mentioned in section 67 (3) relating to the draft amendment; and

(b) a request that the committee decide whether it will prepare a report on the draft amendment.

71 Consideration of draft major plan amendments by relevant Assembly committee

(1) If the Minister refers a draft major plan amendment to the relevant Assembly committee under section 70 (2), the committee must tell the Minister, within 15 working days after the day the draft amendment is referred to the committee, whether or not it will prepare a report on the draft amendment.

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(2) If the committee has not told the Minister, within the 15-day period, whether it will prepare a report, it is taken to have decided not to prepare a report.

(3) Without limiting the matters the relevant Assembly committee may include in a report on the draft major plan amendment, the committee must include in the report—

(a) a recommendation that the Minister approve the draft amendment; or

(b) another recommendation about the draft amendment.

(4) Subsection (5) applies if—

(a) the draft amendment is to facilitate the development of a territory priority project; and

(b) if the committee decides to prepare a report on the draft amendment—the Minister is satisfied that the risk of delay to the development of the territory priority project will be minimised if the committee's report on the draft amendment were given to the Minister earlier than 6 months after the day it is referred to the committee.

(5) When the Minister refers the draft major plan amendment to the relevant Assembly committee, the Minister may request that, if the committee decides to prepare a report, the report be completed and given to the Minister within a period stated by the Minister, that is at least 3 months and not more than 6 months after the day the draft amendment is referred to the committee.

72 Committee decides not to report

(1) This section applies if—

(a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 70 (2); and

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(b) the committee has decided, or is taken to have decided, not to prepare a report on the draft amendment.

(2) The Minister must take action in accordance with section 75 in relation to the draft major plan amendment.

73 Committee reports on draft major plan amendments

(1) This section applies if—

(a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 70 (2); and

(b) the committee has decided to prepare a report on the draft amendment.

(2) The Minister—

(a) unless section 74 applies—must not take action under section 75 in relation to the draft major plan amendment until the relevant Assembly committee has reported on the draft amendment; and

(b) after the committee reports on the draft amendment—must take action under section 75 in relation to the draft amendment.

74 Committee fails to report promptly on draft major plan amendments

(1) This section applies if—

(a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 70 (2) (Certain draft major plan amendments given to Minister under s 67—action by Minister); and

(b) the committee has decided to prepare a report on the draft major plan amendment; and

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(c) the committee has not reported on the draft amendment by the end of—

(i) if the Minister's referral is made within 4 months before a general election of members of the Legislative Assembly—

(A) if the Minister stated a period under section 71 (5) (Consideration of draft major plan amendments by relevant Assembly committee)—the stated period commencing on the first sitting day of the Legislative Assembly after the general election; or

(B) in any other case—6 months after the first sitting day of the Legislative Assembly after the general election; or

(ii) in any other case—

(A) if a period was stated by the Minister under section 71 (5)—the stated period; or

(B) in any other case—6 months after the day the draft major plan amendment is referred to the committee.

(2) The Minister may take action in accordance with section 75 in relation to the draft major plan amendment, even though the relevant Assembly committee has not reported on the amendment.

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Division 5.2.7 Ministerial and Legislative Assembly action on draft major plan amendments

75 Minister's powers in relation to draft major plan amendments

(1) This section applies if—

(a) the Minister is required to take action under this section; or

(b) the Minister decides under section 74 to take action under this section; or

(c) the Minister revokes the approval of a draft major plan amendment under section 77 (4).

Note See s 72 (2), s 73 (2) (b) and s 76 (4) for when the Minister is required to take action under this section.

(2) The Minister must—

(a) approve the draft major plan amendment in the form given; or

Note A draft major plan amendment approved by the Minister is a major plan amendment (see s 55, def ***major plan amendment***).

(b) withdraw the draft major plan amendment; or

(c) return the draft major plan amendment to the territory planning authority and direct the authority to do 1 or more of the following:

(i) conduct further stated consultation;

(ii) consider any revision suggested by the Minister;

(iii) revise the draft amendment in a stated way.

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(3) Before taking action under subsection (2), the Minister must consider the following:

(a) the documents given to the Minister under section 67 (3) (Draft major plan amendments to be given to Minister etc);

(b) any recommendation made by the relevant Assembly committee in relation to the draft amendment, or related documents, referred to the committee under section 70 (2) (a) or otherwise;

(c) the planning strategy;

(d) any relevant district strategy.

Note For par (b), the Minister must not take action under this section in some circumstances if the committee has not reported (see s 73 and s 74).

(4) The Minister may approve a draft major plan amendment only if the draft amendment is not inconsistent with the planning strategy or any relevant district strategy.

(5) If the Minister approves a draft major plan amendment, the Minister must prepare a notice that includes the following:

(a) the major plan amendment;

(b) a statement that the major plan amendment is approved;

(c) a statement that the major plan amendment must be presented to the Legislative Assembly and may only commence by commencement notice under section 80 (2).

(6) A notice under subsection (5) is a notifiable instrument.

(7) The following must be published on the authority website:

(a) a decision by the Minister under subsection (2);

(b) if the decision is under subsection (2) (b) or (c)—the reasons for the decision (if any).

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76 Return of draft major plan amendments to authority

(1) This section applies if the Minister returns a draft major plan amendment to the territory planning authority with a direction under section 75 (2) (c).

(2) If the direction is given under section 75 (2) (c) (i) or (ii), the territory planning authority may revise the draft major plan amendment and give it to the Minister for approval with a written report about—

(a) the authority's response to the Minister's direction; and

(b) any further revision of the draft amendment under section 66 (3).

(3) If the direction is given under section 75 (2) (c) (iii), the territory planning authority must give the Minister the draft major plan amendment, as revised in accordance with the direction, together with a written report about any further revision of the draft amendment under section 66 (3).

(4) After receiving the draft major plan amendment, the Minster must take additional action under section 75 in relation to the draft amendment.

77 Presentation of major plan amendments to Legislative Assembly

(1) This section applies if the Minister approves a major plan amendment under section 75 (2) (a).

(2) The Minister must present to the Legislative Assembly, not later than 5 sitting days after the day the Minister approves a major plan amendment, copies of each of the following:

(a) the major plan amendment;

(b) the background papers relating to the amendment;

(c) any report mentioned in section 76 (2) or (3).

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(3) If a major plan amendment is not presented to the Legislative Assembly in accordance with subsection (2), the major plan amendment does not come into effect.

(4) However, the Minister may, at any time before the major plan amendment is presented to the Legislative Assembly, revoke the approval and reconsider the amendment as a draft major plan amendment under section 75.

78 Assembly may reject major plan amendments completely or partly

(1) The Legislative Assembly may, by resolution, reject a major plan amendment, or a provision of the major plan amendment, presented to the Assembly.

(2) Notice of a motion to reject the major plan amendment or a provision of the major plan amendment (a ***rejection notice***) must be given not later than 5 sitting days after the day the major plan amendment is presented to the Legislative Assembly.

(3) The major plan amendment or provision stated in a rejection notice given in accordance with subsection (2) is taken to have been rejected by the Legislative Assembly if, at the end of 5 sitting days after the day the rejection notice has been given in the Legislative Assembly—

(a) the motion has not been called on; or

(b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

79 Effect of dissolution etc of Legislative Assembly

(1) This section applies if, before the end of 5 sitting days after the day a rejection notice has been given in the Legislative Assembly under section 78 (2)—

(a) the Legislative Assembly is dissolved or expires; and

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(b) at the time of dissolution or expiry—

(i) the notice has not been withdrawn and the motion has not been called on; or

(ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

(2) The major plan amendment is taken, for section 78 (2) and (3), to have been presented to the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.

(3) In this section:

rejection notice—see section 78 (2).

Division 5.2.8 Commencement and publication of major plan amendments

80 Commencement and publication of major plan amendments

(1) This section applies if—

(a) at the end of 5 sitting days after the day a major plan amendment is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the amendment or any provision of the amendment; and

(b) the major plan amendment, or a provision of the major plan amendment is not taken to have been rejected under section 78 (3) (Assembly may reject major plan amendments completely or partly).

(2) The major plan amendment commences on a day fixed by the Minister by written notice.

(3) The territory planning authority must publish a commencement notice under subsection (2) on the authority website.

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81 Rejection of major plan amendments by Legislative Assembly

(1) This section applies if a major plan amendment, or a provision of the major plan amendment, is rejected, or taken to be rejected, under section 78 (Assembly may reject major plan amendments completely or partly).

(2) The major plan amendment, or provision of the major plan amendment, does not come into force if the provision is—

(a) rejected, or taken to be rejected, by the Legislative Assembly under section 78 (3); or

(b) withdrawn under subsection (5) (b).

(3) The territory planning authority must, in relation to each provision of the major plan amendment that is rejected, prepare a notice stating that the provision of the amendment has been rejected.

Note A single notice may be prepared for 1 or more rejected provisions.

(4) The notice is a notifiable instrument.

(5) The Minister must, in relation to each provision of the major plan amendment that is not rejected—

(a) fix a day when the provision is to commence; or

(b) withdraw the provision.

Note On commencement, a provision of a major plan amendment amends the territory plan according to its terms.

(6) A withdrawal under subsection (5) (b) is a notifiable instrument.

(7) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

(8) The territory planning authority must publish notice of the following on the authority website:

(a) a notice under subsection (3);

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(b) a commencement notice under subsection (5) (a);

(c) a withdrawal under subsection (5) (b).

Division 5.2.9 Limitations on challenge to validity of territory plan provisions

82 Limitations on challenge to validity of territory plan provisions

(1) The validity of a provision of the territory plan must not be questioned in any legal proceeding other than a proceeding begun not later than 3 months after the day the provision, or an amendment of the provision, commenced.

(2) The validity of a provision of the territory plan must not be questioned in any legal proceeding only because the major plan amendment that inserted or amended the provision was inconsistent with the planning strategy or a district strategy.

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Part 5.3 Territory plan—minor plan amendments

83 Definitions—pt 5.3

In this part:

limited consultation—see section 86 (1).

minor plan amendment—see section 84.

84 What is a *minor plan amendment* and is consultation needed?

(1) Each of the following territory plan amendments is a ***minor plan amendment*** for which no consultation is needed before it is made under section 85:

(a) an amendment that—

(i) would not adversely affect anyone's rights if approved; and

(ii) has as its only object the correction of a formal error in the plan;

(b) an amendment to change the boundary of a zone under section 87 (Rezoning—boundary changes);

(c) an amendment, other than one to which subsection (2) (b) applies, in relation to a subdivision design application under section 44 (Effect of approval of subdivision design application);

(d) an amendment required to bring the territory plan into line with the national capital plan;

(e) an amendment to add or change a reference to a design guide;

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(f) an amendment to omit something that is obsolete or redundant in the territory plan.

Example—obsolete or redundant thing

a provision of the territory plan that has become redundant because of the enactment of a law that applies in the Territory

(2) Each of the following territory plan amendments is a ***minor plan amendment*** for which only limited consultation is needed under section 86:

(a) an amendment to change the boundary of a zone under section 88 (Rezoning—development encroaching on adjoining land);

(b) an amendment in relation to a subdivision design application under section 44 (Effect of approval of subdivision design application) if it incorporates an ongoing provision that was not included in the plan under section 43 (2) (g) (Subdivision design applications);

(c) an amendment to relocate a provision within the territory plan if the substance of the provision is not changed;

(d) an amendment to change a provision in the territory plan that—

(i) does not change the substance of the plan; and

(ii) is consistent with the policy intent of the provision; and

(iii) is not an amendment mentioned in subsection (1) (a);

(e) an amendment in relation to a future urban area under section 89.

Note An amendment to rezone land that is not in a future urban area is not a minor plan amendment.

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85 Making minor plan amendments

(1) This section applies if—

(a) the territory planning authority is satisfied that a territory plan amendment would, if made, be a minor plan amendment; and

(b) any limited consultation needed for the amendment has taken place.

(2) The territory planning authority may only make a minor plan amendment if the amendment is not inconsistent with the planning strategy or any relevant district strategy.

(3) A minor plan amendment is a notifiable instrument.

(4) A minor plan amendment commences on a day fixed by the territory planning authority by written notice.

(5) Not later than 5 working days after the day a minor plan amendment is notified under the Legislation Act, the territory planning authority must publish on the authority website—

(a) a copy of the amendment as notified; and

(b) any other information considered by the authority to be necessary or useful in explaining the minor amendment.

86 Limited consultation

(1) The territory planning authority undertakes ***limited consultation*** for a proposed minor plan amendment if the authority complies with this section in relation to the amendment.

(2) The territory planning authority must publish on the authority website—

(a) a copy of the proposed minor plan amendment and information about the amendment; and

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(b) a notice that—

(i) states the consultation period and how written comments (***consultation comments***) may be made on the amendment; and

(ii) states that a copy of any consultation comments will be made available on the authority website for at least 15 working days, starting 10 working days after the end of the consultation period; and

(c) a copy of the documents mentioned in paragraph (b) (ii).

Note Section 502 and s 503 apply to a person who makes consultation comments under this section.

(3) The territory planning authority must tell the national capital authority about the minor plan amendment.

(4) The territory planning authority must consider—

(a) any consultation comments made in the consultation period and in accordance with the notice under subsection (2) (b); and

(b) any views of the national capital authority.

(5) In this section:

consultation period means a stated period of at least 20 working days.

87 Rezoning—boundary changes

(1) This section applies to a zone in relation to land if the land adjoins unleased land or land for which the Territory is the registered proprietor (the ***adjoining land***).

(2) The territory planning authority may amend the territory plan under section 85 (Making minor plan amendments) to change the boundary of the zone to encroach onto the adjoining land if the change is consistent with—

(a) the apparent intent of the original boundary line; and

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(b) the desired outcomes for the zone.

(3) The territory planning authority may amend the territory plan under section 85 to change the boundary of the zone to encroach onto the adjoining land if—

(a) the authority is advised to do so by—

(i) the conservator of flora and fauna; or

(ii) the custodian of the land for the zone; and

(b) the conditions in subsection (2) (a) and (b) are satisfied.

88 Rezoning—development encroaching on adjoining land

(1) The territory planning authority may amend the territory plan under section 85 (Making minor plan amendments) to change the boundary of a zone consistent with a development proposal under section 158 (Declaration for development encroaching on adjoining land if development prohibited) if the authority makes a declaration that the proposal satisfies the criteria in section 158 (2).

Note Under s 158 and s 159, a person may apply for development approval of a development proposal that encroaches on adjoining land if the development would otherwise be prohibited on the land. However, development approval must not be given until the minor plan amendment has commenced under s 85 (see s 185 (2) (b)).

(2) However, the territory planning authority must not amend the territory plan under section 85 to change the boundary of the zone if the adjoining land is a future urban area.

(3) In this section:

adjoining land—see section 87 (1).

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89 Minor plan amendments—future urban areas

(1) The territory planning authority may amend the territory plan under section 85 (Making minor plan amendments) to rezone land in a future urban area, and make or amend a district policy in relation to the land, unless the amendment is inconsistent with the principles and policies in the relevant district strategy.

(2) The territory planning authority may amend the territory plan under section 85 to change the boundary of a future urban area if the change is consistent with the relevant district strategy.

(3) However, the territory planning authority must not amend the territory plan under section 85 to change the boundary of a future urban area if part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

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Part 5.4 Review of territory plan

90 Consideration of whether review of territory plan necessary

(1) The Minister must, at least once every 5 years—

(a) decide whether the territory plan should be reviewed; and

(b) if the Minister decides that the territory plan should be reviewed—direct the territory planning authority to review the territory plan.

Note 1 The territory planning authority must also review the territory plan if directed to do so by the Minister (see s 19 and s 20 (1) (b)).

Note 2 A direction mentioned in s (1) (b) is a notifiable instrument (see s 20 (3)).

(2) In deciding whether the territory plan should be reviewed, the Minister—

(a) must consider whether the territory plan—

(i) is consistent with the object of this Act; and

(ii) is consistent with the object of the territory plan; and

(iii) gives effect to the plan's object in a way that is not inconsistent with the national capital plan; and

(iv) gives effect to the plan's object in a way that gives effect to the principles of good planning; and

(v) promotes the planning strategy; and

(b) may consult with the public on whether the territory plan should be reviewed.

(3) The Minister may delay making a decision to review the territory plan for not more than 1 year.

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(4) The territory planning authority must publish on the authority website notice of—

(a) the decision under subsection (1); and

(b) any decision under subsection (3).

(5) A decision by the Minister not to review the territory plan does not affect the territory planning authority's function under section 18 (1) (b) of continually reviewing the territory plan.

91 Review of territory plan

(1) This section applies if the Minister directs the territory planning authority under section 20 (1) (b) to review the territory plan.

Note See also s 90 (1) (b).

(2) The territory planning authority must review the territory plan and consider the following:

(a) whether the territory plan remains consistent with the national capital plan;

(b) whether the territory plan continues to further the object of this Act and the object of the territory plan in accordance with the principles of good planning;

(c) whether the territory plan remains consistent with the planning strategy and district strategies;

(d) whether the territory plan takes into account any planning outcomes contained in other government strategies and policies that may be relevant;

(e) anything else prescribed by regulation.

(3) After reviewing the territory plan, the territory planning authority must prepare a report (a ***draft review report***)—

(a) stating that the authority has reviewed the plan; and

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(b) stating the authority's findings on the review; and

(c) if the authority considers that the territory plan should be amended—including the proposed amendment of the territory plan.

(4) The territory planning authority must consult with each of the following in relation to the draft review report:

(a) the public;

(b) the national capital authority;

(c) the conservator of flora and fauna;

(d) the environment protection authority;

(e) the heritage council;

(f) each referral entity;

(g) if any territory plan amendment in the review report would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.

92 Action after consultation about draft review report

(1) After the end of the consultation period for a draft review report, the territory planning authority may revise the draft review report.

(2) In revising the draft review report, the territory planning authority must consider written comments (including consultation comments) about the draft review report received in the consultation period.

(3) The territory planning authority may, at any time before the draft review report is given, or given again, to the Minister, revise the report to correct a formal error.

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93 Draft review report to be given to Minister etc

(1) The territory planning authority must give the draft review report to the Minister, together with the following documents:

(a) a written report about the authority's consultation with the following:

(i) the public;

(ii) the national capital authority;

(iii) the conservator of flora and fauna;

(iv) the environment protection authority;

(v) the heritage council;

(vi) each referral entity;

(vii) if any territory plan amendment in the review report would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected;

(b) a copy of any written document given to the Minister by the national capital authority in relation to the draft review report.

(2) The written report mentioned in subsection (1) (a) must include a statement about the issues raised in any consultation comments about the draft review report.

Note If the Minister accepts the draft review report, the Minister may direct the territory planning authority to amend the territory plan.

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Chapter 6 Significant development

Part 6.1 Preliminary

94 Meaning of *significant development*

A proposed development is a ***significant development*** if it requires any of the following:

(a) a subdivision design application under section 43;

(b) consultation with the design review panel under section 100 (1) or (2);

(c) an environmental impact statement (***EIS***) under section 105.

Note A regulation cannot exempt a significant development from requiring development approval (see s 145 (2)).

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Part 6.2 Design review panel

95 Establishment of design review panel

The Design Review Panel is established.

96 Functions of design review panel

The design review panel has the following functions:

(a) to provide design advice to proponents of development proposals;

(b) to exercise any other function given to the panel under this Act or another territory law.

97 Members of design review panel

(1) The design review panel consists of at least 3 of the following members:

(a) the person engaged as the government architect;

(b) a representative of the national capital authority;

(c) 1 or more members contracted under subsection (2) to provide design review services to the panel.

(2) The territory planning authority may, on behalf of the Territory, enter into a contract for services with a person to provide design review services to the design review panel.

(3) However, the territory planning authority may enter into a contract with a person only if satisfied that the person has appropriate expertise in architecture, urban design, urban planning, landscape architecture, engineering or another area relevant to the urban environment.

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(4) The contract must include conditions to ensure the accountability, transparency and independence of contracted panel members, including conditions about the following:

(a) ending the member's contract;

(b) disclosure of interests;

(c) conflicts of interest.

98 Rules for design review panel

(1) The Minister may make rules (***design review panel rules***) for the design review panel, including rules about—

(a) terms of reference for the panel; and

(b) constitution of the panel; and

(c) conducting meetings of the panel; and

(d) processes and procedures for reviewing development proposals.

Examples—pars (a) to (c)

1 the quorum at meetings
2 who presides at meetings
3 how questions are resolved at meetings
4 how conflicts of interest are dealt with at meetings

Examples—par (d)

1 site inspections
2 sources of best practice for design review

(2) The design review panel rules may apply, adopt or incorporate an instrument as in force from time to time.

(3) The Legislation Act, section 47 (6) does not apply to an instrument applied, adopted or incorporated under subsection (2).

Note The instrument does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

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(4) The design review panel rules must be published on the authority website.

99 Design principles

(1) The Minister may make principles (***design principles***) to be used by the design review panel in assessing development proposals under this Act.

(2) The design principles must be published on the authority website.

100 When design review panel consultation is required

(1) Before submitting a development application for a prescribed development proposal, the proponent must consult the design review panel about the proposal.

(2) Also, if the Minister is satisfied that a development proposal is likely to be of economic, social or environmental significance to the Territory, the Minister may require the proponent to consult the design review panel about the proposal.

(3) In addition, the proponent of any other development proposal may consult the design review panel about the proposal.

(4) If the proponent of a development proposal consults the design review panel about the proposal, the consultation must be undertaken in accordance with any design review panel rules.

101 Advice of design review panel

(1) This section applies if—

(a) the proponent of a development proposal consults the design review panel about the proposal under section 100; or

(b) the territory planning authority refers a development proposal in a development application to the design review panel under section 171 (2) (b).

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(2) The design review panel must—

(a) consider the proposal; and

(b) either—

(i) provide the proponent with advice about how the proposal could be made consistent, or more consistent, with any design principles (***design advice***); or

(ii) tell the proponent that the panel has no advice about the proposal; and

(c) if the panel provides the proponent with design advice—give a copy of the design advice to the territory planning authority.

Note If design advice is given, the proponent's response to the design advice must be included in the development application (see s 166 (2) (d)).

(3) If the proponent does not submit a development application for the development proposal within 18 months after the design advice is provided, the design advice expires.

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Part 6.3 Environmental impact assessment

Division 6.3.1 Outline and key concepts

102 Outline of environmental impact assessment

(1) Formal assessment of a development proposal's potential environmental impact (***environmental impact assessment***) is required for certain proposals.

(2) Environmental impact assessment is typically in the form of an environmental impact statement (see s 105), but in some cases a proponent may instead apply for an opinion indicating that the proposal is not likely to have a significant adverse environmental impact (an ***environmental significance opinion***) (see s 138).

(3) A development application for a development proposal requiring environmental impact assessment must include a finalised EIS or an environmental significance opinion (see s 166 (2) (d)).

(4) If an environmental significance opinion is given for a proposal, the proposed development is no longer a significant development.

(5) Environmental impact assessment is taken into account in deciding a development application but is not itself a development application or a development approval process.

(6) This section is intended only as a guide to readers.

103 Outline of EIS process

(1) If this Act requires an EIS for a development proposal, the proponent of the proposal must apply to the territory planning authority for a document to identify the matters to be addressed in the EIS (see s 109).

(2) The territory planning authority must prepare and give a scoping document to the proponent (see s 109 to s 111).

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(3) The proponent must prepare a draft EIS (see s 112).

(4) The territory planning authority must publicly notify the draft EIS (see s 114), and anyone may make a representation about the draft EIS (see s 115).

(5) The proponent must revise the draft EIS and give the revised EIS to the territory planning authority (see s 118).

(6) The territory planning authority must consider the EIS (see s 121) and—

(a) accept the EIS (see s 121 (2)); or

(b) give the proponent another opportunity to revise the EIS (see s 122); or

(c) reject the EIS (see s 123).

(7) If the territory planning authority accepts an EIS, the authority must—

(a) give the EIS to the Minister (see s 125); and

(b) prepare an EIS assessment report (see s 126).

(8) After receiving an EIS, the Minister may—

(a) establish an inquiry panel to inquire about the EIS (see s 132); or

(b) give the authority a notice of no action on the EIS (see s 127).

(9) An EIS generally expires 5 years after the day it is finalised (see s 131).

(10) This section is intended only as a guide to readers.

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104 Meaning of *significant* adverse environmental impact

(1) For this Act, an adverse environmental impact is ***significant*** if—

(a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or

(b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.

(2) In deciding whether an adverse environmental impact is ***significant***, the following matters must be taken into account:

(a) the kind, size, frequency, intensity, scope and length of time of the impact;

(b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

(3) In deciding whether a development proposal is likely to have a significant adverse environmental impact, it does not matter whether the adverse environmental impact is likely to occur on the site of the development or elsewhere.

Division 6.3.2 EIS requirements

105 When EIS is required

(1) An EIS is required for a development proposal if—

(a) the proposal is prescribed by regulation; or

(b) the Minister makes a declaration in relation to the proposal under section 106; or

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(c) the Commonwealth Minister responsible for administering the EPBC Act advises the Minister in writing that the proposed development—

(i) is a controlled action under that Act, section 78 (Minister may request more information for making decisions); and

(ii) does not require assessment under that Act, part 8 (Assessing impacts of controlled actions) because a bilateral agreement between the Commonwealth and the Territory under that Act allows the proposal to be assessed under this Act; or

(d) the Public Health Act Minister makes a declaration under the *Public Health Act 1997*, section 134 in relation to a development application for the proposal and—

(i) the application is publicly notified; and

(ii) the declaration is made during the public notification period for the application.

(2) However, an EIS is not required for a development proposal if an environmental significance opinion has been given for the proposal.

Note See s 138 for when a proponent may apply for an environmental significance opinion.

106 EIS—declaration by Minister

(1) The Minister may, in writing, declare that an EIS must be undertaken for a development proposal.

(2) However, the Minister must not make a declaration in relation to the development proposal unless satisfied on reasonable grounds that there is a risk of significant adverse environmental impact from the proposed development.

Note The Minister may publish guidelines about how the Minister will exercise power under this section (see s 519).

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107 Effect of declaration made after development application

(1) This section applies to a development application if, after the application is made—

(a) either—

(i) the Minister makes a declaration under section 106 in relation to the development proposal to which the application relates; or

(ii) the Public Health Act Minister makes a declaration under the *Public Health Act 1997*, section 134 in relation to the application; and

(b) the application does not satisfy the application requirements for a development requiring environmental impact assessment.

(2) The development application is taken to have been withdrawn.

(3) The territory planning authority must give the applicant notice of the effect of this section.

108 Designated proponents for certain EIS decisions

(1) The relevant Minister in relation to a defined decision may, in writing, designate a person or territory authority as the proponent in relation to the decision.

(2) In this section:

defined decision means a decision of the Territory, the Executive, a Minister or a territory authority about a proposal in relation to which a Minister is empowered—

(a) to direct that an EIS be prepared; or

(b) to establish an inquiry panel to inquire about the EIS.

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relevant Minister means the Minister responsible for the administration of the Act or subordinate law under which—

(a) in relation to an EIS or inquiry—the EIS or inquiry is authorised to be prepared or conducted; or

(b) in relation to a defined decision—the relevant decision is authorised to be made.

Division 6.3.3 Scope of EIS

109 Application for EIS scoping document

(1) A proponent of a development proposal must apply to the territory planning authority under this section if an EIS is required under section 105 for the proposal.

(2) The territory planning authority must—

(a) identify the matters that are to be addressed by an EIS in relation to the development proposal; and

(b) prepare a document of the matters (the ***scoping document***); and

(c) publish the application for the scoping document and documents in support of the application on the authority's website.

Note The time for giving a scoping document to the applicant is set out in s 111.

(3) A regulation may prescribe consultation requirements for the preparation of a scoping document.

110 Contents of scoping document

(1) The matters identified in the scoping document for a development proposal must include any minimum content for scoping documents prescribed by regulation.

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(2) The territory planning authority may, in the scoping document for a development proposal—

(a) require the proponent to engage a consultant to help prepare an EIS for the proposal; and

(b) set a shorter period within which a draft EIS must be provided to the authority under section 112; and

(c) request any other information relevant to the proposal.

(3) In this section:

consultant means a person who satisfies the criteria prescribed by regulation.

111 Time to provide scoping document

(1) The territory planning authority must give a scoping document for a development proposal to the proponent of the proposal within—

(a) 30 working days after the day the proponent makes an application under section 109; or

(b) if the chief planner extends the period to give the scoping document under subsection (2)—the extended period.

(2) The chief planner may, in writing, extend the period to give a scoping document for a development proposal if satisfied that, because of the complexity of the proposal and the consultation required, the extension is necessary.

(3) The chief planner must give written notice of an extension under subsection (2) to the proponent of the development proposal.

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Division 6.3.4 Drafting EIS

112 Preparing draft EIS

(1) After the territory planning authority gives a scoping document for a development proposal to the proponent of the proposal, the proponent must—

(a) prepare a document that addresses each matter raised in the scoping document (a ***draft EIS***); and

(b) give the draft EIS to the territory planning authority for public notification within—

(i) 18 months starting on the day after the scoping document is completed; or

(ii) if a shorter period was set under section 110 (2) (b)—the shorter period; or

(iii) if the authority extends the period to give the draft EIS under subsection (2)—the extended period.

(2) The territory planning authority may extend the period for the proponent to give a draft EIS to the authority, but only once.

113 Recent studies to support draft EIS

(1) This section applies if the expected environmental impact of a development proposal has been addressed by a recent study, whether or not the recent study relates directly to the development proposal.

Examples—recent study that may address the expected environmental impact of a development proposal

1 a report about the ecological value of an area

2 an environmental impact statement under the EPBC Act, pt 8 (Assessing impacts of controlled actions)

3 an endorsed policy, plan or program under the EPBC Act, pt 10 (Strategic assessments)

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(2) The draft EIS may refer to the recent study to address a matter identified in the scoping document for the proposal.

(3) In deciding whether the environmental impact of the proposal has been sufficiently addressed by the recent study, the territory planning authority must consider—

(a) whether the recent study was conducted by an appropriately qualified person with relevant expertise and experience in relation to the environmental values of the land in the proposal; and

(b) if the recent study does not relate directly to the proposal—whether the study is sufficiently detailed to allow assessment of the environmental impacts likely to occur if the proposal proceeds; and

(c) whether the part of the recent study relevant to the proposal required public consultation through a statutory process or as part of a government policy development.

Example—par (c)

the public consultation process for a draft major plan amendment under div 5.2.3

(4) If the recent study is more than 18 months old, the draft EIS must include a statement, from an appropriately qualified person with no current professional relationship with the proponent, verifying that the information in the recent study is current.

(5) In this section:

recent study means a study that is less than 5 years old.

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Division 6.3.5 Consultation on EIS

114 Public notification of draft EIS

The territory planning authority must do the following things in relation to a draft EIS to ***publicly notify*** the draft EIS:

(a) give public notice stating—

(i) that the draft EIS is available for public inspection and for purchase at stated places and times; and

(ii) how representations may be made on the draft EIS; and

(iii) the period, at least 30 working days, during which representations may be made on the draft EIS (the ***public consultation period***);

(b) make 1 or more copies of the draft EIS available as stated in the public notice;

(c) make a copy of the draft EIS available on the authority website;

(d) display a sign on the site of the development to which the draft EIS relates stating the matters under paragraph (a).

115 Representations about draft EIS

(1) Anyone may make a representation about a draft EIS publicly notified under section 114.

(2) A representation about a draft EIS must be made during the public consultation period for the draft EIS.

(3) The territory planning authority may give public notice to extend the public consultation period.

(4) If the territory planning authority extends the public consultation period, the authority must give the proponent of the development proposal written notice of the extension.

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(5) A person who makes a representation about a draft EIS may, in writing, withdraw the representation at any time before the territory planning authority accepts the EIS under section 121 (2) (a).

116 Publication of representations about draft EIS

(1) This section applies if a person makes a representation about a draft EIS in accordance with the public notice for the draft EIS under section 114.

(2) The territory planning authority must—

(a) make a copy of the representation available on the authority website until—

(i) the EIS is finalised; or

(ii) the representation is withdrawn; and

(b) give a copy of the representation to the proponent of the development proposal as soon as practicable after the public consultation period for the draft EIS ends.

Note This section is subject to s 502 and s 503.

117 Entity consultation on draft EIS

The territory planning authority may—

(a) consult on a draft EIS with any entity prescribed for section 109 (3); and

(b) give a copy of any submission made by the entity to the proponent of the development proposal.

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Division 6.3.6 Revision of EIS

118 Revision of draft EIS

(1) After the public consultation period for a draft EIS, the territory planning authority must give the proponent of the development proposal written notice of the period within which the proponent must—

(a) revise the draft EIS; and

(b) give the ***revised EIS*** to the authority.

(2) The period in subsection (1) must be at least 30 days, but not more than 18 months, after the day the territory planning authority gives the notice.

(3) The territory planning authority may extend the period in subsection (1), but only once.

(4) The revised EIS must—

(a) address each matter identified in the scoping document for the development proposal; and

(b) if a matter is raised in a representation made during the public consultation period—address the matter and demonstrate how the matter has been taken into account; and

(c) if a matter is raised in a submission under section 117 for the draft EIS—address the matter and demonstrate how the matter has been taken into account.

119 Public notification of revised EIS

(1) The territory planning authority may publicly notify a revised EIS as if it were a draft EIS under section 114 if the authority is satisfied that—

(a) the revised EIS is significantly different from the draft EIS; and

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(b) public notification of the revised EIS is justified because of the difference.

(2) However, there is no minimum period during which representations may be made on a revised EIS.

Note Normally the public consultation period for a draft EIS cannot be less than 30 working days (see s 114 (a) (iii)), but this does not apply to a revised EIS.

(3) If the territory planning authority publicly notifies a revised EIS, the following provisions apply to the revised EIS as if it were a draft EIS:

(a) section 115 (Representations about draft EIS);

(b) section 116 (Publication of representations about draft EIS);

(c) section 117 (Entity consultation on draft EIS);

(d) section 118 (Revision of draft EIS).

Division 6.3.7 Consideration of EIS

120 Rejection of EIS before consideration

(1) This section applies if the proponent of a development proposal fails to give the territory planning authority a revised EIS within the time required by a written notice under section 118 (1).

(2) The territory planning authority must reject the EIS and give the proponent written notice of the rejection.

Note If the EIS is rejected, the EIS process ends and a new process must be started.

121 Authority consideration of EIS

(1) This section applies if the proponent of a development proposal gives the territory planning authority a revised EIS—

(a) within the time required by written notice under section 118 (1); or

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(b) in accordance with a written notice under section 122 (2).

(2) The territory planning authority must—

(a) if satisfied that the revised EIS meets the requirements mentioned in section 118 (4)—accept the revised EIS; or

(b) if section 122 applies—take action under section 122; or

(c) if section 123 applies—take action under section 123.

(3) In making a decision under this division, the territory planning authority must consult each entity that made a submission to the authority about the scoping document for the draft EIS under section 109 (3).

122 Chance to address unaddressed matters

(1) This section applies in relation to a revised EIS for a development proposal if the territory planning authority—

(a) is not satisfied that the revised EIS meets the requirements mentioned in section 118 (4); and

(b) has not given a second written notice in relation to the revised EIS under subsection (2).

(2) The territory planning authority must give the proponent of the development proposal written notice stating the following:

(a) that the authority does not accept the EIS;

(b) why the authority does not accept the EIS;

(c) that the proponent must provide a new revised EIS within a stated period of at least 20 working days.

123 Rejection of EIS after consideration

(1) This section applies if the territory planning authority gives the proponent of a development proposal a second written notice under section 122.

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(2) The territory planning authority must reject the revised EIS if—

(a) the proponent does not provide a new revised EIS within the period stated in the notice; or

(b) the proponent responds within the period stated in the notice but the authority remains unsatisfied in relation to a matter mentioned in section 118 (4).

Note If the EIS is rejected, the EIS process ends and a new process must be started.

124 Cost recovery

The territory planning authority may recover from the proponent of a development proposal to which an EIS relates the direct and indirect costs incurred by the authority—

(a) in preparing an EIS assessment report for the proposal under section 126; and

(b) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters under any of the following provisions:

(i) section 109 (3) (Application for EIS scoping document);

(ii) section 120 (Rejection of EIS before consideration);

(iii) section 121 (3) (Authority consideration of EIS);

(iv) section 122 (Chance to address unaddressed matters);

(v) section 123 (Rejection of EIS after consideration).

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125 Giving EIS to Minister

(1) This section applies if the territory planning authority accepts an EIS under section 121 (2) (a).

(2) However, this section does not apply if the territory planning authority has sent an invoice to the proponent of a development proposal for costs recoverable under section 124 and the invoice remains unpaid.

(3) The territory planning authority must give the EIS to—

(a) the Minister; and

(b) for a public health EIS—the Public Health Act Minister.

126 EIS assessment report

(1) If the territory planning authority accepts an EIS under section 121 (2) (a), the authority must prepare a report (an ***EIS assessment report***) that—

(a) confirms that the authority is satisfied in relation to the matters mentioned in section 118 (4); and

(b) may contain additional information about how the authority came to be satisfied in relation to those matters.

(2) The territory planning authority must—

(a) if an EIS is given to the Minister under section 125—give the EIS assessment report to the Minister; and

(b) if a public health EIS is given to the Public Health Act Minister under section 125—give the EIS assessment report to the Public Health Act Minister.

(3) An EIS assessment report must be published on the authority website.

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127 Notice of no action on EIS

(1) This section applies if—

(a) the territory planning authority gives the Minister an EIS under section 125; and

(b) the Minister decides not to establish an inquiry panel to inquire about the EIS.

(2) The Minister must give the territory planning authority written notice that the Minister has decided to take no action in relation to the EIS.

Note If the Minister gives notice under this section, the EIS to which the notice relates is finalised (see s 128).

Division 6.3.8 Finalisation and expiry of EIS

128 When EIS is *finalised*

For this Act, an EIS (other than a public health EIS) is ***finalised*** if—

(a) the Minister gives the territory planning authority notice under section 127 (Notice of no action on EIS) in relation to the EIS; or

(b) the Minister has established an inquiry panel for the EIS and—

(i) the panel has reported the results of the inquiry; or

(ii) the time for reporting under section 134 has ended.

129 When public health EIS is *finalised*

For this Act, a public health EIS is ***finalised*** if—

(a) notice in relation to the EIS is given to the territory planning authority by—

(i) the Minister under section 127 (Notice of no action on EIS); and

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(ii) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b); or

(b) at least 15 working days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—

(i) the Minister has not decided, within the 15-day period mentioned in section 132 (1), to establish an inquiry panel to inquire about the EIS; and

(ii) the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or

(c) both of the following apply:

(i) notice in relation to the EIS is given to the authority by—

(A) the Minister under section 127; or

(B) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b);

(ii) at least 15 working days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—

(A) if the Minister gave the authority notice in relation to the EIS under section 127—the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or

(B) in any other case—the Minister has not decided, within the 15-day period mentioned in section 132 (1), to establish an inquiry panel to inquire about the EIS; or

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(d) the Minister has established an inquiry panel for the EIS and—

(i) the panel has reported the results of the inquiry; or

(ii) the time for reporting under section 134 has ended.

130 Publication of finalised EIS

A finalised EIS must be published on the authority website.

131 When EIS expires

(1) An EIS expires 5 years after the day it is finalised.

(2) However, subsection (3) applies if an EIS refers to a recent study in accordance with section 113 and—

(a) the recent study is an environmental impact statement prepared under the EPBC Act, part 8 (Assessing impacts of controlled actions) and approval of action in relation to the development has been given under that Act, part 9 (Approval of actions); or

(b) the recent study is an endorsed policy, plan or program under the EPBC Act, part 10 (Strategic assessments) and approval of action in relation to the development has been given under that Act, part 10.

(3) The EIS expires on the latest of—

(a) the expiry of the approval mentioned in subsection (2) (a) or (b) (whichever applies); and

(b) 5 years after the day the EIS is finalised.

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Division 6.3.9 EIS inquiry panels

132 When to establish inquiry panel

(1) The Minister must, within 15 working days after the day an EIS is given to the Minister under section 125—

(a) decide whether to establish a panel (an ***inquiry panel***) to inquire about the EIS; and

(b) if the Minister decides to establish an inquiry panel—tell the territory planning authority about the decision.

(2) If the Minister decides to establish an inquiry panel to inquire about an EIS, the Minister may establish the panel to inquire about 1 or more aspects of the EIS.

(3) However, if the Public Health Act Minister gives notice under the *Public Health Act 1997*, section 134 that a panel to conduct an inquiry about an EIS should be established, the Minister must establish an inquiry panel to inquire in relation to the effects on public health of the proposal that is the subject of the EIS.

(4) If the Minister establishes an inquiry panel to inquire about an EIS, the Minister must—

(a) prepare terms of reference for the inquiry; and

(b) give written notice of the inquiry to the proponent of the development proposal to which the EIS relates.

(5) The terms of reference are a notifiable instrument.

133 How to establish inquiry panel

(1) The Minister establishes an inquiry panel for an EIS by—

(a) appointing 1 or more people to the panel; and

(b) preparing written terms of reference for the inquiry.

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(2) If the Minister appoints more than 1 person to an inquiry panel, the Minister must, in writing, nominate a person appointed to be the presiding member of the panel.

(3) However, the Minister must not appoint a person to an inquiry panel unless satisfied that the person has the expertise necessary to exercise the functions of the panel in relation to the matter inquired into.

(4) Also, the Minister must not appoint any of the following people to an inquiry panel for an EIS:

(a) the chief planner;

(b) a member of the territory planning authority's staff;

(c) a member of the city renewal authority's staff;

(d) a member of the suburban land agency's staff;

(e) a person prescribed by regulation in relation to the EIS.

134 Time for reporting by inquiry panels

(1) An inquiry panel must report in writing to the Minister on the result of the inquiry within—

(a) 60 working days after the day the Minister establishes the panel; or

(b) if the period under paragraph (a) is extended under subsection (2)—the extended period.

(2) The Minister may, on application by the panel, extend by written notice the period for reporting.

135 Inquiry panel findings and report to be independent

(1) The report of an inquiry panel must be the view of the inquiry panel based on the findings of the panel.

(2) The Minister must not direct an inquiry panel in relation to the findings or report of the panel.

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136 Protection of people on inquiry panels from liability

(1) A person appointed to an inquiry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—

(a) in the exercise of a function under this Act; or

(b) in the reasonable belief that the conduct was in the exercise of a function under this Act.

(2) Any liability that would, apart from this section, attach to a person appointed to an inquiry panel attaches instead to the Territory.

137 Recovery of inquiry panel costs

The direct and indirect costs to the Territory of conducting an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

Example—indirect costs

the administrative overheads of staff exercising functions in relation to the inquiry

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

Division 6.3.10 Environmental significance opinions

138 Application for environmental significance opinion

(1) A proponent may apply for an environmental significance opinion for a proposal if a regulation states that an opinion may be given for the proposal.

Note An EIS is not required for a proposal if an environmental significance opinion is given for it (see s 105 (2)).

(2) A regulation may prescribe an agency to which a proponent may apply for an environmental significance opinion (the ***relevant agency***).

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139 Environmental significance opinions given by authority

(1) If the territory planning authority is the relevant agency for an environmental significance opinion, the authority must not give an opinion unless it has consulted each of the following entities:

(a) the work health and safety commissioner;

(b) the environment protection authority;

(c) the emergency services commissioner;

(d) the technical regulator under the *Utilities (Technical Regulation) Act 2014*, section 77;

(e) the director-general of the administrative unit responsible for the *Health Act 1993*;

(f) if an area adjacent to the ACT could be adversely affected by development that is the subject of the development proposal—the council for the area;

(g) an entity prescribed by regulation.

(2) In this section:

area—see the *Local Government Act 1993* (NSW), dictionary.

council—see the *Local Government Act 1993* (NSW), dictionary.

140 Deciding environmental significance opinion application

(1) A relevant agency may, by written notice, require an applicant for an environmental significance opinion to give more information in support of the application.

(2) The notice must state the period, not shorter than 20 working days, within which the applicant must respond to the notice.

(3) The relevant agency may refuse to decide the application if the requested information is not given to the agency within the stated period.

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(4) A relevant agency deciding an application must—

(a) if the relevant agency considers that the proposal is not likely to have a significant adverse environmental impact—give the environmental significance opinion; or

(b) if the relevant agency considers that the proposal is not likely to have a significant adverse environmental impact if the development satisfies certain conditions—give the environmental significance opinion subject to the stated conditions (a ***conditional environmental significance opinion***); or

(c) reject the application.

Note If a conditional environmental significance opinion has been given for a development, the development approval must include a condition that the development comply with the condition in the environmental significance opinion (see s 187 (1) (d)).

In addition, an application to amend a development approval must be refused if the changed development proposal would be in breach of a condition included in the approval relating to a conditional environmental significance opinion (see s 206 (2) (a)).

(5) If a relevant agency other than the territory planning authority rejects the application, the relevant agency must give written notice of the rejection to the authority.

(6) If the territory planning authority rejects the application or receives notice under subsection (5), the authority must give written notice of the rejection to the applicant.

(7) A relevant agency is taken to have rejected an application for an environmental significance opinion if the agency does not give the opinion or notice under subsection (5) within—

(a) if no information is requested under subsection (1)—30 working days after the application is made to the agency; or

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(b) if information is requested and the information is given to the agency—30 working days after the information is given to the agency; or

(c) if information is requested and the information is not given to the agency within the period stated—30 working days after the stated period has ended.

(8) However, the relevant agency may decide the application despite the rejection of the application under subsection (7).

141 Costs of environmental significance opinion

(1) A relevant agency may recover from an applicant for an environmental significance opinion the direct and indirect costs incurred by the agency—

(a) in deciding an application for the opinion; and

(b) in preparing the opinion; and

(c) in engaging a consultant to assist with deciding the application or preparing the opinion.

(2) If the relevant agency has sent an invoice to the applicant for the costs recoverable under subsection (1), the agency must give a copy of the invoice to the territory planning authority.

(3) Despite section 140 (4) and (5), the relevant agency may wait until the invoice has been paid by the applicant before giving the environmental significance opinion or giving notice under section 140 (5).

142 Notice of environmental significance opinion

(1) This section applies to an environmental significance opinion given by a relevant agency to the applicant for the opinion.

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(2) The relevant agency must give a copy of the environmental significance opinion to the territory planning authority when the opinion is given to the applicant.

(3) The territory planning authority must prepare a notice including the text of the environmental significance opinion and publish it on the authority website.

(4) An environmental significance opinion and the notice including the text of the opinion expire 18 months after the day the opinion is given to the applicant.

(5) Giving an environmental significance opinion does not limit any power the relevant agency has under this Act or any other territory law.

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Chapter 7 Development assessment and approvals

Part 7.1 Outline and important concepts

143 Outline—ch 7

(1) This chapter sets out the following:

(a) the main types of development;

(b) requirements for development approval;

(c) the development approval process.

(2) The main types of development are as follows:

(a) *assessable development* needs development approval and includes significant development under chapter 6;

(b) *prohibited development* is unlawful unless development approval is allowed under division 7.3.1;

(c) *exempt development* does not need development approval.

(3) This section is intended only as a guide to readers.

144 Meaning of *decision-maker*—ch 7

In this chapter:

decision-maker—

(a) for a development application, means—

(i) if the application is for the removal of the concessional status of a lease or for a territory priority project—the Minister; and

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(ii) in any other case—the territory planning authority; and

(b) for a development approval, means—

(i) if the approval is for the removal of the concessional status of a lease or for a territory priority project—the Minister; and

(ii) if the territory planning authority decided the application for the approval under section 185—the authority.

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Part 7.2 Exempt development

Division 7.2.1 Preliminary

145 Meaning of *exempt development*

(1) In this Act:

exempt development means—

(a) development that is exempt from requiring development approval under—

(i) section 147 (Exempt development—authorised use); or

(ii) a regulation; and

(b) a land management practice undertaken in accordance with Aboriginal tradition and prescribed by regulation.

Note The territory planning authority may tell a proponent of a development proposal whether the development is likely to be exempt if asked by the proponent (see s 164 and s 165). A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 151).

(2) For the definition of ***exempt development***, a regulation may not exempt any of the following from requiring development approval:

(a) a significant development;

(b) a development that is inconsistent with an essential design element identified in a development approval.

Note ***Essential design element***, of a development proposal—see s 188.

(3) In this section:

Aboriginal tradition means the customs, rituals, institutions, beliefs or general way of life of the traditional custodians of the land.

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146 Meaning of *authorised use*—pt 7.2

In this part:

authorised use, of land, or of a building or other structure on land—

(a) means a use authorised by any of the following:

(i) a lease;

(ii) a licence under this Act;

(iii) a public unleased land permit under the *Public Unleased Land Act 2013*;

(iv) a sign approval or work approval under the *Public Unleased Land Act 2013*;

(v) a preserved lease; and

(b) includes a use authorised by a lease that expired not more than 6 months before the use and is renewed within 6 months after the expiry; but

(c) does not include a use authorised by section 276 (Use of land for leased purpose).

147 Exempt development—authorised use

(1) An authorised use of land, or of a building or other structure on land, is exempt from requiring development approval.

(2) To remove any doubt, an authorised use of a building or other structure on land is exempt from requiring development approval if the construction of the building or other structure is exempt from requiring development approval.

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(3) To remove any doubt, if an authorised use of land, or of a building or other structure on land, is exempt from requiring development approval under subsection (1), the right to use the land, building or other structure as authorised does not end only because 1 or more of the following apply:

(a) the use is not continuous;

(b) someone deals with the lease (the ***affected lease***) that authorises the use;

(c) a further lease is granted for the affected lease on application under section 289 (Grant of further leases), whether or not the grant happens immediately after the expiry of the affected lease.

(4) This section is subject to section 148.

148 Authorised use that is not exempt

(1) An authorised use of land, or of a building or other structure on land, requires development approval if—

(a) earthworks or other construction work is undertaken on the land; and

(b) the work requires development approval.

(2) Also, an authorised use of land, or of a building or other structure on land, requires development approval if—

(a) a building or other structure is constructed on the land, or a building or other structure on the land is altered or demolished; and

(b) the construction, alteration or demolition requires development approval.

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(3) Also, an authorised use of land, or of a building or other structure on land, requires development approval if—

(a) the placard quantity or more of a Schedule 11 hazardous chemical is to be stored on the land or in the building or other structure; and

(b) the land, building or other structure is not mentioned in the *Planning and Development (Placard Quantity Premises) List 2018* (NI2018-532) (repealed).

(4) In this section:

placard quantity—see the *Work Health and Safety Regulation 2011*, dictionary.

Schedule 11 hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

Note Because the use of land, or of a building or other structure on land, is development (see s 14 (1)), if the use of the land, building or other structure stops being exempt under this section, development approval will be required for the use.

149 Effect of s 148 on development approval

(1) This section applies if—

(a) there is a development proposal in relation to land; and

(b) undertaking the proposal would result in an authorised use of the land, or of a building or other structure on the land, requiring development approval because of section 148.

(2) The proponent of the proposal must apply for development approval for—

(a) the proposal; and

(b) any authorised use of the land, or of a building or other structure on the land, that is intended to continue to apply after the proposal is undertaken (the ***proposed use***).

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(3) In deciding the development application, the decision-maker—

(a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use, the application would be refused; and

(b) must not approve the application on a condition only because, if the application were an application only for the proposed use, the application would be approved on the condition.

Example

Maria is the lessee of land for which the authorised uses are retail and commercial and on which there are office buildings and shops. Maria wants to undertake earthworks to clear an area of vegetation for people to park on the land, which will require development approval. If the earthworks were undertaken, the authorised uses of the land would stop being exempt under s 148.

In addition to applying for development approval to undertake the earthworks, Maria must also apply for development approval to use the land for retail and commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for retail purposes or commercial purposes, or use of the office buildings and shops, the decision-maker would refuse the application or approve it on conditions.

Division 7.2.2 Exempt development and approvals

150 Exempt development—no need for approval

An exempt development may be undertaken without any of the following:

(a) a development application;

(b) a development approval;

(c) an exemption assessment.

Note The proposal for the exempt development may still need a building approval under the *Building Act 2004*.

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Division 7.2.3 Exemption assessments

151 Application for exemption assessment

(1) A person may apply to a works assessor or building surveyor (the ***exemption assessor***) for an assessment of whether a development is an exempt development (an ***exemption assessment***).

Note Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 150 and *Building Act 2004*, s 14A). If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor.

(2) An application must be—

(a) in writing submitted by the applicant; and

(b) approved in writing by any other prescribed person; and

(c) accompanied by information, plans and other documents prescribed by regulation.

(3) The application may relate to development that is to be undertaken or has been undertaken.

(4) In this section:

building surveyor—see the *Construction Occupations (Licensing) Act 2004*, section 9.

works assessor—see the *Construction Occupations (Licensing) Act 2004*, section 14A.

152 Exemption assessment and notice

(1) This section applies if—

(a) a person applies to an exemption assessor for an exemption assessment under section 151; and

(b) the exemption assessor agrees to do the exemption assessment.

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(2) The exemption assessor must—

(a) assess the application; and

(b) give the applicant a notice (an ***exemption assessment D notice***)—

(i) stating whether the development is, in the assessor's opinion, an exempt development; and

(ii) including anything else prescribed by regulation.

(3) The exemption assessor must give a copy of the exemption assessment D notice to the territory planning authority within 5 days after the day the notice is given to the applicant.

(4) The exemption assessor may, in assessing the application, request more information from the applicant.

(5) If the applicant does not provide the requested information, the exemption assessor need not assess the application or give the exemption assessment D notice.

(6) The exemption assessor may charge a fee for giving the exemption assessment D notice.

153 Effect of exemption assessment D notice

(1) An exemption assessment D notice in relation to a development yet to be undertaken certifies that the development is, or is not, an exempt development.

(2) An exemption assessment D notice in relation to a development that has been undertaken certifies that the development is, or is not, exempt from requiring development approval based on whether the development—

(a) was exempt from requiring development approval at the time it was done; or

(b) is currently exempt from requiring development approval.

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Part 7.3 Prohibited development

Division 7.3.1 Applications for prohibited development—general

154 Meaning of *prohibited development*

(1) For this Act, a development is a ***prohibited development*** if either of the following applies to the development or a part of the development:

(a) the development is prohibited under the territory plan;

(b) for a development that is in a future urban area—

(i) the development is undertaken by an entity other than the Territory or a territory authority; and

(ii) the territory plan states that the development is not prohibited.

(2) However, if a development is an exempt development and a prohibited development, the development is taken not to be a prohibited development.

155 Development applications prohibited except in stated circumstances

The territory planning authority must not accept a development application for approval of a prohibited development other than under 1 of the following sections:

(a) section 156 (Applications for development approval in relation to use for otherwise prohibited development);

(b) section 157 (Applications in anticipation of major plan amendment);

(c) section 159 (Applications for development encroaching on adjoining land if development prohibited).

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156 Applications for development approval in relation to use for otherwise prohibited development

(1) This section applies to a development proposal in relation to a use of land, or of a building or other structure on land, if the use is—

(a) an authorised use to which section 148 (Authorised use that is not exempt) applies; and

(b) a prohibited development.

Note Because the use is not an exempt development, s 154 (2) does not apply.

(2) A person may apply to the territory planning authority for development approval of the development proposal.

(3) If an application is made under subsection (2), the use is taken not to be a prohibited development.

(4) In this section:

authorised use, of land, or of a building or other structure on land—

(a) means a use authorised by—

(i) a lease; or

(ii) section 276 (Use of land for leased purpose); or

(iii) a preserved lease; and

(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

Example

Lisa is the lessee of land on which she operates a service station in accordance with the lease. The territory plan is amended and it now prohibits using land to operate service stations in her area. Lisa is not affected since her existing use of the land as authorised by the lease is a type of exempt development and taken not to be prohibited (see s 147 and s 154).

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However, Lisa has plans to demolish and rebuild the service station. If she does this, her use of the land is no longer exempt (see s 148). Subsection (2) allows Lisa to apply for development approval for the development proposal and s (3) provides that the use is taken not to be prohibited development.

157 Applications in anticipation of major plan amendment

(1) This section applies if the territory planning authority has—

(a) prepared a draft major plan amendment in accordance with section 60; and

(b) given the draft major plan amendment to the Minister for approval under section 67.

(2) A person may apply for approval of a relevant development proposal after the day the draft amendment is given to the Minister as if the draft amendment were in force.

(3) The development application must—

(a) identify the draft amendment; and

(b) state that the application is made as if the draft amendment were in force.

(4) Despite section 52 (Effect of territory plan)—

(a) chapter 6 (Significant development), this chapter and chapter 10 (Leases and licences) apply to the development application as if the draft amendment were in force; and

(b) the territory planning authority must assess the application as if the draft amendment were in force; and

(c) the territory planning authority must, in publicly notifying the development application under division 7.5.4 (Public notification of development applications)—

(i) identify the draft amendment; and

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(ii) state that the application is made in accordance with the draft amendment.

(5) In this section:

relevant development proposal, in relation to a draft major plan amendment, means a development proposal for a prohibited development that would not be prohibited if the draft amendment were in force.

Note A development application made under this section may be decided only if the draft plan amendment has commenced under s 80 or s 81 (see s 185 (2) (a)).

158 Declaration for development encroaching on adjoining land if development prohibited

(1) This section applies to a development proposal in relation to a use of land, or of a building or other structure on land, if—

(a) the land, building or other structure adjoins unleased land or land for which the Territory is the registered proprietor (the ***adjoining land***); and

(b) the use would encroach no further onto, over or under the adjoining land than the distance prescribed by regulation (the ***encroachment***); and

(c) the use is a prohibited development on the adjoining land.

(2) A person may apply to the territory planning authority for a declaration that the development proposal satisfies the following criteria:

(a) the encroachment is a minor part of the development;

(b) undertaking the proposal in relation to the adjoining land would enable a more logical and appropriate development than if there were no encroachment;

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(c) the proposed use of the land would—

(i) not detract from the amenity of the surrounding area; and

(ii) promote better land management; and

(iii) not unreasonably restrict public access to other land;

(d) the territory planning authority is not prohibited from granting by direct sale a lease over the encroachment.

(3) The application must include—

(a) if the adjoining land is unleased land—written consent by the custodian of the land to the encroachment; and

(b) a copy of any written information given to the custodian, with each page—

(i) signed by the custodian; and

(ii) numbered by stating the page number and the total number of pages provided.

(4) Not later than 10 working days after the day the person applies to the territory planning authority for a declaration under subsection (2), the authority must—

(a) make the declaration; or

(b) refuse to make the declaration.

(5) If the territory planning authority makes the declaration—

(a) the authority must publish the declaration on the authority's website; and

(b) the applicant must obtain a lease or licence over the land.

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159 Applications for development encroaching on adjoining land if development prohibited

(1) If the territory planning authority has made a declaration under section 158 in relation to a development proposal—

(a) the applicant for the declaration may apply to the authority for development approval of the proposal; and

(b) the use is taken not to be a prohibited development on the adjoining land.

(2) Despite section 52 (Effect of territory plan)—

(a) chapter 6 (Significant development), this chapter and chapter 10 (Leases and licences) apply to the application as if the territory plan were amended in accordance with section 88 (Rezoning—development encroaching on adjoining land) to change the boundary of the land consistent with a proposal under section 158; and

(b) the authority must assess the application as if the territory plan were amended in accordance with section 88.

Note 1 A development application made under this section may be decided only if the territory plan has been amended under s 88 (see s 185 (2) (b)).

Note 2 The territory planning authority must not grant a lease over an encroachment on adjoining land by direct sale unless the territory plan has been amended under s 88 (see s 266 (1) (i)).

(3) In this section:

adjoining land—see section 158 (1) (a).

encroachment—see section 158 (1) (b).

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Division 7.3.2 Prohibited waste facility development applications

160 Object—div 7.3.2

The object of this division is to contribute to the achievement of the object of this Act by limiting the development of new waste facilities in the division of Fyshwick.

161 Certain development applications for waste facilities prohibited

(1) The territory planning authority must not accept a prohibited waste facility development application.

(2) In this section:

handle, in relation to waste, means store, sort, treat, process, recover, recycle, use, reuse or dispose of waste.

prohibited waste facility development application means a development application in relation to a development proposal for the use of land in the division of Fyshwick that would, if it were approved, permit—

(a) the use of any part of the land as a waste facility; or

(b) if the land is used, wholly or partly, as an existing waste facility—an increase in the amount of waste handled on the land each year.

waste—see the *Waste Management and Resource Recovery Act 2016*, section 10.

waste facility—

(a) means a site used for the handling of waste and includes—

(i) an incineration facility; and

(ii) a landfill site; and

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(iii) a recyclable material collection site; and

(iv) a recycling facility; and

(v) a waste transfer facility; and

(vi) a hazardous waste facility; but

(b) does not include—

(i) if the handling of waste on a site is ancillary to the site's primary use—the site; or

(ii) a site prescribed by regulation.

Examples——par (b) (i)

1 a paint supplier that accepts unused paint from its customers

2 an electrical goods retailer that uses large on-site bins for storing cardboard for recycling

162 Compensation—safety net

(1) This section applies if, apart from this section, the operation of this division would result in the acquisition of property from a person otherwise than on just terms under the Self-Government Act, section 23 (1) (a).

Note The Legislative Assembly has no power to make a law in relation to an acquisition otherwise than on just terms (see Self-Government Act, s 23 (1) (a)).

(2) The Territory must pay reasonable compensation to the person for the acquisition in accordance with this section.

(3) The Territory and the person may agree on an amount of compensation or other terms in satisfaction of the Territory's obligation under subsection (2).

(4) If there is no agreement under subsection (3), the person may, by proceeding in a court of competent jurisdiction, recover from the Territory the reasonable compensation that the court decides.

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(5) In deciding what is reasonable compensation, the court—

(a) must have regard to any payment made to, or other terms agreed with, the person by or on behalf of the Territory in relation to the acquisition; and

(b) may have regard to the following:

(i) any reasonable costs incurred by the person in relation to a prohibited waste facility development application;

(ii) any loss in value of land or buildings on the land related to the acquisition;

(iii) any cost of work lawfully undertaken in developing the land for use as a waste facility; but

(c) must not have regard to any loss of opportunity or future profit claimed by the person because of the acquisition.

(6) In this section:

prohibited waste facility development application—see section 161 (2).

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Part 7.4 Development in designated areas

163 Development proposal for lease variation in designated area

The following provisions do not apply to a development proposal that is a variation of a lease in a designated area:

(a) section 52 (Effect of territory plan);

(b) section 64 (Public consultation—notice of interim effect etc);

(c) a provision of this Act that refers to any part of the territory plan.

Example—par (c)

s 189 (1) (a)

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Part 7.5 Assessable development

Division 7.5.1 Pre-application matters

164 Consideration of development proposals

(1) The territory planning authority must consider a development proposal if asked by the proponent of the proposal.

(2) However, the territory planning authority need not consider the development proposal if satisfied that the information provided by the proponent in relation to the proposal would not allow the authority to provide adequate advice under section 165.

(3) The territory planning authority must tell the proponent if, because the authority is satisfied under subsection (2), the authority will not consider the development proposal.

165 Advice on development proposals

(1) After considering a development proposal under section 164, the territory planning authority must tell the proponent, in writing, the following in relation to the proposal:

(a) whether the proposed development is likely to be exempt, assessable or prohibited development;

Note A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 151).

(b) whether the authority considers the proposal is for a significant development and, if so, the additional processes (if any) that apply in relation to the proposal;

Examples—additional process

- design review panel advice
- EIS
- environmental significance opinion

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(c) whether the authority considers the proposal will be referred to an entity under section 170 (When authority must refer development application);

(d) whether public notification under division 7.5.3 (Referral of development applications) will be required for the application;

(e) whether the proposed development is consistent with the existing lease applying to the land the subject of the development;

(f) if the proposal relates to a variation of a nominal rent lease—

(i) whether a lease variation charge is payable under division 10.7.3 (Variation of nominal rent leases) in relation to the variation; and

(ii) the process for determining the charge;

(g) generally, what additional information may be required.

(2) The territory planning authority's advice on a development proposal is intended to guide and assist the proponent in understanding the likely development assessment process applying to the proposal.

(3) However, the territory planning authority is not bound by that advice when considering a development application made for the development proposal.

Division 7.5.2 Making a development application

166 Application for development approval

(1) The proponent of a development proposal may apply to the territory planning authority for approval to undertake the proposed development (a ***development application***).

(2) A development application must be—

(a) in writing and signed by the proponent and any prescribed person; and

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(b) in the form required by the territory planning authority by notice on the authority website; and

(c) accompanied by the plans, drawings, specifications, assessments and other information and documents—

(i) sufficient to address each provision of the territory plan relevant to the proposed development; and

(ii) showing how the application meets each mandatory requirement of a provision of the territory plan; and

(iii) stating any condition of a previous development approval that affects the proposed development; and

(iv) showing how the proposed development integrates with the surrounding leases and other approved developments; and

(v) prescribed for this section; and

(vi) required by the territory plan or another provision of this Act; and

(d) if the development application is mentioned in an item in schedule 1, part 1.2, column 2—accompanied by the information or documents mentioned in the item, column 3.

Note 1 Other territory laws may provide additional requirements for development applications under this Act (see for eg *Unit Titles Act 2001*, s 166).

Note 2 Other requirements apply to development applications for subdivision development proposals (see s 43).

Note 3 Other requirements apply to development applications to vary a concessional lease to remove its concessional status (see s 309).

(3) A regulation may exempt a development application from a requirement under this section.

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(4) The territory planning authority may make guidelines—

(a) about the preparation of the information and documents mentioned in subsection (2) (c); and

(b) setting out survey information requirements mentioned in schedule 1, part 1.2, item 6.

(5) A guideline is a notifiable instrument.

(6) A guideline must be published on the authority website.

Note A development application may be made for development undertaken without approval (see s 215).

167 Development applications—authority may request more information

(1) The territory planning authority may at any time, by written notice, ask an applicant for development approval to give the authority more information in relation to the development application.

(2) The territory planning authority may ask for information under subsection (1) more than once.

(3) The territory planning authority must publish on the authority website—

(a) the notice asking for more information; and

(b) the information given to the authority by the applicant.

(4) The development application is taken to have been withdrawn by the applicant if the applicant does not give the territory planning authority the information within 18 months after the day it asked for the information.

Note A request under this section may affect the time to decide an application (see s 192).

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168 Amendment of development application

(1) The territory planning authority may, if asked by an applicant for development approval, amend the development application.

(2) However, the territory planning authority must not amend the development application unless—

(a) the request for amendment is signed by the applicant and any person prescribed for section 166 (2) (a); and

(b) the authority is satisfied that the proposed amended application—

(i) is substantially the same as the original application; and

(ii) if the development in the original application was not a significant development—does not result in the development becoming a significant development; and

(iii) meets the requirements of section 166 (2) (b) to (d); and

(c) for land under a land sublease—

(i) if the applicant is not the sublessee—the sublessee consents, in writing, to the amendment; and

(ii) if the applicant is not the lessee—the lessee consents, in writing, to the amendment.

(3) The applicant must submit the information and documents under section 166 (2) (c) sufficient to allow the authority to assess the proposed amended application in accordance with subsection (2).

Example

Sch 1, pt 1.2, item 12 requires certain development applications to be accompanied by a written endorsement that the proposal is consistent with a development agreement. If the development as amended would no longer be covered by the endorsement, the applicant must submit an updated endorsement.

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(4) The territory planning authority must, not later than 5 working days after the day the information and documents mentioned in subsection (3) are accepted—

(a) amend the development application; or

(b) refuse to amend the development application.

(5) The territory planning authority must publish on the authority website—

(a) the request for amendment; and

(b) the decision made under subsection (4) in response to the request.

169 Correction of development application

(1) The territory planning authority may, on the authority's own initiative or on application by the applicant, correct a formal error in a development application.

(2) However, the territory planning authority must not make a correction if making the correction would adversely affect someone other than the applicant.

(3) If the territory planning authority does not tell the applicant that the authority refuses to correct a development application by not later than 5 working days after the day the applicant asks for the correction, the authority is taken to have refused the correction.

(4) If the territory planning authority corrects a development application on the authority's own initiative, the authority must give the applicant written notice of the correction.

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Division 7.5.3 Referral of development applications

170 When authority must refer development application

(1) The territory planning authority must refer a development application as follows:

(a) to an entity prescribed by regulation (a ***referral entity***);

(b) if required by the territory plan—to the entity stated in the territory plan;

(c) if the authority is satisfied that a proposed development is likely to have a significant adverse environmental impact on a protected matter—to the conservator of flora and fauna;

(d) if the authority is satisfied that a proposed development is likely to have an adverse impact on a matter in which a government entity (other than a referral entity) has an interest, or is relevant to matters over which a government entity (other than a referral entity) has an advisory role—to the government entity;

(e) if the authority is satisfied that the proposed development is likely to affect a protected tree or declared site—to the conservator of flora and fauna.

(2) However, the territory planning authority need not refer a development application to an entity under subsection (1) if—

(a) the authority is satisfied that the applicant has adequately consulted the entity—

(i) in relation to the same development proposal as the proposal in the application; and

(ii) not earlier than 6 months before the day the application is made; and

(b) the entity agrees in writing to the proposed development.

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(3) If the requirements under subsection (2) are met—

(a) the application is taken to have been referred to the entity; and

(b) the agreement mentioned in subsection (2) (b) is taken to be advice received in accordance with section 172 in relation to the development application.

171 Further entity referral—more information or amended application

(1) This section applies to a development application if—

(a) either—

(i) the application was referred to an entity under section 170 (When authority must refer development application); or

(ii) the development proposal in the application was given to the design review panel for consultation under section 100 (When design review panel consultation is required); and

(b) the application (the ***changed application***) is changed in 1 or both of the following ways:

(i) the territory planning authority receives more information in relation to the application in response to a request under section 167 (Development applications—authority may request more information);

(ii) the territory planning authority amends the application under section 168 (Amendment of development application).

(2) The territory planning authority must—

(a) if the application was referred to an entity under section 170—refer the changed application to that entity; and

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(b) if the application was given to the design review panel for consultation under section 100—refer the changed application to the design review panel.

(3) The territory planning authority may refer the changed application to an additional entity mentioned in section 170 if the authority considers that the changed application is likely to have an adverse impact on a matter—

(a) in which the entity has an interest; or

(b) in relation to which the entity has an advisory role.

(4) The territory planning authority need not refer a changed application to an entity under subsection (2) if the authority is satisfied the change—

(a) does not impact on the part of the application in relation to which the entity made comments; and

(b) is unlikely to raise an issue about which the entity may wish to comment.

(5) If the territory planning authority decides under subsection (4) not to refer a changed application to an entity, the authority must publish the decision and reasons for the decision on the authority website.

(6) The territory planning authority must include a brief description of the change to the application if the authority refers the changed application to an entity under this section.

172 Entity advice on development applications

(1) This section applies if a development application is referred to an entity under section 170 or section 171.

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(2) The entity must give the territory planning authority the entity's advice in relation to the development application within the number of days prescribed by regulation after the day the authority refers the application to the entity.

Note A written agreement to a development proposal under s 170 (2) (b) is taken to be advice given in accordance with this section in relation to a development application for the proposal (see s 170 (3)).

173 Effect of approvals or advice in development applications

(1) This section applies to an entity if the territory planning authority approves a development application and—

(a) if an approval of a development or certification of a thing is required by an entity before the authority can approve the development application—the entity gave a written approval or certification; or

(b) if the development application was referred to the entity under section 170 or section 171—the approval is substantially consistent with the entity's advice.

(2) The entity must not act inconsistently with the development approval, certification or the advice unless—

(a) more information in relation to the proposed development comes to the entity's attention (other than information mentioned in subsection (3)); and

(b) the entity did not have the information when the entity approved the development, certified the thing or gave the advice; and

(c) the information is relevant to the approval of, or certification or advice in relation to, the development; and

(d) the entity would not have approved the development, certified the thing or given the advice if the entity had the information.

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(3) Subsection (2) (a) does not apply to information in relation to a development proposed in an application if the information—

(a) was not required in the application; and

(b) is required by the entity after the application is approved; and

(c) is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.

(4) For this section, an entity ***acts inconsistently*** with a development approval, certification or advice if—

(a) the entity has—

(i) approved the application or certified the thing; or

(ii) given advice that the entity will give an approval or other thing in relation to the development; and

(b) the entity—

(i) does not give an approval or other thing required for the development; or

(ii) gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the development approved.

Example—advice

that the entity will agree to the digging up of a footpath to allow the development

Example—thing required for development

the entity's agreement to the digging up of a footpath to allow the development

(5) Also for this section, an entity ***acts inconsistently*** with a development approval, certification or advice in relation to a development application if—

(a) the approval, certification or advice states that an activity to which the approval, certification or advice relates does not require a particular authorisation (however described); and

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(b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is undertaken without the particular authorisation.

Example—acting inconsistently

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice under s 172 that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistent with the advice. The entity cannot prosecute a person for undertaking activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

Division 7.5.4 Public notification of development applications

174 Definitions—div 7.5.4

In this division:

adjoins—land ***adjoins*** other land if the land touches the other land, or is separated from the other land only by a road, reserve, river, watercourse or similar division.

registered interest holder, in relation to a lease, means each person with a registered interest in the land described in the lease, other than the applicant for a development application relating to the land.

175 Authority must publicly notify development applications

(1) The territory planning authority must ***publicly notify*** a development application by—

(a) giving public notice of the making of the application on the authority website; and

(b) if section 176 applies—giving notice in accordance with that section; and

(c) if section 177 applies—giving notice in accordance with that section; and

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(d) displaying a sign on the land to which the application relates stating the development proposed to be undertaken.

(2) A development application must be notified for the period (the ***public notification period***)—

(a) prescribed by regulation; or

(b) if the period prescribed is extended under section 180 (3)—the prescribed period as extended.

(3) A regulation may prescribe a development application that is exempt from the requirements under—

(a) subsection (1) (b) and section 176; or

(b) subsection (1) (a) and (d).

(4) The validity of a development approval is not affected by a failure by the territory planning authority to comply with this section.

Note Additional notification requirements apply to development applications for significant development (see s 179).

176 Notice of development applications—adjoining land

(1) This section applies in relation to a development application if leased land (the ***adjoining land***) adjoins the land to which the application relates.

(2) The territory planning authority must do the following:

(a) if the adjoining land is occupied—give written notice of the making of the development application to the registered proprietor of the lease at the adjoining land;

(b) if the adjoining land is unoccupied—give written notice of the making of the development application to the lessee of the adjoining land at the lessee's last-known address.

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(3) The territory planning authority may give written notice of the making of the development application to a lessee of land that is not adjoining land if the authority considers that the land may be affected by the proposed development in a way similar to adjoining land.

(4) The territory planning authority may make a guideline for subsection (3) about how land may be affected by a proposed development to which a development application relates.

(5) A guideline is a notifiable instrument.

177 Notice of development applications—lease variations

(1) This section applies in relation to a development application if the application is, or includes, a lease variation.

(2) The territory planning authority must give written notice of the application to each person with a registered interest in the land described in the lease (other than the applicant).

178 Further public notification—changed application

(1) This section applies if—

(a) a development application is publicly notified (an ***initial public notification***); and

(b) the development application (the ***changed development application***) is changed in 1 or both of the following ways:

(i) the territory planning authority receives more information in relation to the application in response to a request under section 167 (Development applications—authority may request more information);

(ii) the territory planning authority amends the application under section 168 (Amendment of development application); and

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(c) the development application is not for a significant development.

(2) The territory planning authority must—

(a) publicly notify the changed development application; and

(b) give written notice of the changed development application to each person who made a representation about the development application during the initial public notification.

Note ***Publicly notify*** a development application—see s 175 (1).

(3) However, the territory planning authority need not publicly notify the changed development application if satisfied there will be no, or minimal, increase in—

(a) the adverse impact of the development; and

(b) the environmental impact of the development.

(4) Before making a decision under subsection (3), the territory planning authority must consider—

(a) the representations (if any) received in response to the initial public notification of the development application; and

(b) the cumulative impact of the changes to the development application.

(5) If the territory planning authority decides not to publicly notify the changed development application, the authority must publish the decision and reasons for the decision on the authority website.

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179 Further public notification—significant development

(1) This section applies to a development application for a significant development that has been publicly notified for the first time.

(2) After the public notification period for the development application ends, the applicant must give a statement to the territory planning authority that includes details of the following:

(a) entity advice given, and representations made, in relation to the application;

(b) how the applicant has addressed the entity advice and representations;

(c) any changes to the application.

(3) If the territory planning authority is not satisfied that the applicant has met the requirements of subsection (2), the authority may, by written notice, ask the applicant for more information.

Note A request under this subsection may affect the time to decide an application (see s 192).

(4) The development application is taken to have been withdrawn by the applicant if the applicant does not give the territory planning authority the information within 18 months after the day it asked for the information.

(5) As soon as practicable after receiving the statement, the territory planning authority must—

(a) publish the statement and the development application on the authority website; and

(b) publicly notify the development application (whether or not the development application has changed).

(6) The territory planning authority may make a guideline about the information that must be included in a statement under subsection (2).

(7) A guideline is a notifiable instrument.

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Division 7.5.5 Representations about development applications

180 Making representations about development applications

(1) Anyone may make a written representation about a development application that has been publicly notified.

(2) A representation about a development application must be made during the public notification period for the application.

Note ***Public notification period***, for a development application—see s 175 (2).

(3) The territory planning authority may, by public notice, extend the public notification period.

(4) If the territory planning authority extends the public notification period, the authority must—

(a) give the applicant for the development approval written notice of the extension; and

(b) publish the decision to extend the public notification period on the authority website.

(5) A person who makes a representation about a development application may, in writing, withdraw the representation at any time before the application is decided.

(6) To remove any doubt, a representation about a development application—

(a) may relate to how the development proposed in the application meets, or does not meet, any finding or recommendation of the EIS for the development; and

(b) must not relate to the adequacy of a finalised EIS.

Note Representations about a draft EIS may be made under s 115.

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Division 7.5.6 Notice of development applications to registrar-general

181 Notice of development applications

(1) The territory planning authority must give written notice of each development application submitted to the authority to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests).

(2) The notice must include the following:

(a) a description of the development;

(b) the number allocated to the development application by the territory planning authority;

(c) the approval status of the application;

Examples—approval status

- approved
- approved on conditions
- pending
- refused
- under review by the ACAT

(d) anything else prescribed by regulation.

(3) If the approval status of a development application changes, the territory planning authority must give the registrar-general written notice of the change.

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Division 7.5.7 Pre-decision advice

182 Authority may give advice

(1) The territory planning authority may, at any time before deciding a development application under section 185, give the applicant for the development application advice (***pre-decision advice***) that, in the authority's opinion, the application in its current form does not meet the requirements of the territory plan.

(2) The territory planning authority may give pre-decision advice more than once.

(3) The territory planning authority may include advisory notes for the applicant about recommended changes to the application to meet the requirements of the territory plan.

(4) The applicant may respond to the pre-decision advice by—

(a) amending the development application; or

(b) requesting that the territory planning authority decide the application in its current form under section 185.

Note A response in accordance with s (4) (b) may affect the time to decide an application (see s 192).

(5) Pre-decision advice must be published on the authority website.

Division 7.5.8 Development applications—termination

183 Withdrawal of development applications

An applicant may withdraw a development application at any time before the application is decided under section 185 (Deciding development applications).

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184 Refusal, rejection or withdrawal of concurrent documents

(1) This section applies if—

(a) a development application is a concurrent development application; and

(b) a concurrent document, or a provision of a concurrent document, relating to the application—

(i) is refused, rejected or withdrawn; or

(ii) is taken to have been refused, rejected or withdrawn; or

(iii) for a draft major plan amendment—is revised in a way that no longer permits the proposed development.

(2) The territory planning authority is taken to have refused the concurrent development application.

(3) The territory planning authority must give the applicant for the concurrent development application written notice of the effect of this section.

(4) In this section:

concurrent document, in relation to a concurrent development application, means—

(a) if the application is made under section 157 (Applications in anticipation of major plan amendment)—the draft major plan amendment that gives effect to the anticipated plan amendment; or

(b) if the application is made under section 159 (Applications for development encroaching on adjoining land if development prohibited)—the proposed technical amendment.

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Part 7.6 Development approval

Division 7.6.1 Deciding development applications

185 Deciding development applications

(1) The decision-maker for a development application must—

(a) approve a development application; or

(b) approve a development application subject to a condition under section 187; or

(c) refuse a development application.

Note 1 A development application to vary a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease is subject to a condition (see s 308).

Note 2 In some cases a condition may be required (see s 187 (1)).

(2) However, the decision-maker may decide a concurrent development application only if—

(a) for an application made under section 157 (Applications in anticipation of major plan amendment)—the draft major plan amendment has commenced under division 5.2.8 (Commencement and publication of major plan amendments); and

(b) for an application made under section 159 (Applications for development encroaching on adjoining land if development prohibited)—the minor plan amendment has commenced under section 85 (4).

(3) A development application for a territory priority project must be decided by the Minister.

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(4) Before the Minister decides a development application for a territory priority project, the territory planning authority must give the Minister information about whether, in its opinion, the proposal meets the requirements of this Act and the territory plan.

(5) If the territory planning authority approves a development application that relates to a regulated tree or a public tree, the authority may, under this section—

(a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or

(b) in any other case—approve a tree management plan for the tree.

(6) In this section:

approve a development application includes partly approving the application.

public tree—see the *Urban Forest Act 2023*, section 9, definition of ***protected tree***, paragraph (a) (iii).

regulated tree—see the *Tree Protection Act 2005*, section 10 (1).

186 Considerations when deciding development applications

In deciding a development application under section 185, the decision-maker must consider the following:

(a) any applicable desired outcomes in the territory plan;

(b) any applicable design guidance in a design guide;

(c) if the territory planning authority gave pre-decision advice in relation to the application—the pre-decision advice and any response by the applicant to that advice;

(d) if the site of the proposed development adjoins another zone—whether the development proposal achieves an appropriate transition between the zones;

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(e) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those areas;

(f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;

(g) the interaction of the proposed development with any other adjoining or adjacent development proposals for which a development application has been submitted or development approval given;

(h) any representation about the development application received by the territory planning authority and not withdrawn;

(i) any advice given by an entity to which the development application was referred under section 170 (When authority must refer development application) or section 171 (Further entity referral—more information or amended application);

(j) any environmental significance opinion or conditional environmental significance opinion in relation to the development proposal;

(k) if the proposed development relates to land that is public land—the public land management plan for the land;

(l) if the design review panel gave advice on the development proposal—the panel's advice and the applicant's response to the panel's advice.

187 Conditional approvals

(1) An approval under section 185 (1)—

(a) must include any condition required to be included by the territory plan; and

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(b) must not include a condition inconsistent with a condition required to be included by the territory plan; and

(c) if the development application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—must include a condition that the units plan is cancelled; and

(d) if a conditional environmental significance opinion has been given in relation to the development—must include a condition that the development comply with the condition in the environmental significance opinion; and

Note An application to amend a development approval must be refused if the changed development proposal would be in breach of the condition relating to the conditional environmental significance opinion (see s 206 (2) (a)).

(e) if the application is for approval of a development on subleased land—

(i) may include a condition that the sublessee develops unleased land in a stated way; and

(ii) must not include a condition inconsistent with the lease under which the sublease is granted; and

(f) if the application is for approval of a development that includes works in a declared site or the protection zone of a protected tree under the *Urban Forest Act 2023*—must include a condition that the development comply with any of the following that apply in relation to the declared site or the tree:

(i) a tree management plan;

(ii) a canopy contribution agreement;

(iii) a tree bond agreement;

(iv) any other agreement or undertaking to do something or not do something in relation to the declared site or the tree.

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(2) The following are examples of the conditions subject to which development approval in relation to land may be given:

(a) the development, or a stated stage of the development, must be undertaken to the satisfaction of a stated entity;

(b) the development, or a stated stage of the development, must be undertaken within a period stated in or under the approval;

(c) the approval does not take effect unless a stated approval is revoked, amended or given;

(d) a lease relating to the land must be varied and the variation registered under the *Land Titles Act 1925*;

(e) an existing licence must be varied;

(f) another approval relating to the land must be surrendered;

(g) stated things must be done to prevent or minimise adverse environmental impacts;

(h) an offset condition;

(i) for an approval relating to use of the land, or of a building or other structure on the land—the use may take place only in stated circumstances or at stated times;

(j) for an approval to undertake a development for a stated period—

(i) building works or other works undertaken in or on a place the subject of the approval must be removed at the end of the period; or

(ii) that the site where the development is to take place is to be restored to a particular state at the end of the period;

(k) a bond must be entered into securing performance against the conditions of the approval;

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(l) for an approval in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—the applicant must enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;

(m) the development must be undertaken to a stated standard;

(n) stated works, services or facilities that the relevant authority considers reasonable in the circumstances—

(i) must be provided by the applicant on or to a place the subject of the approval, or on or to another place; or

(ii) must be paid for completely or partly by the applicant; or

(iii) must be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;

(o) a plan, drawing, specification or other document must be prepared by the applicant and submitted to the territory planning authority for endorsement before the development, or a stated stage of it, starts;

(p) a change must be made to a plan, drawing, specification or other document forming part of the application for approval;

(q) for an approval of a development that proposes to remove a protected tree under the *Urban Forest Act 2023*, section 21—the applicant must enter into a canopy contribution agreement in relation to the tree's removal.

(3) A condition may modify the proposed development to make it consistent with the territory plan.

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(4) The territory planning authority may endorse a change to a document previously endorsed in accordance with a condition mentioned in subsection (2) (o) if the change—

(a) would not make the approval inconsistent with table 210 (When development approvals take effect), item 4; and

(b) is consistent with the approval, including any conditions of the approval.

(5) If the change required by a condition mentioned in subsection (2) (o) is minor in nature, the condition may be annotated on the document and attached to the approval.

(6) In this section:

canopy contribution agreement—see the *Urban Forest Act 2023*, section 35 (3).

tree bond agreement—see the *Urban Forest Act 2023*, section 92 (2).

188 Essential design elements

(1) A decision-maker, or the ACAT, may decide that an element of a development proposal is an ***essential design element***.

(2) An essential design element—

(a) must be identified in a development approval; and

(b) may be marked on a plan.

189 Restrictions on development approval

(1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following:

(a) the territory plan;

(b) for development relating to land described in a rural lease—any land management agreement for the land;

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(c) for development in relation to which an entity has given advice under section 172—the entity's advice;

Note Advice given outside the time required by s 172 is not entity advice for the purpose of that section, but may be considered under s 186 (h).

(d) for development that will affect a registered tree, remnant tree located on land outside the built-up urban area or declared site—the advice of the conservator of flora and fauna in relation to the application;

(e) for development that is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth—any advice given by the Commonwealth Minister under section 191 in relation to the matter.

Note A development application cannot be approved if it is inconsistent with the territory plan (see s 52) or the National Capital Plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

(2) Subsection (1) (c) and (d) are subject to section 190 (Development approval contrary to entity advice).

(3) If an entity mentioned in subsection (1) (c) suggests conditions for the approval in its advice, the suggested conditions are not entity advice for the purpose of this section.

(4) Also, if an entity mentioned in subsection (1) (c) fails to give advice within the time prescribed for section 172—

(a) the decision-maker may approve the development application despite or without the advice; and

(b) the validity of the development approval is not affected by the entity's failure.

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(5) The decision-maker must refuse the following development applications:

(a) an application for a development proposal involving affected residential premises other than a remediation development;

(b) an application for a development proposal mentioned in section 105 (When EIS is required) if the finalised EIS or environmental significance opinion is not provided.

(6) The decision-maker may refuse the following development applications:

(a) an application in which, or in relation to which, the applicant has provided false or misleading information;

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(b) an application if the design review panel has given design advice in relation to the development proposal under section 101 and—

(i) the proponent has not responded to the design advice; or

(ii) the decision-maker considers the proponent's response to the design advice unsatisfactory.

(7) In this section:

affected building—see the *Dangerous Substances Act 2004*, section 47I.

affected residential premises—see the *Dangerous Substances Act 2004*, section 47I.

development proposal includes a development proposal as amended in accordance with any conditions of approval.

registered tree—see the *Urban Forest Act 2023*, section 10.

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remediation development, in relation to affected residential premises, means—

(a) the demolition of each affected building on the premises including asbestos removal related to the demolition; and

(b) the remediation of the premises.

remnant tree—see the *Urban Forest Act 2023*, section 12.

190 Development approval contrary to entity advice

(1) A decision-maker may approve a development application if—

(a) the application is for—

(i) a development proposal that is inconsistent with entity advice mentioned in section 189 (1) (c); or

(ii) a territory priority project that is inconsistent with the advice of the conservator of flora and fauna mentioned in section 189 (1) (d); and

(b) the proposal or project does not involve a protected matter; and

(c) the decision-maker has considered both of the following:

(i) the desired outcomes applying to the proposal under the territory plan;

(ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and

(d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.

Note The decision-maker for an application for a territory priority project is the Minister (see s 144).

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(2) Also, the chief planner or the Minister may approve a development application if—

(a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and

(b) the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 189 (1) (c) in relation to the protected matter; and

(c) the chief planner or Minister is satisfied that the proposal—

(i) is consistent with the offsets policy; and

(ii) would provide a substantial public benefit.

Note The chief planner or Minister's approval must be consistent with approvals required under the EPBC Act.

(3) A decision-maker must state in their decision the reasons why they were satisfied of the matters mentioned in subsection (1) (d) or (2) (c).

(4) In this section:

development proposal—see section 189 (7).

191 Referral of matter protected by the Commonwealth

(1) This section applies if—

(a) a decision-maker proposes under section 185 to approve a development application (with or without a condition); and

(b) the proposed development is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth.

(2) Before the decision-maker may approve the application, the decision-maker must refer the proposed decision to the Commonwealth Minister responsible for administering the EPBC Act.

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(3) If the Commonwealth Minister does not give the decision-maker advice about the proposed decision within 10 working days after the day the decision-maker gives the application to the Commonwealth Minister, the decision-maker may approve the application.

Note If the Commonwealth Minister gives the decision-maker advice about the proposed approval, development approval must not be given unless the development proposal is consistent with the advice (see s 189 (1) (e)).

192 Time to decide development applications

(1) The maximum time for deciding, under section 185, a development application mentioned in an item in table 192, is the number of working days mentioned in column 3 of the item, starting on the day mentioned in column 4 of the item.

(2) However, if the decision-maker has referred the proposed decision to the Commonwealth Minister under section 191, the time for deciding the development application is increased by 10 working days.

(3) If the territory planning authority asks for more information in relation to a development application under section 167 or section 179, the time for deciding the application—

(a) stops on the day the authority asks for the information; and

(b) recommences on the day the applicant gives the information.

(4) If an applicant responds to pre-decision advice in relation to a development application under section 182 (4) (b), the time for deciding the application—

(a) stops on the day the territory planning authority gives the applicant the advice; and

(b) recommences on the day the applicant responds.

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Table 192 Maximum number of days to decide development application

column 1 item	column 2 type of application	column 3 number of working days for decision	column 4 starting day
1	development application (other than a concurrent application or an application for significant development)— (a) if a representation is made under s 180 (b) if no representation is made under s 180	 45 30	the latest of the following days: (a) the day the application is submitted (b) if the application is amended under s 168—the day the application is amended by the authority
2	concurrent development application	10	the latest of the following days: (a) the day the concurrent process is completed (b) the day otherwise applying to the application under this section
3	development application for significant development	60	the latest of the following days: (a) the day the application is submitted (b) if the application is amended under s 168—the day the application is amended by the authority

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(5) In this section:

day the concurrent process is completed, in relation to a concurrent development application, means—

(a) for an application made under section 157 (Applications in anticipation of major plan amendment)—the day the draft major plan amendment commences under division 5.2.8 (Commencement and publication of major plan amendments); or

(b) for an application made under section 159 (Applications for development encroaching on adjoining land if development prohibited)—the day the minor plan amendment commences under section 85.

working day, for a development application mentioned in table 192, item 1 or 3, means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday in the ACT; or

(c) a day in the period beginning on 20 December in a year and ending on 10 January the following year.

193 Development applications not decided within time

(1) This section applies if—

(a) the time for deciding a development application has ended; and

(b) the decision-maker has not decided the application under section 185.

(2) The decision-maker may approve the application under section 185 (with or without conditions) even if the time for deciding the application has ended.

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(3) To remove any doubt, the decision-maker is taken to have decided to refuse an application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) if the decision-maker has not decided the application under section 185.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the original decision-maker will not be able to approve an application if the ACAT has decided an application for review of the deemed refusal (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

194 Lease to be varied to give effect to development approval

(1) This section applies if—

(a) a decision-maker approves a development application under section 185; and

(b) the development consists of or includes a lease variation (other than the variation of a concessional lease to remove its concessional status).

(2) The territory planning authority must vary the lease in accordance with the terms of the approval.

(3) This section is subject to part 10.7 (Lease variations).

Note Table 210, item 4 and item 5 set out when development approvals requiring lease variations take effect.

195 Refusal does not affect existing use

The refusal of a development application in relation to the use of land does not affect an existing use of land, or use of existing developments on the land.

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Division 7.6.2 Notice of decisions on development applications

196 Notice of decision

(1) A decision-maker who decides a development application under section 185 (other than an application to remove the concessional status of a lease) must give written notice of the decision (the ***decision notice***) to—

(a) the applicant; and

(b) each person who made a representation under section 180 about the application; and

(c) each entity to whom the application was referred under section 170 (When authority must refer development application) or section 171 (Further entity referral—more information or amended application); and

(d) if the decision is to approve the application under section 185 (1) (a) or (b)—the registrar-general.

(2) A decision notice given to a person mentioned in subsection (1) (a) or (b) must include the following:

(a) a brief description of the place to which the approval relates;

(b) a description of the development to which the approval relates;

(c) the reasons for the decision;

(d) a summary of any advice in relation to the application received from an entity (the ***entity's advice***) under section 172 (Entity advice on development applications);

(e) if the decision-maker did not follow the entity's advice in making the decision—the reasons for not following the advice;

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(f) if a development application decision was referred to the Commonwealth Minister responsible for administering the EPBC Act—a summary of the Commonwealth Minister's advice (if any);

(g) a statement about whether the development application is for a significant development or a territory priority project;

(h) the date the development application was submitted;

(i) the date the development application was decided;

(j) a statement about whether the development application was—

(i) approved; or

(ii) approved in part; or

(iii) refused;

(k) if any part of the application was approved—

(i) a statement about whether the approval is subject to conditions and, if so, what the conditions are; and

(ii) the date the approval takes effect; and

(iii) any essential design elements for the approval; and

(iv) a summary of any essential design elements marked on a plan for the approval;

(l) anything else prescribed by regulation.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 505).

(3) If a representation in relation to the development application has been made on behalf of 2 or more people (a ***joint representation***) and 1 person is nominated as the contact person for the representation (the ***nominated person***), it is sufficient for subsection (1) (b) if the decision-maker gives the decision notice to the nominated person.

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(4) A decision notice given to the nominated person is taken to be given to each person on behalf of whom the joint representation was made.

(5) A decision notice must be published on the authority website.

Division 7.6.3 Reconsideration of decisions on development applications

197 Definitions—div 7.6.3

In this division:

original application—see section 198 (1) (a).

original decision—see section 198 (1) (a).

reconsideration application—see section 198 (2).

198 Applications for reconsideration

(1) This section applies if—

(a) a development application, or an application for amendment of a development approval (the ***original application***), is conditionally approved (including partly approved) or refused by the territory planning authority (the ***original decision***); and

(b) an application has not previously been made under this section for reconsideration of the original decision; and

(c) an application has not been made to the ACAT for review of the original decision.

Note This section does not apply to a development application, or an application for amendment of a development approval, decided by the Minister.

(2) The applicant for the original application may apply for reconsideration of the original decision (the ***reconsideration application***).

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(3) The reconsideration application must—

(a) be in writing signed by the applicant; and

(b) if the application is made by someone other than the lessee of the land to which the application relates and the land is not unleased—also be signed by the lessee of the land.

(4) The reconsideration application must be made not later than—

(a) 20 working days after the day the applicant is told about the original decision by the territory planning authority; or

(b) any longer period allowed by the territory planning authority.

(5) The reconsideration application must set out the grounds on which reconsideration of the original decision is sought.

(6) A reconsideration application must be published on the authority website.

199 Reconsideration

(1) If the territory planning authority receives a reconsideration application, the authority must—

(a) reconsider the original decision; and

(b) not later than 20 working days after the day the authority receives the application—

(i) make any decision in substitution for the original decision that the authority could have made on the original application; or

(ii) confirm the original decision.

(2) The 20 working days mentioned in subsection (1) may be extended for a stated period by agreement between the territory planning authority and the applicant.

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(3) In reconsidering the original decision, the territory planning authority—

(a) need not publicly notify the reconsideration application under division 7.5.4; but

(b) must—

(i) give written notice of the reconsideration application to anyone who made a representation under section 180 about the original application; and

(ii) allow the person reasonable time (that is at least 2 weeks) to make a representation on the reconsideration application; and

(iii) consider any representation made within the time allowed.

Note Applications for reconsideration must be published on the authority website (see s 198 (6)).

(4) Also, in reconsidering the original decision, the territory planning authority—

(a) must consider any information available to the authority when it made the original decision and information given in the reconsideration application; and

(b) may consider any other relevant information.

Example—other relevant information

information from representations

(5) If the original decision was made on the territory planning authority's behalf, the authority or someone holding a position senior to the position held by the person who made the original decision must reconsider the decision.

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200 Effect of ACAT application on reconsideration

(1) This section applies if, after a reconsideration application is made, an application is made to the ACAT for review of the original decision.

(2) If the application to the ACAT is made by a third party, the reconsideration application is taken to be withdrawn.

(3) However, if the ACAT makes an order dismissing or striking out the application to the ACAT, the applicant for the reconsideration application may make another reconsideration application not later than 20 working days after the day the order takes effect.

(4) In this section:

third party means an entity other than the applicant for the development approval or the territory planning authority.

201 Notice of decisions on reconsideration

As soon as practicable after reconsidering an original decision under section 199, the territory planning authority must give written notice of the decision on the reconsideration to—

(a) the applicant; and

(b) anyone who was given notice of the reconsideration application under section 199 (3) (b); and

(c) if the original decision was an approval subject to conditions—the registrar-general.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 505).

202 No action by authority within time

(1) If the territory planning authority does not make a decision within the time for deciding the reconsideration application under section 199, the authority is taken to have confirmed the original decision.

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(2) However, the territory planning authority may reconsider the original application under section 199 even if the time for deciding the application ends.

Division 7.6.4 Correction and amendment of development approvals

203 Correcting development approvals

(1) The territory planning authority may, on its own initiative or on application, correct a formal error in a development approval.

(2) If the territory planning authority corrects a development approval, the authority must give every approval-holder written notice about the correction.

204 Revocation of development approvals

(1) The territory planning authority may revoke a development approval—

(a) if satisfied that the approval was obtained by fraud or misrepresentation; or

(b) if the approval is in relation to a place registered or nominated for provisional registration under the *Heritage Act 2004* and the applicant for the approval is convicted of an offence against chapter 13 (Enforcement) or the *Heritage Act 2004*.

(2) The territory planning authority must tell the registrar-general about the revocation.

205 Applications to amend development approvals

(1) This section applies if—

(a) a development proposal changes and is no longer covered by the development approval for the development; and

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(b) section 209 (When development approvals do not require amendment) does not apply to the changed development proposal.

Note If the development proposal changes in accordance with a condition of the development approval, the change is covered by the approval and this section does not apply.

(2) The approval-holder may apply to 1 of the following to amend the development approval so that it covers the changed development proposal:

(a) if the application involves amendment of an essential design element—the entity who decided the essential design element under section 188;

(b) in any other case—the territory planning authority.

(3) An application under subsection (2) must—

(a) be in writing signed by the applicant; and

(b) if the application is made by someone other than the lessee of the land to which the application relates, be signed by—

(i) if the land to which the application relates is subject to a lease—the lessee of the land; or

(ii) if the land to which the application relates is public land or unleased land—the custodian of the land; or

(iii) in any other case—the territory planning authority; or

(c) if the application relates to land under a land sublease and—

(i) the applicant is not the sublessee—also be signed by the sublessee; and

(ii) the applicant is not the lessee—also be signed by the lessee.

(4) A person who signs an application under subsection (3) (b) (i) or (c) is taken to be an applicant in relation to the application.

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206 Deciding applications to amend development approvals

(1) In deciding whether to amend a development approval in accordance with an application under section 205, the decision-maker must consider the application, and take action in relation to the application, as if—

(a) the development originally approved is completed; and

(b) the application is a development application to be decided under section 185.

Example

Tony has development approval to build a house (the ***original approval***). Tony starts to build the house, but discovers that he needs an extra room in the house. He applies to amend the original approval.

In deciding whether to amend the original approval, the territory planning authority must treat the application to amend as if the house has been built in accordance with the original approval, and the application is for approval to add an extra room.

Note 1 A decision of the territory planning authority to amend a development approval subject to a condition, or refuse to amend a development approval, may be reconsidered (see s 198 (1) (a)). The approval-holder may apply for review of a decision under s 199 (1) (b) (ii) to confirm the original decision (see sch 5, pt 5.2, item 5).

Note 2 The decision-maker must decide whether to amend the development approval as soon as possible (see Legislation Act, s 151B).

(2) The decision-maker must refuse to amend the development approval if satisfied that—

(a) the changed development proposal would be in breach of a condition included in the approval under section 187 (1) (d); or

Note If a conditional environmental significance opinion has been given for a development, the development approval must include a condition that the development comply with the condition in the environmental significance opinion (see s 187 (1) (d)).

(b) an offset condition for the approval as amended would not provide an offset at least equivalent to an offset provided by the original approval.

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(3) Also, the decision-maker must refuse to amend a development approval unless satisfied that, after the amendment, the development approved will be substantially the same as the development for which approval was originally given.

207 Exception to s 206 (1) (b)—referral requirements

(1) This section applies if—

(a) a development application was referred to an entity under section 170 (When authority must refer development application) or section 191 (Referral of matter protected by the Commonwealth); and

(b) an application is made under section 205 to amend the development approval to which the application relates (the ***amendment application***).

(2) Despite section 206 (1) (b), the decision-maker need not refer the amendment application to an entity under section 170 or section 191 if the decision-maker is satisfied that the amendment application—

(a) does not affect any part of the development approval in relation to which the entity gave advice; or

(b) is not reasonably expected to contain matters upon which the entity would wish to comment.

Note Under s 206 (1) (b), an amendment to amend a development approval is subject to the same requirements as an application for development approval, which would ordinarily require the amendment application to be referred to relevant entities under s 170.

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208 Exception to s 206 (1) (b)—waiver of notification requirement

Despite section 206 (1) (b), the decision-maker may waive the requirement to publicly notify an application to amend a development approval if satisfied that—

(a) the amendment will not involve any change that would be inconsistent with an essential design element; and

(b) the amendment will do no more than minimally increase—

(i) the adverse impact of the development otherwise than on the applicant; and

(ii) the environmental impact of the development.

209 When development approvals do not require amendment

(1) This section applies if—

(a) the decision-maker has given development approval for a development proposal; and

(b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the development approval; and

(c) a circumstance prescribed by regulation under subsection (3) applies.

(2) The changed development proposal is taken to be in accordance with the development approval.

(3) A regulation may prescribe circumstances for subsection (1) (c).

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 The development must also comply with the lease for the land on which it is undertaken.

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Division 7.6.5 Effect and duration of development approvals

210 When development approvals take effect

(1) This section applies if a decision-maker approves a development application under section 185 (Deciding development applications).

(2) If the circumstances mentioned in column 2 of an item in table 210 apply to a development approval, the approval (or an approval as varied or substituted by the ACAT) takes effect on the day mentioned in column 3 of the item.

Table 210 When development approvals take effect

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
1	(a) no third party may make an application for ACAT review of the approval decision or there are no representations about the development application; and (b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (c) the approval is not subject to a condition that something must happen before the approval takes effect	the day after the day the approval decision is made

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column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
2	(a) 1 or more representations are made about the development application; and (b) no application for ACAT review of the approval decision was made within 20 working days after the day that every person who made a representation was given the notice of the decision under s 196; and (c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (d) the approval is not subject to a condition that something must happen before the approval takes effect; and (e) no reconsideration application has been made in relation to the approval	21 working days after the day notice of the approval decision is given under s 196

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column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
3	(a) an application for ACAT review of the approval decision has been made; and (b) the ACAT has— (i) confirmed or varied the approval decision; or made a substitute approval decision; or (ii) the application was dismissed or struck out; and (c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (d) the approval is not subject to a condition that something must happen before the approval takes effect	(a) if the ACAT makes an order confirming, varying or substituting the approval decision—the day the order takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, s 69; or (b) in any other case—the day the application is dismissed or struck out
4	(a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and (b) the approval is not subject to a condition that something must happen before the approval takes effect; and (c) no reconsideration application has been made in relation to the approval	the latest of the following days: (a) the day the approval would take effect if the development did not include an activity not allowed under the lease; (b) the day the lease variation to allow the activity takes effect; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3

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column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
5	(a) the approval is subject to a condition that something must happen before the approval takes effect; and (b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (c) no reconsideration application has been made in relation to the approval	the latest of the following days: (a) the day the approval would take effect if it were not subject to the condition; (b) the day the condition is complied with; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3
6	(a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and (b) the approval is subject to a condition that something must happen before the approval takes effect; and (c) no reconsideration application has been made in relation to the approval	the latest of the following days: (a) the day the approval would take effect under item 4, column 3 if the development did not include an activity not allowed under the lease; (b) the day the approval would take effect under item 5, column 3 if it were not subject to the condition; (c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3

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column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
7	(a) a reconsideration application has been made in relation to the approval; and (b) the territory planning authority— (i) has made a reconsideration decision; and (ii) did not substitute the approval with a decision to refuse the development application under s 185 (1) (c)	the latest of the following days: (a) the day the approval would take effect if the reconsideration decision were the original decision; (b) the day after the reconsideration decision is made; (c) if an application for ACAT review of the reconsideration decision has been made—the day mentioned in item 3, column 3

(3) In this section:

application for ACAT review, of a decision, means an application for ACAT review under section 506.

approval decision, in relation to a development application, means a decision to approve the application under section 185.

Note ***Approve*** for s 185 includes a partial approval. Also, an application may be approved subject to conditions (see s 185 (1) (b)).

reconsideration application—see section 198 (2).

reconsideration decision means a decision under section 199 in relation to a reconsideration application.

representation, in relation to a development application, means a representation made under section 180 about the application.

third party means an entity other than the applicant for the development approval or the territory planning authority.

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211 End of development approvals generally

(1) This section applies to a development approval other than—

(a) a development approval that consists only of a variation of a lease; or

(b) a part of a development approval that consists of a variation of a lease; or

(c) a development approval, or part of a development approval, that relates only to the use of land, or to a building or other structure on land.

(2) The development approval ends—

(a) 5 years after the day the approval takes effect (the ***5-year period***); or

(b) if an extension of the 5-year period is granted under this section—at the end of the extended period; or

(c) if the approval is revoked under section 204; or

(d) the approval-holder surrenders the approval to the territory planning authority.

(3) The territory planning authority may, on application made within 6 months after the end of the 5-year period, extend the period if the development to which the approval relates—

(a) has started and is substantially progressed; and

(b) would be approved if it were the subject of a development application submitted on the same day as the application for the extension.

(4) The territory planning authority may also extend the 5-year period on application under subsection (3) if—

(a) an appeal is made to a court in relation to the development approval; and

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(b) taking into account when the appeal is likely to end, more time is needed to start or complete the development to which the approval relates.

(5) The 5-year period may be extended—

(a) more than once; and

(b) for a cumulative period of up to 2 years.

Note A development approval to which this section applies continues unless the approval ends under this section, s 212 or s 213.

212 End of development approvals for lease variations

(1) This section applies to—

(a) a development approval that consists only of a variation of a lease; or

(b) a part of a development approval that consists of a variation of a lease.

(2) The development approval, or part of the approval, ends—

(a) if—

(i) the lease is varied in accordance with the approval; or

(ii) the lease is terminated; or

(iii) the approval is revoked under section 204; or

(iv) the approval-holder surrenders the approval to the territory planning authority; or

(v) the lease expires and no application is made under section 289 (Grant of further leases) for a further lease; or

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease.

(vi) the lease is surrendered, other than for a lease variation or renewal; or

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(vii) the lease is subject to a condition that a charge be paid to the Territory in relation to the lease variation under section 311 (Working out amount payable to remove concessional status) or section 328 (Lease variation charge payable for chargeable variation)—2 years after the day the charge is determined; or

(b) at the end of—

(i) 2 years starting on the day after the day the approval takes effect; or

(ii) if an appeal is made to a court in relation to the approval—2 years starting on the day after the day the appeal ends; or

(iii) if, in relation to a decision about a payout amount under section 311 or a charge under section 328, an application for review to the ACAT is made—2 years starting on the day the application is decided, withdrawn, dismissed or struck out.

(3) The territory planning authority may extend the development approval, or part of the approval, for up to 2 years.

Note A development approval to which this section applies continues unless the approval ends under s 211, this section or s 213.

213 End of development approvals for use

(1) This section applies to the following:

(a) a development approval, or part of a development approval, that—

(i) relates only to the use of land, or a building or other structure on land, under a lease or declared unit title lease (the ***affected lease***); and

(ii) does not involve a lease variation;

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(b) a development approval, or part of a development approval, that relates only to the use of land under a licence or permit.

(2) The development approval ends if—

(a) the affected lease expires and no application is made under section 289 (Grant of further leases) for a further lease; or

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease.

(b) the approval is revoked under section 204; or

(c) if the approval states a period for the end of the approval—the period ends; or

(d) the approval is surrendered, other than for a lease variation or renewal; or

(e) the affected lease is surrendered (other than under section 289 (Grant of further leases)) or terminated; or

(f) for a declared unit title lease—a further lease is not granted under the *Unit Titles Act 2001*, section 167AA; or

(g) if the approval relates to the use of land under a licence or permit—the licence or permit ends.

Note A development approval to which this section applies continues unless the approval ends under s 211, s 212 or this section.

(3) To remove any doubt, a development approval relating to use does not end only because 1 or more of the following apply to the development or lease:

(a) the use is not continuous;

(b) someone deals with the affected lease;

(c) a further lease is granted for the affected lease on application under section 289 (Grant of further leases), whether the grant happens immediately after the expiry of the affected lease or otherwise;

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(d) for a declared unit title lease—a further lease is granted under the *Unit Titles Act 2001*, section 167AA.

Examples—par (a)

1 the use is interrupted

2 the use is intermittent

(4) The territory planning authority must tell the registrar-general about the ending of a development approval to which this section applies if—

(a) the authority gave the registrar-general notice of the approval; and

(b) the approval is surrendered to the authority.

(5) In this section:

declared unit title lease means a lease of a unit or common property in a units plan that subdivides land under a declared land sublease.

214 Development approval continues unless ended

A development approval, including a development approval that has been extended, continues unless ended under this part.

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Part 7.7 Development applications for development undertaken without approval

215 Development applications for development undertaken without approval

(1) This section applies if—

(a) a development has been undertaken; and

(b) development approval was required for the development; and

(c) there was no development approval for the development.

(2) The lessee of the land (or for land under a land sublease, the sublessee) where the development was undertaken may apply for development approval for the development.

(3) The territory planning authority must treat the application for development approval as if the development was not undertaken.

Note A proceeding under part 12.1 (Development offences) is not affected by an application made or approved under this section (see s 403 (7)).

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Chapter 8 Territory priority projects

216 Meaning of *territory priority project*

In this Act:

territory priority project means—

(a) a development proposal declared to be a territory priority project under section 218; or

(b) a development proposal related to light rail.

217 Meaning of *related to light rail*

For this Act, a development proposal is ***related to light rail*** if the development to which the proposal relates may facilitate the construction, ongoing operation and maintenance, repairs, refurbishment, relocation or replacement of—

(a) light rail track; or

(b) infrastructure within, or partly within, 1km from—

(i) existing light rail track; or

(ii) light rail track identified in a development proposal in a development application that includes the construction, extension, refurbishment, relocation or replacement of light rail track; or

(iii) light rail track identified in a development approval that authorises the construction, extension, refurbishment, relocation or replacement of light rail track.

Examples—par (b)

1 access roads, footpaths and bicycle lanes

2 depot facilities

3 electricity supply infrastructure including substations, overhead lines and supports

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4 entry and access points and safety barriers

5 signalling and other control facilities

6 stops, stations, terminus and associated shelters, seating and toilet amenities, ticketing infrastructure, parking, set-down areas and bicycle storage

7 temporary infrastructure for construction of light rail such as safety fencing, scaffolding, access roads and parking

218 Declaration of territory priority projects

(1) The Chief Minister and Minister may jointly declare that a development proposal is a territory priority project (a ***territory priority project declaration***) if the Chief Minister and Minister are satisfied that the proposal—

(a) would achieve a major government policy outcome that is of significant benefit to the people of the ACT; and

(b) would substantially facilitate the achievement of the desired future planning outcomes set out in the planning strategy, a relevant district strategy, the territory plan or any relevant zone; and

(c) is for significant infrastructure, or significant facilities, that are of significant benefit to the people of the ACT; and

Note Significant infrastructure or facilities includes community, social and public housing projects of any scale.

(d) has been the subject of sufficient consultation under subsection (3).

(2) A territory priority project declaration for a development proposal must be made before the development application for the proposal is made under section 166.

(3) Before making a territory priority project declaration, the Minister—

(a) may seek the advice of the territory planning authority; and

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(b) must publish a notice on the authority website—

(i) stating that copies of the proposed declaration are available on the website; and

(ii) inviting people to give written comments about the proposed declaration to the authority at a stated address during a stated period of at least 15 working days (the ***consultation period***); and

(iii) if the development proposal requires a major plan amendment to proceed—

(A) including a description of the proposed major plan amendment; and

(B) inviting the national capital authority to give written comments about the proposed declaration to the authority during the consultation period; and

(C) including the supporting report for the major plan amendment; and

(c) must consider any comments received during the consultation period.

(4) If the Chief Minister is also the Minister, another Minister must make the declaration under subsection (1) with the Chief Minister.

(5) In this section:

development proposal includes a proposal involving 2 or more stages, sites or development applications.

supporting report—see section 55.

219 Presentation of declaration to Legislative Assembly

(1) As soon as practicable after making a territory priority project declaration, the Minister must present to the Legislative Assembly—

(a) the declaration; and

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(b) a statement of the reasons for making the declaration.

(2) The Legislative Assembly may, by resolution, approve or refuse to approve the declaration.

(3) If the Legislative Assembly does not pass a resolution mentioned in subsection (2) within 2 sitting days after the declaration and statement is presented, the Assembly is taken to have approved the declaration.

(4) A territory priority project declaration commences only after the declaration is—

(a) approved by the Legislative Assembly under subsection (2); and

(b) notified.

220 Time limits on proceedings—territory priority projects

(1) A person may not start a proceeding in a court in relation to a decision to make a territory priority project declaration more than 2 months after the day the declaration is notified.

(2) Despite section 82 (Limitations on challenge to validity of territory plan provisions), the validity of a provision of the territory plan must not be questioned in a legal proceeding if—

(a) the provision was inserted or amended by a major plan amendment approved for a territory priority project; and

(b) the proceeding started more than 2 months after the day the provision, or amendment of the provision, commenced.

(3) A person may not start a proceeding in a court in relation to a decision under part 6.3 (Environmental impact assessment), chapter 7 (Development assessment and approvals) or chapter 10 (Leases and licences) more than 2 months after the day the decision is made if the decision relates to a territory priority project.

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Chapter 9 Offsets

Part 9.1 Important concepts

221 Meaning of *protected matter*

(1) In this Act:

protected matter means—

(a) matter protected by the Commonwealth; or

(b) a native species or ecological community protected under the *Nature Conservation Act 2014*; or

(c) a declared protected matter.

(2) The Minister may declare a matter to be a protected matter (a ***declared protected matter***).

Note The Minister may consider relevant matters under the *Nature Conservation Act 2014* or any other ACT law when making a declaration.

(3) A declaration is a disallowable instrument.

222 Meaning of *matter protected by the Commonwealth*

(1) In this Act:

matter protected by the Commonwealth means a matter protected by a provision of the EPBC Act, chapter 2 (Protecting the environment), part 3 (Requirements for environmental approvals).

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(2) In this section:

matter protected by a provision of the EPBC Act, chapter 2, part 3—see the EPBC Act, section 34 (What is ***matter protected*** by a provision of Part 3?).

Note The EPBC Act, ch 2, pt 3 deals with taking action that would have a significant impact on a matter of national environmental significance. Matters of national environmental significance include the following:

- world heritage properties
- national heritage places
- wetlands of international importance (Ramsar wetlands)
- threatened species and threatened ecological communities
- migratory species protected under international agreements
- nuclear actions
- water resources in relation to coal seam gas development and large coal mining development.

223 Meaning of *offset*

In this Act:

offset, for a development that is likely to have a significant adverse environmental impact on a protected matter, means environmental compensation for the likely impact.

224 Meaning of *offsets policy*

In this Act:

offsets policy means a statement—

(a) describing—

(i) how environmental compensation may be made to offset the impact of development that has a significant adverse environmental impact on protected matters; and

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(ii) suitable forms for offsets; and

(b) notified under—

(i) for an initial offsets policy—section 226; or

(ii) for a revised offsets policy—section 231.

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Part 9.2 Offsets policy

Division 9.2.1 Preliminary

225 Meaning of *Minister*—pt 9.2

In this part:

Minister means the Minister responsible for administering the *Nature Conservation Act 2014*, chapter 13.

Division 9.2.2 Initial offsets policy

226 Initial offsets policy

(1) The Minister may make an initial offsets policy.

(2) An initial offsets policy is a notifiable instrument.

(3) The Minister may amend the initial offsets policy only by—

(a) reviewing and revising the offsets policy under sections 227 to 231; or

(b) making minor amendments to the policy under section 232.

Division 9.2.3 Revised offsets policy

227 Offsets policy—monitoring and review

(1) The Minister must monitor the effectiveness of the offsets policy.

(2) The Minister must consider, at least once every 5 years, whether the offsets policy needs to be reviewed.

(3) In considering whether the offsets policy needs to be reviewed, the Minister must consult—

(a) the territory planning authority; and

(b) the conservator of flora and fauna.

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(4) If the Minister decides that the offsets policy needs to be reviewed, the Minister must review the offsets policy.

(5) In reviewing the offsets policy, the Minister must consult—

(a) the territory planning authority; and

(b) the conservator of flora and fauna.

228 Draft revised offsets policy—Minister to prepare

(1) This section applies if the Minister—

(a) reviews the offsets policy under section 227; and

(b) considers that revisions of the offsets policy are appropriate.

(2) The Minister must prepare a draft offsets policy (a ***draft revised offsets policy***) incorporating the revisions.

(3) In preparing a draft revised offsets policy, the Minister must consult—

(a) the territory planning authority; and

(b) the conservator of flora and fauna.

229 Draft revised offsets policy—public consultation

(1) If the Minister prepares a draft revised offsets policy, the Minister must also prepare a notice about the policy (a ***consultation notice***).

(2) If the Minister publishes a consultation notice about a draft revised offsets policy—

(a) anyone may make a written submission to the Minister about the policy; and

(b) submissions may be made to the Minister within 6 weeks after the day the consultation notice is published on the authority website (the ***consultation period***); and

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(c) a person making a submission may, in writing, withdraw the submission at any time.

(3) A consultation notice must—

(a) state the matters mentioned in subsection (2) (a) to (c); and

(b) include the draft revised offsets policy; and

(c) be published on the authority website.

230 Draft revised offsets policy—revision

If the consultation period for a draft revised offsets policy has ended, the Minister must—

(a) consider any submissions received during the consultation period; and

(b) make any revisions to the draft revised offsets policy that the Minister considers appropriate; and

(c) prepare a final version of the draft revised offsets policy.

231 Draft revised offsets policy—final version and notification

(1) The final version of a draft revised offsets policy prepared under section 230 or section 232 is an offsets policy.

(2) An offsets policy is a notifiable instrument.

232 Offsets policy—minor amendments

(1) This section applies if—

(a) an offsets policy is in force (the ***existing policy***); and

(b) the Minister considers that minor amendments to the existing policy are appropriate.

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(2) The Minister—

(a) may prepare a new draft offsets policy, incorporating the minor amendments into the existing policy; and

(b) need not comply with the consultation requirements in section 229; and

(c) may prepare a final version of the new draft offsets policy, as amended.

(3) In this section:

minor amendment, of an offsets policy, means an amendment that—

(a) improves the effectiveness or technical efficiency of the offsets policy without changing the substance of the policy; or

(b) corrects a formal error.

Examples

- minor correction to improve effectiveness
- omission of something redundant
- rewording to clarify language
- technical adjustment to improve efficiency

Division 9.2.4 Offsets policy—implementation and guidelines

233 Offsets policy—authority to implement

The territory planning authority must take reasonable steps to implement the offsets policy.

234 Offsets policy—guidelines

(1) The Minister may make guidelines about the implementation of the offsets policy (***offsets policy guidelines***).

(2) The offsets policy guidelines are a notifiable instrument.

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235 Draft offsets policy guidelines

(1) If the Minister intends to make offsets policy guidelines, the Minister must prepare a draft version of the guidelines (the ***draft offsets policy guidelines***).

(2) In preparing the draft offsets policy guidelines, the Minister must consult the conservator of flora and fauna.

236 Draft offsets policy guidelines—public consultation

(1) If the Minister prepares draft offsets policy guidelines, the Minister must also prepare a notice about the draft guidelines (a ***consultation notice***).

(2) If the Minister publishes a consultation notice about draft offsets policy guidelines—

(a) anyone may make a written submission to the Minister about the draft guidelines; and

(b) submissions may be made to the Minister within 3 weeks after the day the consultation notice is published on the authority website (the ***consultation period***); and

(c) a person making a submission may, in writing, withdraw the submission at any time.

(3) A consultation notice must—

(a) state the matters mentioned in subsection (2) (a) to (c); and

(b) include the draft offsets policy guidelines; and

(c) be published on the authority website.

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237 Draft offsets policy guidelines—revision

If the consultation period for the draft offsets policy guidelines has ended, the Minister must—

(a) consider any submissions received during the consultation period; and

(b) make any revisions to the draft offsets policy guidelines that the Minister considers appropriate.

238 Offsets policy guidelines—monitoring and review

(1) The Minister must monitor the effectiveness of the offsets policy guidelines.

(2) The Minister must consider, at least once every 5 years, whether the offsets policy guidelines need to be reviewed.

(3) In considering whether the offsets policy guidelines need to be reviewed, the Minister must consult the conservator of flora and fauna.

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Part 9.3 Offsets policy—other provisions

239 Offsets—consistency with offsets policy

An offset must be consistent with the offsets policy.

240 Offsets—calculating value

(1) The Minister may determine how the value of an offset is to be calculated (an ***offset value calculation determination***).

(2) An offset value calculation determination must be consistent with the offsets policy.

(3) An offset value calculation determination is a notifiable instrument.

241 Offsets—form

(1) An offset for a development may be in—

(a) a form prescribed by regulation; or

(b) any other form the territory planning authority considers appropriate.

(2) However, an offset for a development must be in a form that is consistent with the offsets policy.

242 Offsets register

(1) The territory planning authority must keep a register of each offset (the ***offsets register***).

(2) The offsets register must include the following for each offset:

(a) the development approval that includes the offset condition requiring the offset;

(b) the details of the offset;

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(c) if the offset requires an offset management plan—the offset management plan;

(d) details of a lease if—

(i) the offset requires another lease to be subject to a condition; and

(ii) the condition requires the lessee of the other lease to comply with an offset management plan applying to the lease;

(e) anything else prescribed by regulation.

(3) The offsets register may include anything else the authority considers relevant.

Note The authority may give an evidentiary certificate about details kept in the offsets register (see s 514).

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Part 9.4 Offset conditions

243 Meaning of *decision-maker*—pt 9.4

In this part:

decision-maker, for an offset condition or offset management plan, means the decision-maker for the development approval in relation to which the condition or plan applies.

244 Meaning of *offset condition*

(1) In this Act:

offset condition, for a development approval, means a condition—

(a) identifying a protected matter that is likely to suffer a significant adverse environmental impact from the development; and

(b) requiring an offset to compensate for the likely impact of the development on the protected matter.

(2) An offset condition for a development approval may include a requirement that the proponent of the development have an offset management plan for the offset.

(3) Also, an offset condition for a development approval may include a requirement that—

(a) if the offset land is not the land to which the approval applies—the lease for the offset land be subject to a condition requiring the lessee of the offset land to comply with an offset management plan for the offset; and

Note To satisfy an offset condition with this kind of requirement, another development approval may be needed to vary the lease for the offset land to include a condition on the lease for the offset land that the lessee must comply with the offset management plan.

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(b) if the offset will be on public land—

(i) a new public land management plan for the land be prepared, including stated matters; or

(ii) an existing public land management plan for the land be varied in a stated way; and

(c) if the offset is to be on land described in a rural lease—

(i) a new land management agreement for the land be prepared, including stated matters; or

(ii) an existing land management agreement for the land be varied in a stated way.

(4) In this section:

offset land, for an offset, means the land on which the offset is to be located.

245 Meaning of *offset management plan*

(1) In this Act:

offset management plan, for an offset, means a plan to achieve the offset that is—

(a) approved by a decision-maker under section 248 (Draft offset management plan—submission to decision-maker); or

(b) amended by the decision-maker under—

(i) section 251 (Offset management plan—amendment initiated by offset manager); or

(ii) section 252 (Offset management plan—amendment initiated by decision-maker).

(2) An offset management plan must be published on the authority website.

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246 Meaning of *offset manager*

In this Act:

offset manager, for an offset management plan—

(a) means—

(i) if a lease of land includes a condition that requires the lessee of the land to comply with an offset management plan in relation to an offset—the lessee of the land; or

(ii) if the offset management plan applies to unleased land or public land—the custodian of the land; or

(iii) in any other case—the person identified in the offset management plan as the offset manager; but

(b) if paragraph (a) (i) does not apply—does not include the lessee of the land.

247 Draft offset management plan—proponent to prepare

(1) If an offset condition for a development approval requires the proponent to have an offset management plan for the offset, the proponent must prepare a draft offset management plan for the offset.

(2) The draft offset management plan must—

(a) identify the land to which it applies; and

(b) include a plan describing how the offset may be achieved; and

(c) if the offset management plan will not apply to leased land, unleased land or public land—identify the offset manager for the offset management plan; and

(d) include provisions about—

(i) how the effectiveness of the plan is to be monitored; and

(ii) when the plan is to be reviewed; and

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(e) include any matters prescribed by regulation.

(3) The draft offset management plan may—

(a) state the term of the offset management plan; and

Note If no term is stated, the offset management plan expires when the development approval, including the offset condition requiring the offset management plan, ends (see s 254). Otherwise the offset management plan operates indefinitely.

(b) apply, adopt or incorporate an instrument as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

(4) In preparing a draft offset management plan, the proponent must consult the following entities and seek their written agreement to the draft offset management plan:

(a) the conservator of flora and fauna;

(b) if the offset management plan will apply to leased land—the lessee of the land (unless the lessee is the proponent);

(c) if the offset management plan will apply to unleased land or public land—the custodian of the land.

248 Draft offset management plan—submission to decision-maker

(1) The proponent must submit the draft offset management plan to the decision-maker for approval.

(2) The draft offset management plan must be accompanied by the written agreement of the entities mentioned in section 247 (4).

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(3) If the proponent submits the draft offset management plan to the decision-maker for approval, the decision-maker must—

(a) approve the draft offset management plan; or

(b) return the draft offset management plan to the proponent and direct the proponent to take 1 or more of the following actions in relation to it:

(i) undertake stated further consultation;

(ii) consider a relevant report;

(iii) revise the draft offset management plan in a stated way; or

(c) reject the draft offset management plan.

(4) However, the decision-maker may approve the draft offset management plan only if the plan is consistent with—

(a) the offset condition in the development approval requiring the offset; and

(b) the offsets policy.

Note This section is subject to s 502 and s 503.

249 Draft offset management plan—decision-maker's direction to revise etc

(1) This section applies if the decision-maker gives the proponent a direction under section 248 (3) (b).

(2) The proponent must—

(a) give effect to the direction; and

(b) if the direction is to revise the draft offset management plan in a stated way—consult the entities mentioned in section 247 (4) and seek their written agreement to the revisions; and

(c) resubmit the draft offset management plan to the decision-maker for approval.

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(3) The resubmitted draft offset management plan must be accompanied by the written agreement of the entities mentioned in section 247 (4).

(4) The decision-maker must decide, under section 248 (3), what to do with the resubmitted draft offset management plan.

250 Offset management plan—unleased land or public land

If an offset management plan applies to unleased land or public land, the custodian of the land must take reasonable steps to implement the plan.

Note Failure to implement the offset management plan is a controlled activity (see sch 4, item 5).

251 Offset management plan—amendment initiated by offset manager

(1) The offset manager for an offset management plan may apply to the decision-maker to amend the offset management plan.

(2) The application must—

(a) be in writing; and

(b) include details of the proposed amendment.

(3) The decision-maker may amend the offset management plan only if satisfied that the offset for the amended offset management plan is—

(a) at least equivalent to the offset for the original offset management plan; and

(b) consistent with the offsets policy.

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252 Offset management plan—amendment initiated by decision-maker

(1) The decision-maker may, by written notice (an ***amendment notice***) given to the offset manager for an offset management plan, amend the offset management plan if satisfied that—

(a) the offset for the amended offset management plan is at least equivalent to the offset for the original offset management plan; and

(b) the offset for the amended offset management plan is consistent with the offsets policy.

(2) However, the decision-maker may amend the offset management plan only if—

(a) the decision-maker has given the offset manager for the offset management plan written notice of the proposed amendment (a ***proposal notice***); and

(b) the proposal notice states that written submissions about the proposal may be made to the decision-maker before the end of a stated period of at least 14 days after the day the proposal notice is given to the offset manager; and

(c) after the end of the stated period, the decision-maker has considered any submissions made in accordance with the proposal notice.

(3) The amendment takes effect on the day the amendment notice is given to the offset manager for the offset management plan or a later day stated in the amendment notice.

253 Offset management plan—reporting

(1) The offset manager for an offset management plan must report to the territory planning authority about the offset management plan—

(a) at least once every 3 years; and

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(b) at any other time the authority requests.

(2) The territory planning authority must report to the Minister about each offset management plan at least once every 3 years.

254 Offset management plan—expiry if development approval ends

(1) This section applies if—

(a) a development approval includes an offset condition requiring the proponent of the development to have an offset management plan for the offset; and

(b) the offset management plan is in force when the development approval ends.

(2) The offset management plan expires when the development approval ends.

255 Offset power must not be delegated

A decision-maker must not delegate a power under this chapter.

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Chapter 10 Leases and licences

Part 10.1 Preliminary

256 Definitions—ch 10

In this chapter:

building and development provision, in relation to a lease, means a provision of the lease that requires the lessee to undertake stated works on the land described in the lease or on unleased land.

consolidation means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to the lessee to consolidate the parcels of land described in the surrendered leases.

lessee means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and regardless of how the person became the proprietor of the lease.

market value, of a lease, means the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

provision, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

registered proprietor, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as proprietor of the lease.

rental lease means a lease for rent that is more than a nominal rent.

residential lease means a lease that authorises only residential use of the land described in the lease.

rural lease means a lease granted for a rural purpose or purposes including a rural purpose.

single dwelling house lease means a lease granted under section 266 (1) (f).

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subdivision—

(a) means the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcel or parcels of land in the surrendered lease or leases; but

(b) does not include the subdivision of land—

(i) under the *Unit Titles Act 2001*; or

(ii) by the grant of a sublease.

sublease means a sublease of—

(a) a parcel of land, or part of a parcel of land, subject to a lease; or

(b) a building, or part of a building, on a parcel of land subject to a lease.

257 Meaning of *lease*—Act

In this Act:

lease means a lease (other than a sublease) of land—

(a) granted under this Act; or

(b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act (see s 619).

258 When is a lease a *concessional lease*—Act

(1) In this Act:

concessional lease—

(a) means a lease—

(i) that is stated in the lease, or a memorial to the lease, to be concessional and which has not had its concessional status removed; or

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(ii) granted on a concessional basis and which has not had its concessional status removed; and

(b) includes the following:

(i) a consolidated or subdivided concessional lease;

(ii) a further concessional lease;

(iii) a regranted concessional lease.

Example—par (a) (i)

a condition of the lease or a notation or stamp on the lease

(2) For this Act, a lease has had its ***concessional status removed*** if—

(a) the lease is varied to remove its concessional status in accordance with division 10.5.3 or the *Planning and Development Act 2007* (repealed), division 9.4.2; or

(b) for a lease granted before 31 March 2008—either of the following amounts has been paid:

(i) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;

(ii) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991* (repealed), section 186 (Variation of lease to pay out rent).

(3) For this Act, a lease—

(a) is ***granted on a concessional basis*** if it is granted for a consideration less than the full market value of the lease, whether paid as a lump sum or payable as rent, or for no consideration; but

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(b) is not ***granted on a concessional basis*** only because the lease—

(i) was granted under the *Leases (Special Purposes) Act 1925* (repealed); and

(ii) was granted before 1 January 1971; and

(iii) is a lease to which the *Leases (Special Purposes) Act 1970* (repealed), section 5AB (Rent) applies.

(4) In this section:

consolidated or subdivided concessional lease means a lease—

(a) granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was granted on a concessional basis; and

(b) which has not had its concessional status removed.

further concessional lease means a further lease—

(a) if the surrendered lease was granted on a concessional basis; and

(b) which has not had its concessional status removed.

paid—an amount has been ***paid*** if the relevant amount—

(a) was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease; or

(b) was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid in accordance with paragraph (a).

regranted concessional lease means a regranted lease—

(a) whether the regrant is on the same or different conditions, if the surrendered lease was granted on a concessional basis; and

(b) which has not had its concessional status removed.

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259 Meaning of *market value lease*—Act

In this Act:

market value lease—

(a) means a lease other than a concessional lease or a lease that is possibly concessional; and

(b) includes a lease mentioned in schedule 2, part 2.2.

Note A lease is taken to be a market value lease if, after an application under s 298, the territory planning authority is not satisfied it is a concessional lease (see s 299 (3) (b) and s 300 (4) (b)).

260 Meaning of *possibly concessional*—Act

(1) For this Act, a lease is ***possibly concessional*** if the lease—

(a) was granted before 31 March 2008; and

(b) does not include a statement in the lease, or a memorial to the lease, that the lease is granted on a concessional basis or otherwise; and

(c) is mentioned in schedule 2, part 2.3.

(2) However, a lease is not ***possibly concessional*** if the lease is also mentioned in schedule 2, part 2.2.

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Part 10.2 Grants of leases generally

Division 10.2.1 Grants of leases

261 Effect subject to pt 10.8

This part has effect subject to part 10.8 (Rural leases).

262 Authority may grant leases

The territory planning authority is authorised to grant, on behalf of the Executive, leases that the Executive may grant on behalf of the Commonwealth.

Note For power to delegate this function, see s 25 (2).

263 Granting leases

(1) The territory planning authority may grant a lease by—

(a) auction; or

(b) tender; or

(c) ballot; or

(d) direct sale.

(2) A lease granted under this section must include—

(a) a statement—

(i) if the lease is granted on a concessional basis—that the lease is concessional; or

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(ii) if the lease is not granted on a concessional basis—to the effect that the lease is a market value lease; and

Examples—statement in lease

1 a condition of the lease

2 a notation or stamp on the lease

Examples—statement to the effect that lease is market value lease

1 the lease is a market value lease

2 the lease is not concessional

(b) for a land rent lease—a statement that the lease is a land rent lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

(3) A lease granted under this section may include provisions—

(a) requiring the lessee to develop the land described in the lease, or any unleased land, in a stated way; or

(b) requiring the lessee to give security for the performance of any of the lessee's obligations under the lease.

264 Lease conditional on approval for stated development

(1) This section applies to a lease granted under section 263 if—

(a) a provision of the lease requires the lessee to obtain the approval of the territory planning authority to undertake development on the land described in the lease; and

(b) the development is exempt development.

(2) The lessee does not require the territory planning authority's approval for the development.

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265 Eligibility for grant of lease

The territory planning authority may restrict the people eligible for the grant of a lease under section 263 by stating, in the relevant notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale.

266 Restriction on direct sale by authority

(1) The territory planning authority must not grant a lease under section 263 (1) (d) unless—

(a) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Executive approves the grant; or

(b) for a lease prescribed by regulation for this paragraph—

(i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and

(ii) the Minister approves the grant; or

(c) the Executive approves the grant under subsection (2); or

(d) for a community lease—the grant is approved by the Executive under section 293; or

(e) the lease is prescribed by regulation; or

(f) the grant is of a residential lease for a single dwelling house; or

(g) the grant is to give effect to a lease variation (whether by consolidation, subdivision or otherwise); or

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(h) the grant is in accordance with—

(i) section 267 (Direct sale if single person in restricted class); or

(ii) section 289 (Grant of further leases); or

(i) for a lease over an encroachment on adjoining land under section 159 (Applications for development encroaching on adjoining land if development prohibited)—the territory plan has been amended in accordance with section 88 (Rezoning—development encroaching on adjoining land).

(2) The Executive may approve the grant by direct sale of a lease (other than a community lease) if satisfied that—

(a) the grant meets 1 or more of the grant objectives; and

(b) a grant by a means other than direct sale—

(i) is not likely to meet any of the grant objectives; or

(ii) may meet 1 or more of the grant objectives but is unlikely to meet the objective to the same extent as the grant by direct sale of the lease.

(3) The validity of a lease granted under section 263 (1) (d) is not taken to be affected by a failure to comply with any criteria or requirement applicable to the grant of the lease.

(4) In this section:

adjoining land—see section 158 (1) (a).

encroachment—see section 158 (1) (b).

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grant objective—each of the following is a ***grant objective***:

(a) to benefit the economy of the ACT or surrounding region;

(b) to contribute to the environment, or social or cultural features in the ACT;

(c) to introduce new skills, technology or services in the ACT;

(d) to contribute to the export earnings and import replacement of the ACT or surrounding region;

(e) to facilitate the achievement of a major policy objective.

single dwelling house—see the territory plan.

267 Direct sale if single person in restricted class

(1) This section applies if—

(a) under section 265 (Eligibility for grant of lease), the territory planning authority restricts the people eligible to apply for a lease; and

(b) only 1 person is eligible for the grant of the lease.

(2) The territory planning authority may grant the lease to the person under section 263 (1) (d) without auctioning the lease, calling for tenders or holding a ballot.

268 Notice of direct sale

(1) The territory planning authority must, not later than 10 working days after the end of a quarter, give the Minister—

(a) a statement of—

(i) the number of single dwelling house leases granted during the quarter; and

(ii) any other information prescribed by regulation for single dwelling house leases; and

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(b) a statement that sets out the prescribed information for each other direct sale lease granted during the quarter; and

(c) a copy of each other direct sale lease granted during the quarter.

(2) The Minister must present the documents given under subsection (1) to the Legislative Assembly not later than 5 sitting days after the day the Minister receives the information.

(3) To remove any doubt, the validity of a single dwelling house lease or other direct sale lease is not affected by a failure to comply with subsection (1) or (2) in relation to the lease.

(4) In this section:

other direct sale lease means a lease granted by direct sale, other than a single dwelling house lease.

prescribed information, for an other direct sale lease, means—

(a) the amount (if any) paid for the grant of the lease; and

(b) if the lease was granted with the approval of the Executive under section 266 (2)—the reason for granting the lease with the approval of the Executive.

269 Direct sale leases subject to certain provisions

(1) A lease granted under section 263 (1) (d) must be granted subject to the provisions that are agreed between the territory planning authority and the applicant for the lease.

(2) A regulation may prescribe a provision or matter that must, or must not, be included in a lease granted under section 263 (1) (d).

270 Authority need not grant lease

(1) The territory planning authority need not grant a lease to an applicant, even if applications for the lease have been invited.

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(2) If applications for a lease have been invited subject to conditions, the territory planning authority may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

271 Report before granting leases

(1) The territory planning authority may prepare a report in relation to a proposal to grant a lease.

(2) A regulation may prescribe what must be included in the report.

(3) The territory planning authority must prepare a report in relation to a proposal to grant a lease if directed in writing to do so by the Minister.

272 Lease must provide for access by road etc

(1) The territory planning authority must not grant a lease unless satisfied that, during the term of the lease, the lessee will have—

(a) direct access to the leased land from a road or road related area; or

(b) access to the leased land from a road or road related area by an access road or track, or in another way, that the lessee may use for entry or exit only, without charge and at any time.

(2) Access provided because of subsection (1) (b)—

(a) must not interfere with a building, garden or stockyard on the land (the ***affected land***) through which the access is provided at the time the access is provided; and

(b) must be located in a way that causes as little damage to the affected land, or inconvenience to the lessee of the affected land, as possible.

(3) The validity of a lease granted under this part is not affected by a failure to comply with this section.

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(4) In this section:

road—see the *Road Transport (General) Act 1999*, dictionary.

road related area—see the *Road Transport (General) Act 1999*, dictionary.

273 Failure to accept and execute lease

(1) This section applies if, not later than the end of the period prescribed by regulation, a person who is entitled to the grant of a lease under this chapter fails to—

(a) accept and execute the lease; or

(b) pay any amount the person is required to pay before being granted the lease.

(2) The territory planning authority may, by written notice to the person, end the person's right to be granted the lease.

(3) A notice under subsection (2) must—

(a) state the ground on which it is given; and

(b) state that it takes effect on the day 20 working days after the day it is given.

(4) If the territory planning authority does not know the home address of the person to whom the notice under subsection (2) is to be given, the authority may give public notice of the notice.

(5) A notice given under subsection (2) takes effect on the day 20 working days after the day it is given.

(6) A person whose right to be granted a lease has been ended under this section does not have any claim for compensation in relation to the ending of the right or for the recovery of any money paid to the territory planning authority in relation to the grant of the lease.

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Division 10.2.2 Payment for leases

274 Payment for leases generally

(1) The territory planning authority must not grant a lease other than for payment of an amount that is not less than the market value of the lease.

(2) However, subsection (1) does not apply in relation to—

(a) a rental lease granted for not less than the market rental value of the lease; or

(b) a land rent lease; or

(c) a lease mentioned in section 275 (Payment for adjoining concessional leases); or

(d) the grant of a community lease by—

(i) direct sale in accordance with section 293 (Grant of community lease by direct sale); or

(ii) tender in accordance with section 295 (Grant of community lease by tender); or

(e) a further lease granted under section 289 (Grant of further leases); or

(f) the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid; or

(g) the grant of a lease of land prescribed by regulation to the University of NSW.

(3) For subsection (1) and (2) (f), payment for a lease may include monetary and non-monetary components.

Examples—non-monetary components

provision of infrastructure, goods, services or other works

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(4) If before a lease is granted, a contract for the grant of the lease is entered into, the market value of the lease must be determined at the time the contract is entered into.

(5) The validity of a lease granted by the territory planning authority is not affected by a failure to comply with this section.

275 Payment for adjoining concessional leases

(1) This section applies to the grant of a lease (a ***new lease***) under section 263 (1) (d) if—

(a) the new lease adjoins another lease (an ***adjoining lease***) granted to the person; and

(b) the adjoining lease is a concessional lease.

(2) The territory planning authority may grant the new lease on payment of an amount worked out in the way the amount payable for the adjoining lease was worked out.

(3) If the amount payable for the adjoining lease was worked out under a repealed Act, the repealed Act applies to working out the amount payable for the new lease as if the repealed Act had not been repealed.

(4) In this section:

repealed Act means—

(a) the *Land (Planning and Environment) Act 1991* (repealed); or

(b) the *Planning and Development Act 2007* (repealed).

Division 10.2.3 Use of leased land

276 Use of land for leased purpose

(1) Land, or a building or other structure on land, in relation to which a lease has been granted, whether before or after the commencement of this part, must not be used for a purpose other than a purpose authorised by the lease or this Act.

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(2) However, if the lease is a residential lease, the land may also be used for a home business.

Note While the use of a residential lease for a home business is authorised, beginning to use the land for a home business requires development approval unless the use is an exempt development (see pt 7.2).

(3) In this section:

home business, in relation to a residential lease of land, means a profession, trade or other occupation carried on by a resident of a building or other structure on the land.

277 Authority may authorise temporary use of land for special circumstances

(1) The territory planning authority may authorise the use of land subject to a lease, or a building or other structure on the land, for a purpose other than a purpose authorised by the lease if satisfied—

(a) the land, building or other structure is needed urgently for the purpose; and

(b) using the land, building or other structure for the purpose will achieve a significant public benefit.

(2) The territory planning authority must not authorise a use under subsection (1) for a period longer than is reasonably necessary for the purpose.

278 No right to use, flow and control of water

A lease or further lease granted under this chapter does not give a right to the use, flow and control of water (including water containing impurities) under the land described in the lease.

Note This section does not apply in relation to leases or further leases granted before the commencement of the *Water Resources Act 1988* (repealed) on 11 December 1998.

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Division 10.2.4 Dealings with leases

279 Leases to which restriction under s 280 applies

(1) Section 280 applies in relation to the following leases:

(a) a lease that provides that the lessee cannot deal with the land, or part of the land, described in the lease without the prior written approval of the territory planning authority;

(b) a lease granted under section 263 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 265;

(c) a lease granted under section 263 (1) (d), other than—

(i) a lease granted to the Territory; or

(ii) a single dwelling house lease, unless the lease provides that the lessee cannot deal with the land, or part of the land, described in the lease without the prior written approval of the territory planning authority; or

(iii) a lease—

(A) that was offered for sale under section 263 (1) (a) or (c) but not sold; and

(B) for which not less than the market value was paid for the subsequent direct sale; or

(iv) a lease—

(A) that was sold under section 263 (1) (c) but the contract of sale was rescinded or otherwise ended before the lease was granted under the contract; and

(B) for which not less than the market value was paid for the subsequent direct sale;

(d) a lease prescribed by regulation.

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(2) Section 280 does not apply in relation to the following leases:

(a) a concessional lease;

(b) a rural lease;

(c) a lease granted to the University of NSW of land mentioned in section 274 (2) (g).

Note Dealings with concessional leases and rural leases are restricted under s 306 and s 351.

(3) If section 280 applies to a lease, the territory planning authority must tell the registrar-general that it applies.

Note If the territory planning authority tells the registrar-general that s 280 applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

280 Restriction on transfer, assignment and parting with possession

(1) This section applies if a memorial in relation to a lease states that this section applies to it.

(2) The lessee under the lease, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease in either of the following ways without the territory planning authority's written approval under section 281:

(a) assign or transfer the lease;

(b) part with possession of the land described in the lease or any part of it.

(3) However, a regulation may exempt a lease from this section, generally or in relation to a particular dealing.

(4) A dealing mentioned in subsection (2) in relation to a lease that is made or entered into without the territory planning authority's approval has no effect.

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(5) However, subsection (4) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

(6) In this section:

restricted period, for a lease, means—

(a) for a lease that provides that the lessee cannot deal with the land, or part of the land, described in the lease without the territory planning authority's prior written approval—the period stated in the lease or, if no period is stated, the term of the lease; or

(b) for a lease granted under section 263 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 265—5 years after the day the lease was granted; or

(c) for a lease granted under section 263 (1) (d)—the period ending 5 years after the day the lease was granted; or

(d) for a lease prescribed by regulation—

(i) the period prescribed by regulation for the lease; or

(ii) if no period is prescribed—the term of the lease.

281 Approval to transfer, assign, or part with possession

(1) The territory planning authority must not approve a dealing under this section in relation to a lease unless—

(a) satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who satisfies the criteria prescribed under section 266 in relation to the class of leases in which the lease is included; or

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(b) if the lease was originally granted by restricted auction, tender or ballot—satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who could have been granted the original lease.

(2) The validity of a dealing made or entered into with the territory planning authority's written approval is not affected—

(a) by a defect or irregularity in relation to the giving of the approval; or

(b) because a ground, or all grounds, for the approval had not arisen.

282 Restriction on transfer, assignment and parting with possession—certain University of NSW leases

(1) This section applies to a lease granted to the University of NSW of land mentioned in section 274 (2) (g).

(2) The territory planning authority must tell the registrar-general that this section applies to the lease.

Note If the territory planning authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

(3) If a memorial stating that this section applies to the lease is included in the register under the *Land Titles Act 1925*, the University of NSW, or anyone else with an interest in the lease, must not—

(a) for 20 years after the day the lease was granted—deal with the lease; and

(b) after the 20-year period—deal with the lease without the territory planning authority's approval under section 283.

(4) A dealing in relation to a lease to which this section applies that is made or entered into in contravention of subsection (3) has no effect.

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(5) However, subsection (4) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

(6) In this section:

deal, with a lease—

(a) means—

(i) assign or transfer the lease; or

(ii) vary the lease; or

(iii) part with possession of the land described in the lease or any part of it; but

(b) does not include a subdivision or consolidation of the lease.

283 Approval to transfer, assign, or part with possession—certain University of NSW leases

(1) The territory planning authority must not approve a dealing under section 282 (3) (b) in relation to a lease—

(a) without the Executive's approval; and

(b) unless satisfied that—

(i) for an assignment or transfer of the lease or change in possession of the land described in the lease—the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is—

(A) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth); or

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(B) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth); or

(ii) for a variation of the lease—the variation is consistent with the authorised use of the land under the original lease.

(2) The validity of a dealing made or entered into with the territory planning authority's approval is not affected—

(a) by a defect or irregularity in relation to the giving of the approval; or

(b) because a ground, or all grounds, for the approval had not arisen.

284 Restriction on subletting of land

(1) A lessee must not sublease any land described in a lease without the territory planning authority's prior written approval.

Note A sublessee cannot further sublease the land under the sublease (see *Land Titles Act 1925*, s 88E).

(2) The territory planning authority must, in writing, approve or refuse to approve a sublease of land not later than 10 working days after the authority is asked, in writing, to approve the sublease.

(3) The territory planning authority must not approve a sublease of land—

(a) other than in accordance with criteria prescribed by regulation; and

(b) if the sublease—

(i) is inconsistent with this Act or the *Land Titles Act 1925*; or

(ii) allows—

(A) the extension of the initial term of the sublease; or

(B) the grant of a further sublease; and

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(c) unless satisfied that, during the term of the sublease (including a declared land sublease), the sublessee will have—

(i) direct access to the subleased land from a road or road related area; or

(ii) access to the subleased land from a road or road related area by an access road or track, or in another way, that the sublessee may use for entry or exit only, without charge and at any time.

(4) If the territory planning authority approves a sublease, the lessee must execute and give the executed sublease to the authority.

(5) The territory planning authority must execute and give the executed sublease to the registrar-general for registration under the *Land Titles Act 1925*.

(6) Access provided because of subsection (3) (c) (ii)—

(a) must not interfere with a building, garden or stockyard on the land through which the access is provided at the time the access is provided; and

(b) must be located in a way that causes as little damage to the land, or inconvenience to any sublessee or the lessee of the land, as possible.

(7) A regulation may prescribe—

(a) the form of a sublease; and

(b) a document that must accompany or be included in a sublease; and

(c) a provision that must or must not be included in the sublease.

(8) A provision of a sublease is void if—

(a) it is inconsistent with this Act or the *Land Titles Act 1925*, to the extent of the inconsistency; or

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(b) it allows the extension of the initial term of the sublease; or

(c) it allows the grant of a further sublease.

(9) Nothing in this Act, by itself, creates an obligation on a lessee under a sublease of land to grant the sublessee a further or new sublease.

Note The *Unit Titles Act 2001*, s 167AA provides for the grant of further leases of units and common property if a declared land sublease is subdivided by a units plan.

(10) This section does not apply to a part of land sublet under section 285 and section 286.

(11) In this section:

road—see the *Road Transport (General) Act 1999*, dictionary.

road-related area—see the *Road Transport (General) Act 1999*, dictionary.

285 Subletting part of building

(1) Any part of a building on land described in a lease may, subject to the lease, any sublease of the land and this Act, be sublet separately from the remainder of the building.

(2) If a part of a building is sublet separately from the remainder of the building, any part of the parcel of land with the building on it may be sublet with the part of the building separately from the remainder of the parcel, as long as the part of the parcel sublet adjoins the part of the parcel with the building on it.

(3) To remove any doubt, nothing in this section prevents the subletting of a whole building.

286 Subletting for siting of mobile homes

(1) This section applies if—

(a) a lease of land authorises the use of the land described in the lease as a mobile home park; and

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(b) part of the land is being used, or intended to be used, for the siting of a mobile home.

(2) The part of the land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of the land.

(3) In this section:

mobile home means a dwelling (whether or not on wheels) capable of being transferred from place to place and re-erected.

mobile home park means land used for the purpose of accommodating mobile homes or caravans, and includes a caravan park or camping ground.

287 Land leased to be held as undivided parcel

(1) The land described in a lease must at all times be held and occupied by or under the lessee as 1 undivided parcel, unless section 284, section 285 or section 286 provides otherwise.

(2) The land described in a lease may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged, unless a provision of this chapter provides otherwise.

288 Leases held by Territory not to be transferred or assigned

(1) The Territory must not transfer or assign a lease if the Territory is the registered proprietor of the lease.

(2) To remove any doubt, subsection (1) does not prevent the Territory from subletting a lease if the Territory is the registered proprietor of the lease.

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Part 10.3 Grants of further leases

289 Grant of further leases

(1) This section applies if—

(a) a person who is or was the lessee under a lease of land (the ***old lease***) applies to the territory planning authority for the grant of another lease of the land (a ***further lease***); and

(b) neither the Territory nor the Commonwealth needs the land for a public purpose; and

(c) either—

(i) before the expiry of the old lease, the lessee surrenders the old lease; or

(ii) the old lease expired not more than 6 months before the application for the grant of the further lease; and

(d) if the old lease is not a residential lease—all rent due under the old lease is paid; and

(e) if the further lease is a rural lease—

(i) if the further lease is a rental lease—the amount of rent determined under section 347 is payable under the further lease; or

(ii) in any other case—

(A) the amount determined under section 347 for the grant of the further lease is paid; or

(B) if the determination under section 347 for the grant of the further lease provides for the payment of the amount by instalments—any instalment required, under the determination, to be paid before the further lease is granted is paid; and

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(f) any criteria prescribed by regulation are satisfied.

(2) For an old lease granted or arising under the *Unit Titles Act 2001*—

(a) the owners corporation for a units plan may apply on behalf of an owner of a unit for the grant of a further lease of the unit; and

(b) for a units plan that subdivides land under a declared land sublease—the owners corporation for the units plan may apply for the grant of a further lease under the *Unit Titles Act 2001*, section 167AA.

(3) The territory planning authority must grant the lessee the further lease of the land for a term not longer than—

(a) 99 years; or

(b) for a rural lease for which a period shorter than 99 years is determined under section 348—the shorter period.

(4) A further lease granted under this section must include a statement—

(a) if the lease is a concessional lease—that the lease is concessional; or

(b) if the lease is not concessional—to the effect that the lease is a market value lease.

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

(5) A further lease begins on the day after—

(a) the day the old lease is surrendered; or

(b) for a further lease granted on application after the expiry of the old lease—the day after the old lease expires.

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(6) If the term of a further lease granted under subsection (3) is not longer than the term of the old lease, any fee payable under subsection (3) for the grant of the further lease must not be more than the cost of granting the further lease.

290 Grant of further lease includes same authorised use

(1) This section applies if a further lease is granted under section 289 on the surrender of an existing lease.

(2) The further lease must authorise each use of the leased land, and any building or other structure on the land, that the surrendered lease authorised.

(3) However, subsection (2) does not apply if a person applies for a change of use of land, or of a building or other structure on land, that involves a lease variation at the same time as applying for the grant of the further lease.

(4) To remove any doubt, a further lease may include provisions that are different from the lease that it is replacing.

Example—s (4)

A further lease includes a restriction on the number of dwellings that may be built on the land described in the lease, and the old lease did not include a similar provision.

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Part 10.4 Grants of concessional leases to community organisations

291 Meaning of *community lease* and *community lease use*

(1) In this Act:

community lease means a concessional lease granted to a community organisation for 1 or more community lease uses.

community lease use means each of the following community uses:

(a) community activity centre;

(b) community theatre;

(c) cultural facility;

(d) educational establishment;

(e) indoor recreation facility;

(f) outdoor education establishment;

(g) outdoor recreation facility;

(h) place of worship;

(i) playing field;

(j) religious associated use;

(k) a community use prescribed by regulation.

(2) A term used in subsection (1) has the same meaning as it has in the territory plan.

(3) In this section:

community use includes a minor use incidental to the community use.

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292 Meaning of *community lease provisions*

In this Act:

community lease provisions, for a community lease, means the following:

(a) a provision requiring the lease to be held by a sole lessee;

(b) a provision stating the restrictions applying to the lease under section 307 (Approval of dealings with concessional leases) when the lease is granted;

(c) if the lease includes a building and development provision—a provision stating that the provisions mentioned in paragraphs (d) to (f) commence on the issue of a certificate of occupancy stating that the building and development provision has been complied with;

(d) if the community lease use for which the land described in the lease must be used involves a non-continuous service being provided on the land—a provision stating the minimum requirements for how frequently, and for how long, the service must be provided;

(e) a provision requiring the lessee to give the territory planning authority prescribed information about the use of the land described in the lease;

(f) a provision requiring the lessee to give the territory planning authority reports about the use of the land described in the lease;

(g) any other provision prescribed by regulation.

Example—par (d)

the lessee must provide a place of worship that is open on weekends, and on 3 working days, for at least 8 months per year

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293 Grant of community lease by direct sale

(1) The Executive may approve the grant by direct sale of a community lease if satisfied that—

(a) the grant will achieve the objective of delivering a service that provides ongoing benefits to the community; and

(b) a grant by a means other than direct sale is unlikely to meet that objective to the same extent as the grant by direct sale of the lease.

(2) If the Executive approves the grant of a community lease under subsection (1), the approval must—

(a) state the reasons why the grant is not to be made by tender under section 295; and

(b) state the community lease use for which the land must be used.

(3) A statement of reasons under subsection (2) must be published on the authority website.

(4) If the territory planning authority grants a community lease by direct sale, the lease must include—

(a) the community lease use for which the land must be used; and

(b) the community lease provisions.

Note 1 The territory planning authority may only grant a community lease if the Executive approves the grant under s (1) (see s 266 (1) (d)).

Note 2 The lease must also include a statement that the lease is a concessional lease (see s 263 (2) (a) (i)).

294 Statement of future community land for stated districts

(1) The territory planning authority may, for a stated district, make a statement setting out the government's priorities in relation to community use of land in the district.

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(2) The statement—

(a) must identify 1 or more areas of land that may be leased for community lease uses; and

(b) for each identified area—must propose the community lease use; and

(c) may state that the identified land is to be used only for the proposed community lease use.

(3) A statement is a notifiable instrument.

295 Grant of community lease by tender

(1) The territory planning authority may grant a community lease by tender only if—

(a) the land described in the lease is in an area of land identified under section 294 (2) (a); and

(b) the land is to be used only for the community lease use proposed under section 294 (2) (b); and

(c) the authority has given notice—

(i) identifying the land by the block, section number and division; and

(ii) stating the community lease use for which the land must be used; and

(d) the tender process is undertaken in the way prescribed by regulation; and

(e) the authority is satisfied that the person to whom the lease is granted meets the criteria prescribed by regulation; and

(f) the lease includes—

(i) the community lease use for which the land must be used; and

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(ii) the community lease provisions.

Note The lease must also include a statement that the lease is a concessional lease (see s 263 (2) (a) (i)).

(2) A notice under subsection (1) (c) is a notifiable instrument.

(3) In this section:

section, in relation to land—see the *Districts Act 2002*, dictionary.

296 Community use reports

(1) This section applies if the lessee of a community lease is required under the lease to give the territory planning authority reports about the use of the land described in the lease.

(2) The lessee must, for each financial year, prepare a report about how the lessee's use of the land has benefitted the broader community during the financial year.

(3) The report must—

(a) include any matter prescribed by regulation; and

(b) be given to the territory planning authority within—

(i) 3 months after the end of the financial year; or

(ii) any longer period allowed by the authority.

(4) The territory planning authority may ask the lessee for additional information for the report.

297 Audit of use of community lease land

(1) The territory planning authority may require the lessee of a community lease to commission an audit of the lessee's use of the land described in the lease.

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(2) The audit must be—

(a) paid for by the lessee; and

(b) undertaken by—

(i) an auditor appointed by the territory planning authority; or

(ii) if the authority decides not to appoint an auditor—an auditor that is independent of the lessee; and

(c) undertaken in accordance with procedures decided by the territory planning authority following consultation with the lessee.

(3) The lessee must make all records relating to the lessee's use of the land available to the auditor for examination within a reasonable time after the auditor asks for the records.

(4) The territory planning authority must not require a lessee to commission more than 1 audit in any 6-month period.

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Part 10.5 Concessional leases

Division 10.5.1 Deciding whether leases concessional

298 Application for decision about whether lease concessional

A lessee may apply to the territory planning authority for a decision about whether a lease is a concessional lease.

299 Decision about whether lease concessional

(1) On application under section 298, the territory planning authority must decide if the lease is a concessional lease.

(2) However, if a person other than the lessee has a registered interest in the lease, the territory planning authority must not make a decision under subsection (1) unless the authority has—

(a) given written notice of the application to the person; and

(b) in the notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of at least 15 working days after the day the notice is given to the person; and

(c) considered any representations made in the time given in the notice.

(3) If the territory planning authority is not satisfied that the lease is a concessional lease—

(a) the authority must decide that the lease is not concessional; and

(b) the lease is taken to be a market value lease.

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(4) However, the territory planning authority is taken to have decided that the lease is a concessional lease if the authority has not made a decision on the application at the end of the period of 15 working days after—

(a) the day the application is made; or

(b) if a person other than the lessee has a registered interest in the lease—the day the period for making representations given in the notice ends.

(5) Despite subsection (4), the territory planning authority may, within 20 working days after the decision under subsection (4) is taken to have been made, decide that the lease is not a concessional lease.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the territory planning authority will not be able to make a decision under s (5) if the ACAT has decided an application for review of the deemed decision under s (4) (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

(6) The territory planning authority must give written notice of the decision under subsection (1) to the applicant and anyone else with a registered interest in the lease to which the decision relates.

(7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

300 Authority may decide if lease concessional on own initiative

(1) The territory planning authority may on its own initiative decide if a lease is concessional.

(2) However, the territory planning authority must not make a decision under subsection (1) unless the authority has—

(a) given written notice of the authority's intention to make the decision to each person with a registered interest in the lease; and

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(b) in the notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of at least 15 working days after the day the notice is given to the person; and

(c) considered any representations made in the time given in the notice.

(3) If the territory planning authority gives a notice under subsection (2), the authority must make a decision under subsection (1) in relation to the lease not later than 15 working days after the day the period for making representations given in the notice ends.

(4) If the territory planning authority is not satisfied that the lease is a concessional lease—

(a) the authority must decide that the lease is not concessional; and

(b) the lease is taken to be a market value lease.

(5) The territory planning authority must give written notice of the decision under subsection (1) to each person with a registered interest in the lease to which the decision relates.

301 Review of certain decisions about concessional status of lease

(1) This section applies to a lease if—

(a) the lease was granted before 31 March 2008; and

(b) the lease does not state in the lease that the lease is a concessional lease; and

(c) the territory planning authority made a decision that the lease is concessional (the ***original decision***), whether before or after 31 March 2008; and

(d) the original decision is stated in a memorial to the lease.

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(2) The lessee of the lease may apply to the territory planning authority for a review of the original decision.

(3) The territory planning authority must decide the application if satisfied that—

(a) there is additional relevant information about the concessional status of the lease; or

(b) there is information to indicate that the authority made a formal error when it made the original decision.

(4) If subsection (3) applies, the application is taken to be an application under section 298.

(5) Also, if the territory planning authority is satisfied of the matters mentioned in subsection (3), it may on its own initiative, review the original decision in accordance with section 300.

302 Lodging notice of decision about concessional status of lease

(1) This section applies if the territory planning authority decides, or is taken to have decided, under this division that a lease—

(a) is not a concessional lease; or

(b) is a concessional lease and—

(i) no application is made to the ACAT for review of the decision within the time allowed for applications; or

(ii) an application for review of the decision is made and the ACAT—

(A) confirms the lease is a concessional lease; or

(B) remits the matter for reconsideration by the territory planning authority and the authority decides that the lease is a concessional lease.

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(2) The territory planning authority must lodge a notice with the registrar-general for registration under the *Land Titles Act 1925* that—

(a) if the authority decides that the lease is a concessional lease—the lease is concessional; or

(b) if the authority decides that the lease is not a concessional lease—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

303 Concessional status of leases

(1) This section applies to a lease if—

(a) the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease; or

(b) the territory planning authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.

Examples—par (a)

a condition of the lease or a notation or stamp on the lease

(2) A person may rely on the statement and deal with the lease as a concessional lease.

(3) The territory planning authority must not make a decision that would change the lease's status as a concessional lease.

(4) This section is subject to the following:

(a) a review of a decision about the concessional status of a lease under section 301;

(b) a variation of the lease to remove the concessional status of the lease under division 10.5.3;

(c) an order of a court or tribunal.

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304 Non-concessional status of leases

(1) This section applies to a lease if—

(a) the lease includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease; or

(b) the territory planning authority has lodged a notice that the lease is a market value lease with the registrar-general for registration under the *Land Titles Act 1925*.

Examples—par (a)

1 a condition of the lease or a notation or stamp on the lease that it is a market value lease

2 a statement that the lease is not concessional

(2) A person may rely on the statement and deal with the lease as a market value lease.

(3) The territory planning authority must not make a decision that would change the lease's status as a market value lease.

(4) This section is subject to an order of a court or tribunal.

305 Concessional status guidelines

(1) The territory planning authority may make guidelines setting out information to assist people to decide whether a lease is a concessional lease, market value lease or possibly concessional.

(2) A person who is deciding whether a lease is a concessional lease, market value lease or possibly concessional may take into account the concessional lease guidelines but is not bound by the guidelines.

(3) A concessional lease guideline is a notifiable instrument.

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Division 10.5.2 Restrictions on dealings with concessional leases

306 Restrictions on dealings with concessional leases

(1) The lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written approval of the territory planning authority.

(2) A dealing in relation to a lease to which this section applies that is made or entered into without the territory planning authority's approval has no effect.

(3) However, subsection (2) does not apply to a dealing—

(a) registered under the *Land Titles Act 1925*; or

(b) made under any of the following orders:

(i) an order of the Family Court;

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);

(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 (Adjustment of property interests) adjusting the property interests of parties in a domestic relationship; or

(c) that happens by operation of, or under, bankruptcy or insolvency; or

(d) in any circumstances prescribed by regulation.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

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307 Approval of dealings with concessional leases

(1) The territory planning authority must not approve a dealing under section 306 in relation to a lease unless—

(a) satisfied that the person to whom it is proposed that the lease be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given—

(i) is a person (an ***eligible person***) who could be granted the concessional lease; or

(ii) for a dealing with a community lease—

(A) is a community organisation; and

(B) satisfies the criteria prescribed under section 295 (Grant of community lease by tender); or

(b) for a sublease—satisfied that the lessee, or an eligible person, continues to be the main user of the lease.

(2) In deciding whether the lessee proposing to grant a sublease, or an eligible person, continues to be the main user of the lease, the territory planning authority must consider the following:

(a) the proposed area of the sublease;

(b) the extent to which the lessee or eligible person continues to provide most of the goods, services or both to be provided from the area leased;

(c) the extent to which the use of the area proposed to be subleased will be ancillary to the permitted uses of the area that is not proposed to be subleased;

(d) the extent to which the use of the area proposed to be subleased will be complementary to the use of the area that is not proposed to be subleased.

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(3) The validity of a dealing made or entered into with the territory planning authority's approval is not affected—

(a) by a defect or irregularity in relation to the giving of the approval; or

(b) because a ground, or all grounds, for the approval had not arisen.

Division 10.5.3 Varying concessional leases to remove concessional status

308 Removal of concessional status by variation of lease

(1) The concessional status of a lease may only be removed by a variation of the lease.

(2) Subsection (1) does not apply to a review of a decision about the concessional status of a lease under section 301.

309 Development application to remove concessional status of lease

(1) This section applies to a development application to vary a concessional lease to remove its concessional status.

(2) The territory planning authority must refer the development application to the Minister for decision under section 185 (Deciding development applications).

(3) In deciding the development application under section 185, the Minister must also consider the following:

(a) any information or documents required to accompany the application under section 166 (2) (d);

(b) whether the Territory wishes to continue to monitor the use and operation of the concessional lease by requiring approval before the lease is dealt with;

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(c) whether approving the application would cause any disadvantage to the public, taking into account potential uses of the leased land—

(i) mentioned in a statement under section 294 (Statement of future community land for stated districts); or

(ii) that are consistent with the territory plan, whether or not those uses are authorised by the lease;

(d) whether the Territory should buy back, or otherwise acquire, the lease;

(e) whether the Territory wishes to encourage the continued use of the leased land for an authorised use under the lease by retaining the concessional status of the lease;

(f) whether varying the lease to remove its concessional status would be consistent with any statement under section 294 or notice under section 295 (1) (c) (Grant of community lease by tender) that applies to the lease;

(g) any representation about the application received by the territory planning authority and not withdrawn;

(h) the availability and leased purpose of any land to which concessional leases or community uses apply in the surrounding area.

(4) The development application must be for approval to vary the lease to remove its concessional status only.

(5) The following provisions do not apply to the development application:

(a) section 170 (When authority must refer development application);

(b) section 186 (Considerations when deciding development applications);

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(c) section 187 (Conditional approvals);

(d) section 189 (Restrictions on development approval);

(e) section 190 (Development approval contrary to entity advice);

(f) section 191 (Referral of matter protected by the Commonwealth).

(6) The Minister must not approve the development application without the approval of the Executive.

310 Development approval to remove concessional status subject to condition

(1) If the Minister approves a development application under section 185 to vary a concessional lease to remove its concessional status, the approval is subject to the condition that the lessee pays the Territory or a territory entity the amount worked out under section 311.

Note If the variation of the lease is not solely for the purpose of removing the lease's concessional status, a person may also be required to pay a lease variation charge under div 10.7.3.

(2) The amount payable is taken to be paid to the Territory or a territory entity if the amount is waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount is waived and the rest of the amount is paid.

311 Working out amount payable to remove concessional status

(1) This section applies if a development application in relation to a lease is subject to a condition under section 310.

(2) The amount payable is worked out as follows:

$$\text{MV} - \left(\frac{\text{AP}}{\text{OV}} \times \text{MV} \right)$$

AP, for a lease, means the amount (if any) paid for the lease at grant.

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MV, for a lease, means the market value of the lease if it were a market value lease.

OV, for a lease, means the market value of the lease at grant if it had been a market value lease.

(3) To remove any doubt, an amount paid as rent under a lease is not an amount paid for the lease.

312 Uses under leases varied by surrender and regrant to remove concessional status

(1) This section applies to a lease varied only to remove the concessional status of the lease by surrender and regrant of the lease.

(2) The regranted lease authorises each use of the land, and any building or other structure on the land, authorised under the lease before the lease was varied to remove its concessional status.

(3) Subsection (2) applies despite anything to the contrary in the territory plan.

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Part 10.6 Rent variations and relief from provisions of leases

313 Application to land rent—pt 10.6

This part does not apply to a variation of land rent in accordance with the provisions of a land rent lease.

314 Variations of rent

(1) If the rent payable under a lease is varied in accordance with the provisions of the lease, the territory planning authority must give the lessee written notice of the variation.

(2) A variation of rent mentioned in the notice comes into operation on—

(a) the day 20 working days after the day the notice is given; or

(b) if the lease under which the variation is made provides that the variation comes into operation on a later day—the later day.

315 Review of variations of rent

(1) This section applies if—

(a) the rent payable under a lease is varied in accordance with the provisions of the lease; and

(b) the lease does not provide for the submission to arbitration of differences between the parties to the lease about variation of the rent.

(2) The lessee may, not later than 20 working days after receiving the notice under section 314 (1) about the variation, ask the territory planning authority in writing to review the variation.

(3) The making of the request does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

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(4) If the request is made in relation to a variation, the territory planning authority must review the variation and may—

(a) confirm the variation; or

(b) set the variation aside and substitute any other variation the authority considers appropriate.

316 Reduction of rent and relief from provisions of lease

(1) The territory planning authority may approve—

(a) a reduction of the rent payable under a lease, or of an amount payable, in relation to any occupation of land; or

(b) the grant of relief, to a lessee or occupier of land, from compliance, completely or partly, with any provision to which the person's lease or occupation is subject.

(2) The reduction or grant of relief may be for a maximum period of 3 years, and may include a period before the approval.

(3) If the territory planning authority gives an approval under subsection (1), the liability or obligation of the lessee or occupier under the lease, or in relation to the person's occupation, is discharged for the period approved, to the extent of the reduction or grant of relief approved.

(4) An approval under subsection (1) may be conditional.

(5) If the territory planning authority approves a grant of relief to a lessee or occupier under subsection (1), the authority must give the lessee or occupier written notice of the reduction of rent or amount payable or other grant of relief approved.

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Part 10.7 Lease variations

Division 10.7.1 Lease variations—general

317 Effect subject to pt 10.8

This part has effect subject to part 10.8 (Rural leases).

Division 10.7.2 Variation of rental leases

318 Variation of rental leases

(1) The territory planning authority must not execute a variation of a rental lease unless any rent, including additional rent, payable under the lease up to the day the variation is executed has been paid.

(2) If the territory planning authority executes a variation of a rental lease—

(a) the authority must reassess the rent payable under the lease, following (as far as possible) the method provided by the rental provisions of the lease; and

(b) the rent payable under the lease must be adjusted in accordance with the reassessment with effect from the day the variation is executed.

(3) Subsection (2) does not apply to a variation of—

(a) a rental lease—

(i) to reduce the rent payable to a nominal rent; or

(ii) otherwise affecting the rental provisions of the lease; or

(b) a land rent lease.

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319 Advice of rent payable on variation of lease

(1) This section applies if—

(a) the territory planning authority approves a variation of a lease; and

(b) the lease is a lease (other than a land rent lease) under which rent or additional rent is payable.

(2) The territory planning authority must—

(a) work out the amount that would be payable under the lease for rent, including additional rent, up to the day when the authority expects the variation will be executed; and

(b) give the lessee written notice of—

(i) the amount worked out for rent, including additional rent, under paragraph (a); and

(ii) the day up to which the amount payable for rent and additional rent has been worked out; and

(iii) the day by which the authority requires payment of the amount stated under subparagraph (i) to allow the variation of the lease to be executed on the day stated under subparagraph (ii).

320 Application for rent payout lease variation

(1) This section applies to the following leases:

(a) a land rent lease;

(b) a lease that is included in a class of leases prescribed by regulation.

(2) The lessee may apply to the territory planning authority for a variation of the lease to reduce the rent payable to a nominal rent.

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321 Decision on rent payout lease variation application

(1) Within the period prescribed by regulation after the day the territory planning authority receives an application by a lessee under section 320 (2), the authority must—

(a) decide to vary the lease to reduce the rent payable to a nominal rent; or

(b) if subsection (2) stops the authority from varying the lease—refuse to vary the lease.

(2) The territory planning authority must not vary the lease to reduce the rent payable to a nominal rent unless—

(a) all amounts payable to the Territory up to the day of variation of the lease for tax levied in relation to the land described in the lease have been paid; and

(b) for a land rent lease, all rent and other amounts payable to the commissioner for revenue under the *Land Rent Act 2008* up to the day the variation is executed in relation to the land have been paid; and

(c) the provisions of the lease requiring the lessee to develop the land have been complied with up to the day the variation is executed; and

(d) the lessee has paid the Territory an amount decided by the authority under any policy direction made under section 322.

(3) The territory planning authority must give written notice of the decision on the application to the applicant.

(4) If the amount mentioned in subsection (2) (d) has not been paid within 12 months from the day the notice under subsection (3) is given, the territory planning authority's decision to vary the lease is revoked.

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(5) In this section:

tax means a tax under the following tax laws:

(a) division 10.7.3 (Variation of nominal rent leases);

(b) the *Duties Act 1999*;

(c) the *Land Tax Act 2004*;

(d) the *Rates Act 2004*.

322 Policy directions for paying out rent

(1) The Minister may make policy directions for section 321 (2) (d).

(2) A policy direction is a disallowable instrument.

323 Power to decide rent payout applications deemed refused

(1) This section applies if—

(a) an application has been made under section 320; and

(b) the time for deciding the application has ended; and

(c) the territory planning authority has not decided the application under section 321.

(2) The territory planning authority is taken to have refused the application.

(3) However, the territory planning authority may decide to vary the lease to reduce the rent payable to a nominal rent under section 321 despite subsection (2).

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the territory planning authority will not be able to make a decision under s (3) if the ACAT has decided an application for review of the deemed decision under s (2) (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

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324 Lease to be varied to pay out rent

(1) This section applies if the territory planning authority decides to vary a lease under section 321 to reduce the rent payable to a nominal rent.

(2) The territory planning authority must vary the lease in accordance with the decision.

(3) The lease as varied must provide that the lessee is to pay a nominal rent if and when that rent is demanded.

325 No variations to extend term

The territory planning authority must not execute a variation of a lease to extend the term of the lease.

326 No variation of certain leases for 5 years

(1) This section applies to the following leases:

(a) a lease granted in accordance with section 267 (Direct sale if single person in restricted class);

(b) a lease to which section 280 (Restriction on transfer, assignment and parting with possession) applies.

(2) However, this section does not apply to a lease exempted by regulation.

(3) The territory planning authority must not approve a variation of the lease earlier than 5 years after the day the lease is granted.

(4) However, the territory planning authority may approve a variation of the lease if it does not limit, add or remove an authorised use of the land described in the lease.

(5) In this section:

authorised use, of land—

(a) means a use authorised (whether expressly or by implication) by a lease; and

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(b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

Division 10.7.3 Variation of nominal rent leases

Note This division is a tax law under the *Taxation Administration Act 1999*. As a tax law, this division is subject to provisions of that Act about the administration and enforcement of tax laws generally.

Subdivision 10.7.3.1 Preliminary

327 Definitions—div 10.7.3

In this division:

chargeable variation, of a nominal rent lease, means a variation of the lease other than—

(a) a variation, if—

(i) the only effect of the variation is to alter a common boundary between 2 or more adjoining leases; and

(ii) the authorised use of the land described in each adjoining lease (however described) is the same; and

(iii) none of the adjoining leases is a rural lease; or

(b) a variation if the only effect of the variation is to remove the lease's concessional status; or

(c) a variation prescribed by regulation.

gross floor area—see the territory plan.

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non-standard chargeable variation, of a nominal rent lease, means—

(a) a chargeable variation that is not a standard chargeable variation; or

(b) a standard chargeable variation if no lease variation charge is determined for the variation under section 331.

original decision—see section 334 (1) (b).

reconsideration application—see section 335 (5).

standard chargeable variation, of a nominal rent lease, means a chargeable variation prescribed by regulation.

working out statement—see section 334 (2).

Subdivision 10.7.3.2 Chargeable variations of nominal rent leases

328 Lease variation charge payable for chargeable variation

(1) The territory planning authority must not execute a chargeable variation of a nominal rent lease unless—

(a) the total lease variation charge for the variation has been paid to the Territory; or

(b) a deferral arrangement in relation to the total lease variation charge has been entered into.

Note If the territory planning authority has executed a variation of a nominal rent lease, the authority must lodge a copy of the variation with the registrar-general for registration. A lease variation takes effect on registration (see *Land Titles Act 1925*, s 72A).

(2) A lease variation charge is taken to be paid to the Territory if—

(a) the amount of the charge is waived by the Treasurer under the *Financial Management Act 1996*, section 131 (Waiver of debts etc); or

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(b) part of the amount is waived and the rest of the amount is paid.

(3) Payment of the lease variation charge, or entering into a deferral arrangement in relation to the lease variation charge, does not affect any right a person may have to apply for reconsideration under section 335.

(4) In this section:

total lease variation charge, in relation to a chargeable variation of a nominal rent lease, means the following:

(a) the standard or non-standard lease variation charge applying to the variation;

(b) less any reduction under section 338;

(c) plus any increase under section 339.

329 Notice of assessment

(1) On approval of a development application for a chargeable variation of a nominal rent lease, the commissioner for revenue must give—

(a) a notice of assessment of the lease variation charge to the lessee; and

(b) if the development application is made by someone other than the lessee—a copy of the notice to the applicant.

(2) A lease variation charge is taken to be worked out—

(a) on the day the development application for the chargeable variation is approved; or

(b) if another day is prescribed by regulation—on that day.

(3) A notice of assessment lapses on the earliest of the following—

(a) the day the lease variation charge is paid;

(b) the day the development approval of the chargeable variation lapses.

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(4) For the *Taxation Administration Act 1999*, an assessment of a lease variation charge is a tax liability that only becomes payable if the territory planning authority executes the variation of the lease.

Note The territory planning authority must not execute a variation of the lease unless the lessee has paid the assessed lease variation charge or the amount has been deferred (see s 328 (1)).

330 More than 1 chargeable variation

If a development approval relates to more than 1 chargeable variation of a nominal rent lease, the lease variation charge is worked out as follows:

(a) if all the chargeable variations are standard chargeable variations for which a charge is determined under section 331—in accordance with section 331;

(b) if all the chargeable variations are non-standard chargeable variations—in accordance with section 332;

(c) if the chargeable variations are made up of standard and non-standard chargeable variations—as prescribed by regulation.

331 Standard chargeable variations

(1) The lease variation charge for a standard chargeable variation of a nominal rent lease is the amount determined under this section.

(2) The Treasurer may, after consulting with the Minister, determine a lease variation charge for a standard chargeable variation of a nominal rent lease.

(3) In considering whether to determine a lease variation charge under this section, the Treasurer must—

(a) obtain advice from an accredited valuer at least once every 3 years; and

(b) take into account the advice; and

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(c) comply with any other requirement prescribed by regulation.

(4) A determination must—

(a) as far as is practicable, represent the average market value in relation to the standard chargeable variation; and

(b) if a standard chargeable variation increases the number of dwellings permitted on the land under the lease—state an amount for each additional dwelling permitted on the land under the lease; and

(c) if a standard chargeable variation increases, or has the effect of increasing, the maximum gross floor area of any building or other structure permitted for non-residential use on the land under the lease—state an amount for each additional square metre of gross floor area permitted on the land under the lease.

(5) The determination must state—

(a) the reasons for determining the lease variation charge; and

(b) how the charge was determined.

(6) A determination under subsection (2) is a disallowable instrument.

332 Non-standard chargeable variations

(1) The lease variation charge for a non-standard chargeable variation of a nominal rent lease is the amount worked out under this section.

(2) The commissioner for revenue works out the lease variation charge for a non-standard chargeable variation of a nominal rent lease as follows:

$$LVC = (V_1 - V_2) \times 75\%$$

LVC means the lease variation charge payable for the non-standard chargeable variation of the lease.

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***V*$_1$**—

(a) for a chargeable variation other than a consolidation or subdivision—means the capital sum that the lease might be expected to realise if—

(i) the lease were varied as proposed; and

(ii) the lease were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and

(iii) either—

(A) the rent payable throughout the term of the lease were a nominal rent; or

(B) for a variation that involves the surrender of a lease and issue of a new lease—the rent payable for the term of the new lease were a nominal rent; or

(b) for a chargeable variation that is a consolidation or subdivision—means the capital sum that the new lease or leases to be granted under the consolidation or subdivision might be expected to realise if—

(i) the consolidation or subdivision were to take place as proposed; and

(ii) the new lease or leases were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the new lease or leases were a nominal rent.

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V₂—

(a) for a chargeable variation other than a consolidation or subdivision—means the capital sum that the lease might be expected to realise if—

(i) the lease were not varied during the remainder of its term; and

(ii) the lease were genuinely offered for sale immediately before the variation on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the lease, or lease to be surrendered, were a nominal rent; or

(b) for a chargeable variation that is a consolidation or subdivision—means the capital sum that the lease or leases to be surrendered under the consolidation or subdivision might be expected to realise if—

(i) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases; and

(ii) the lease or leases were genuinely offered for sale immediately before the consolidation or subdivision on the reasonable terms and conditions that a genuine seller would require; and

(iii) the rent payable throughout the term of the lease, or leases to be surrendered, were a nominal rent.

(3) If the amount worked out as ***V₁*** is equal to or less than the amount worked out as ***V₂***, no lease variation charge is payable.

(4) If the development approval for the relevant development application relates to 2 or more non-standard chargeable variations, ***V₁*** and ***LVC*** are worked out as if the non-standard chargeable variations were a single non-standard chargeable variation of the lease.

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333 Non-standard chargeable variations—improvements

(1) In working out V_1 and V_2 under section 332, an improvement in relation to the land described in the lease must not be taken into account.

(2) However, an existing improvement by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

(3) In this section:

improvement, in relation to land, means an existing or proposed improvement and includes any of the following:

(a) a building or other structure on or under the land;

(b) an alteration or demolition of an existing building or other structure on or under the land;

(c) the remediation of the land;

(d) earthworks, planting or other work that affects the landscape of the land;

(e) anything mentioned in paragraphs (a) to (d) that is required—

(i) as a condition of a development approval; or

(ii) by a statutory approval obtained or required for a development proposal; or

(iii) under an agreement between the Territory or a territory entity and—

(A) the lessee; or

(B) if the lessee is not the applicant for the development approval—the applicant;

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(f) anything mentioned in paragraphs (a) to (d) proposed in a development application in relation to a chargeable variation of a nominal rent lease to be undertaken on land outside of the land under the lease.

remediation—see the *Environment Protection Act 1997*, dictionary.

334 Non-standard chargeable variations—working out statement

(1) This section applies if—

(a) a development application in relation to a non-standard chargeable variation of a nominal rent lease is approved; and

(b) the lease variation charge in relation to the variation has been worked out in accordance with section 332 (the ***original decision***); and

(c) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 329 (1); and

(d) an application has not previously been made under section 335 for reconsideration of the original decision.

(2) The applicant for the development application may ask the commissioner for revenue for a statement (a ***working out statement***) explaining the commissioner's working out of the original decision.

(3) The commissioner for revenue must give the applicant a working out statement within 20 working days after the day the applicant asks for the statement unless—

(a) the notice of assessment contains the matters that the working out statement would contain; or

(b) a document that contains the matters that a working out statement would contain has already been given to the applicant.

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335 Non-standard chargeable variations—application for reconsideration

(1) The applicant for a development application in relation to a non-standard chargeable variation of a nominal rent lease may apply for reconsideration of an original decision on the earliest of the following:

(a) the day the applicant receives the working out statement;

(b) the end of the 20-working day period mentioned in section 334 (3).

(2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, this section only applies to the part of the lease variation charge that is worked out for a non-standard chargeable variation.

Note The total lease variation charge for a development application that relates to more than 1 chargeable variation is worked out in accordance with s 330.

(3) This section does not apply to a reassessment of a lease variation charge under section 340.

(4) If the applicant for the development application is not the lessee, the lessee may apply for reconsideration under this section instead of the applicant.

(5) An application for reconsideration of the original decision (the ***reconsideration application***) must be made not later than—

(a) the latest of—

(i) 80 working days after the day the notice of assessment under section 329 (1) is given; and

(ii) if a later day is prescribed by regulation—that day; or

(b) any longer period allowed by the commissioner for revenue.

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336 Non-standard chargeable variations—requirements for reconsideration application

(1) A reconsideration application must be in writing and signed by—

(a) the lessee; and

(b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

(2) Also, the reconsideration application must—

(a) set out the grounds on which the reconsideration is sought; and

(b) include an independent valuation that works out the amounts represented by V_1 and V_2 in section 332; and

(c) if the applicant is given a working out statement in accordance with section 334—include the statement.

(3) If subsection (2) (c) applies, the applicant for the reconsideration must give the valuer for the independent valuation the commissioner for revenue's working out statement.

(4) The independent valuation must be prepared by an accredited valuer who—

(a) was not involved in working out or advising on the original decision; and

(b) is—

(i) agreed to by the applicant for the reconsideration and the commissioner for revenue; or

(ii) if the applicant and the commissioner cannot agree—appointed in writing by a person prescribed by regulation; and

(c) satisfies any requirement prescribed by regulation.

(5) The applicant for the reconsideration is responsible for the cost of the independent valuation.

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337 Non-standard chargeable variations—reconsideration

(1) Within 20 working days after receiving a reconsideration application, the commissioner for revenue must—

(a) reconsider the original decision; and

(b) either—

(i) make a decision in substitution for the original decision that the commissioner could have made; or

(ii) confirm the original decision.

(2) The 20-working day period mentioned in subsection (1) may be extended for a stated period by agreement between the commissioner for revenue and the applicant for the reconsideration.

(3) In reconsidering the original decision, the commissioner for revenue—

(a) must consider the independent valuation required under section 336 (2) (b) and any other information given in the reconsideration application; and

(b) may consider any other relevant information.

(4) The commissioner for revenue must ensure that, if the original decision is made by the commissioner or a person on the commissioner's behalf (the ***original decision-maker***), someone other than the original decision-maker reconsiders the decision.

(5) If the commissioner for revenue does not make a substitute decision, or confirm the original decision, by the end of the 20-working day period mentioned in subsection (1), or the period as extended by agreement under subsection (2), the commissioner is taken to have confirmed the original decision.

(6) The commissioner for revenue must give written notice of the decision on the reconsideration to—

(a) the lessee; and

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(b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

338 Reduction of lease variation charges

(1) The Minister may determine circumstances in which the amount of lease variation charge applying under this part to a chargeable variation of a nominal rent lease must be reduced.

(2) For each circumstance determined under subsection (1), the Treasurer must determine the amount by which the lease variation charge must be reduced.

(3) The amount must be expressed as a percentage of the lease variation charge.

(4) A determination is a disallowable instrument.

339 Increase of lease variation charge

(1) The amount of lease variation charge applying under this part to a chargeable variation of a nominal rent lease must be increased in the circumstances, and for the amount, prescribed by regulation.

(2) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulation commences—

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

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

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

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340 Lease variation charge—reassessment

(1) This section applies if—

(a) a development application for approval of a chargeable variation of a nominal rent lease is approved; and

(b) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 329 (1); and

(c) the territory planning authority executes a variation of the lease to which the lease variation charge relates.

(2) The commissioner for revenue may reassess the lease variation charge under the *Taxation Administration Act 1999*, section 9 (Reassessment).

(3) The commissioner for revenue must give—

(a) a notice of assessment of the lease variation charge to the lessee; and

(b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

Note The assessment notice must show the amount of the reassessment and the amount by which the assessment has been increased or decreased (see *Taxation Administration Act 1999*, s 14 (3)).

(4) For this division, the *Taxation Administration Act 1999*, part 10 (Objections and reviews) applies only to a reassessment of a lease variation charge under this section.

341 Taxation Administration Act—disclosure of information

For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a tax officer under that Act may disclose information obtained under or in relation to the administration of this division to the territory planning authority or a person authorised by the authority to receive the information.

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Subdivision 10.7.3.3 Deferring lease variation charges

342 Application to defer payment of lease variation charges

(1) An applicant for a development application for a chargeable variation of a nominal rent lease may apply to the commissioner for revenue to defer the time for payment of the lease variation charge payable under section 328 in relation to the charge.

Note Unless payment of the lease variation charge is deferred, it must be paid before the territory planning authority executes the chargeable variation (see s 328).

(2) The applicant must give the commissioner for revenue any information the commissioner considers necessary to decide the application.

(3) If the applicant for the development application is not the lessee, the lessee—

(a) may apply for the deferral instead of the applicant; or

(b) must sign the deferral application.

343 Approval to defer payment of lease variation charges

(1) The commissioner for revenue must approve an application to defer payment of a lease variation charge under section 342 if—

(a) the total lease variation charge to be deferred is at least the amount determined by the Treasurer; and

(b) the applicant satisfies any other criteria determined by the Treasurer; and

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(c) the applicant enters into an arrangement under the *Taxation Administration Act 1999*, section 52 (Arrangements for payment of tax) about payment of the amount of the deferred lease variation charge (a ***deferral arrangement***).

Note 1 An amount payable under a deferral arrangement is a debt owing to the Territory and is a charge on the land (see *Taxation Administration Act 1999*, s 56H).

Note 2 A decision in relation to an application, the conditions of a deferral arrangement under s 344 or the variation of a deferral arrangement under s 345 are reviewable decisions (see *Taxation Administration Act 1999*, sch 1).

(2) A determination under subsection (1) (b) is a disallowable instrument.

(3) If the applicant for deferral is not the lessee, the lessee—

(a) may enter into the deferral arrangement instead of the applicant; or

(b) must sign the deferral arrangement.

(4) In this section:

total lease variation charge—see section 328 (4).

344 Conditions of deferral arrangement

(1) A deferral arrangement under section 343 must—

(a) state the amount of lease variation charge that is being deferred; and

(b) state that the deferred amount, and any accrued interest, must be paid to the commissioner for revenue not later than the earliest of the following—

(i) if stated in the deferral arrangement—the date a certificate of occupancy is issued for part of the building work for the development to which the chargeable variation relates;

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(ii) the date a certificate of occupancy is issued for all of the building work for the development to which the chargeable variation relates;

(iii) 4 years from the day the chargeable variation is executed; and

(c) include any other condition determined under subsection (2).

(2) The Treasurer may determine other conditions to which a deferral arrangement is subject, including the rate of interest charged on the amount payable under the arrangement.

Note There may be additional interest and penalty tax payable under the *Taxation Administration Act 1999*.

(3) A determination is a disallowable instrument.

(4) This section does not limit the *Taxation Administration Act 1999*, section 52, but any arrangement under that section about payment of a deferred lease variation charge under this subdivision must not be inconsistent with the conditions under subsection (1).

345 Lease variation charge changed after reconsideration etc

(1) This section applies if—

(a) a person enters into a deferral arrangement in relation to a lease variation charge for the chargeable variation; and

(b) after the arrangement is entered into, the amount of lease variation charge payable for the chargeable variation (the ***new amount***) is different to the amount of lease variation charge payable at the time the arrangement was entered into (the ***deferred amount***) because of a reconsideration, reassessment or review under this Act or the *Taxation Administration Act 1999*.

(2) The deferral arrangement applies to the new amount.

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(3) If the new amount is more than the deferred amount, the commissioner for revenue may, on application by the other party to the deferral arrangement, vary the conditions of the deferral arrangement.

(4) If the applicant for reconsideration is not the lessee—

(a) the lessee—

(i) may apply for the variation instead of the applicant; or

(ii) must sign the application; and

(b) if the application is approved, the lessee must sign the variation.

346 Certificate of lease variation charge and other amounts

(1) This section applies if there is a charge on land under the *Taxation Administration Act 1999*, section 56H in relation to a lease variation charge.

(2) A relevant person in relation to the land to which the lease variation charge applies may apply to the commissioner for revenue for a certificate that sets out the amount of—

(a) lease variation charge that remains unpaid at the date of the certificate; and

(b) any interest and penalty tax payable under this division, a deferral arrangement or the *Taxation Administration Act 1999*.

(3) The commissioner must give the applicant the certificate.

(4) The certificate is conclusive proof for an honest buyer for value of the matters certified.

(5) For this section, the lease variation charge and other amounts payable are taken to be payable immediately even though any necessary time after a date or event, or the service of a notice, has not ended.

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(6) In this section:

relevant person, in relation to land to which a lease variation charge applies, means—

(a) the lessee, buyer or mortgagee of the land; or

(b) an applicant for a development application in relation to the land, if the applicant is not the lessee.

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Part 10.8 Rural leases

Division 10.8.1 Further rural leases

347 Amount payable for further leases—rural land

(1) The Minister may make a determination for section 289 (1) (e) (i) or (ii) (Grant of further leases).

(2) A determination for section 289 (1) (e) (ii) may provide that the amount payable for the grant of the lease is payable in stated instalments.

(3) If the Minister has not made a determination under subsection (1), the amount that is taken to have been determined for a rural lease is the market value of the lease, payable as a lump sum.

(4) A determination is a disallowable instrument.

348 Term of further leases—rural land

(1) The Minister may make a determination for section 289 (3) (b).

(2) However, if the national capital authority has set a maximum term for a rural lease of land in a designated area, the Minister must not determine a period under subsection (1) for a further rural lease of the land in a designated area that is longer than the maximum term set by the authority.

(3) A determination is a disallowable instrument.

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Division 10.8.2 Exceptions for rural leases

349 Definitions—div 10.8.2

In this division:

discharge amount, for a rural lease, means the discharge amount worked out as prescribed by regulation.

holding period, for a rural lease, is a period ending—

(a) if the discharge amount is paid—when the discharge amount is paid; or

(b) in relation to a lease for a term of 21 years or longer—10 years after the lease commences; or

(c) in relation to a lease for a term shorter than 21 years—at the end of $^{1}/_{3}$ of the term of the lease.

350 Land management agreements

(1) This section applies to the following:

(a) the grant of a rural lease;

(b) the grant of a further rural lease;

(c) the variation of a rural lease;

(d) the approval of an assignment or transfer of a rural lease.

(2) The territory planning authority may do the things mentioned in subsection (1) only if—

(a) the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, has entered into an agreement with the Territory about managing the rural land described in the lease (a ***land management agreement***); and

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(b) the agreement is signed by the conservator of flora and fauna and the person mentioned in paragraph (a).

(3) A land management agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.

(4) The conservator of flora and fauna may make guidelines setting out the requirements for land management agreements.

(5) In preparing a guideline, the conservator of flora and fauna must consult the territory planning authority.

(6) A guideline is a notifiable instrument.

351 Dealings with rural leases

(1) This section applies to—

(a) a rural lease granted under section 263 (Granting leases); and

(b) a grant of a further rural lease.

(2) A lessee, or anyone else with an interest in the rural lease, must not deal with the lease without the written approval of the territory planning authority.

(3) A dealing in relation to a rural lease made or entered into without the territory planning authority's approval has no effect.

(4) The territory planning authority must approve a dealing in relation to a rural lease if—

(a) either—

(i) the lessee's domestic partner or child is the person to whom—

(A) the lease is being assigned or transferred; or

(B) the land described in the lease, or part of it, is sublet; or

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(C) possession of the land described in the lease, or part of it, is being given; or

(ii) the holding period for the lease has ended; and

(b) for an assignment or transfer of the rural lease—the person to whom the lease is to be transferred or assigned has entered into a land management agreement in accordance with section 350.

(5) The validity of a dealing made or entered into with the consent of the territory planning authority is not affected—

(a) by a defect or irregularity in relation to the giving of the consent; or

(b) because a ground, or all grounds, for the consent had not arisen.

(6) To remove any doubt, a person is not required to pay a discharge amount more than once under this section in relation to a rural lease.

(7) In this section:

child, of a lessee, includes a child of the lessee's domestic partner.

352 Exceptions to s 350 and s 351

Section 350 and section 351 do not apply to the transfer or assignment of a lease, or an interest in the lease, if—

(a) the lessee has died; or

(b) the transfer or assignment is made under any of the following orders:

(i) an order of the Family Court;

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);

(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or

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(c) the transfer or assignment happens by operation of, or under, bankruptcy or insolvency.

353 Delayed requirement to enter into land management agreement

(1) This section applies if a lease, part of the lease or an interest in the lease, to which section 350 or section 351 applies has been transferred or assigned to someone (the ***interest holder***) who has not entered into a land management agreement for the rural land described in the lease, or part of the lease, or to which the interest relates.

(2) The interest holder must enter into a land management agreement for the land not later than 6 months (or any extended period) after the day the lease, part of the lease or interest, is transferred or assigned to the interest holder.

(3) The territory planning authority may, in writing, extend the period under subsection (2) for entering into a land management agreement.

354 Certain dealings in holding period

The territory planning authority—

(a) must not approve the subdivision of a rural lease to which section 351 applies during the holding period; and

(b) may approve the consolidation of a lease to which section 351 applies during the holding period.

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Part 10.9 Leases—improvements

355 Application—pt 10.9

This part applies to an improvement—

(a) undertaken in a way consistent with territory law, and with any lease over the land; or

(b) if the improvement was undertaken or acquired by the Territory or Commonwealth—for which the Territory or Commonwealth has been, or is entitled to be, paid.

356 Definitions—pt 10.9

In this part:

improvement, in relation to land, means—

(a) a building or other structure on or under the land; or

(b) for land described in a rural lease—

(i) a building or other structure on or under the land; or

(ii) any earthworks, planting or other work that affects the landscape of the land that is reasonably undertaken for rural purposes.

lessee, for a lease that has ended, whether by termination, surrender, end of term or otherwise, means the person who was the lessee under the lease when the lease ended.

undertaken, in relation to an improvement that is a building or other structure, means the construction of the building or other structure.

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357 Renewing lessee not liable to pay for improvements

(1) This section applies if—

(a) the term of a lease expires; and

(b) there are improvements on the land described in the lease; and

(c) the lessee is granted a further lease of the land or part of it.

(2) The lessee is not liable to pay the territory planning authority for the improvements on the land.

358 Authority must pay for certain improvements

(1) This section applies if—

(a) the term of a lease expires; and

(b) there are improvements on the land described in the lease; and

(c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to the improvements; and

(d) the lessee is not granted a further lease of the land, or is granted a lease of only part of the land.

(2) The territory planning authority must pay the lessee—

(a) if no further lease of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements on the land; or

(b) if a further lease of only part of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements on the part of the land not leased.

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359 Land declared available for further lease

(1) This section applies if—

(a) the territory planning authority must pay a lessee an amount under section 358; and

(b) before the expiry of the term of the lease, the territory planning authority declares that the land described in the lease, or part of the land, is available for a further lease; and

(c) the lessee does not elect to take a further lease of the declared land within 6 months after the expiry of the term of the lease.

(2) The amount of any expenditure reasonably incurred by the Territory, the territory planning authority or both, in relation to the grant of a lease of the land, or part of the land, to anyone else must be deducted from the amount payable to the lessee under section 358.

360 Lease surrendered or terminated

(1) This section applies if—

(a) a lease is surrendered or terminated; and

(b) the lessee has fully complied with any provisions of the lease relating to the construction of a building on the land described in the lease; and

(c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to improvements on the land.

(2) Section 358 and section 359 apply in relation to the lease (so far as applicable) as if the term of the lease had expired on the day the lease was surrendered or terminated.

(3) However, the amount worked out under subsection (4) must be deducted from any amount payable under section 358 to the lessee of the surrendered or terminated lease.

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(4) The territory planning authority may work out the amount of the expenditure reasonably incurred by the Territory, the authority or both, in relation to the surrender or termination of the lease.

361 Withdrawal of lease or part before end

(1) This section applies if—

(a) before the end of the term of a lease, the territory planning authority withdraws all or part of the leased land from the lease under a provision of the lease; and

(b) the lessee has fully complied with any provisions of the lease relating to the construction of a building on the land; and

(c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to improvements on the land.

(2) Section 358 and section 359 apply in relation to the lease for the withdrawn land, as if the term of the lease had ended on the day the land is withdrawn.

362 Deciding value of improvements

(1) If compensation is payable under this part in relation to improvements, the territory planning authority must—

(a) as soon as practicable after the assessment day decide, in writing, the market value of the improvements on the land as at the assessment day; and

(b) in valuing the improvements, assume that—

(i) for section 359—a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease the term of which has expired; and

(ii) for section 360—the lease of the land had not been terminated or surrendered; and

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(iii) for section 361—the leased land had not been withdrawn from the lease.

(2) In this section:

assessment day means—

(a) in relation to land if the term of the lease has expired—the day the term expired; or

(b) in relation to land a lease of which has been terminated or surrendered—the day the lease was terminated or surrendered; or

(c) in relation to land that has been withdrawn from a lease—the day the land was withdrawn.

market value, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day before the assessment day on the reasonable terms and conditions that a genuine seller might require.

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Part 10.10 Surrendering and termination of leases

363 Lessee may surrender lease

(1) A lessee under a lease may, at any time, with the approval of the territory planning authority, surrender the lease or part of the land described in the lease.

(2) The territory planning authority may accept the surrendered lease or land unconditionally or subject to any condition the authority considers appropriate.

(3) The surrender of the lease or land does not entitle the lessee to a refund or reduction of any rent paid or owing.

364 Refund on lease surrender or termination

(1) This section applies if a lease is surrendered or terminated under this Act.

(2) On application by the person whose lease has been surrendered or terminated, the territory planning authority may pay the person the amount prescribed by regulation.

(3) A regulation may prescribe when the territory planning authority may make a payment under this section.

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Part 10.11 Declared subleases of land

365 Meaning of *declared land sublease*

(1) In this Act:

declared land sublease—

(a) means a land sublease under a declared lease; and

(b) includes any new land sublease granted by the lessee to the sublessee over the land under a surrendered or expired declared land sublease.

(2) In this section:

declared lease—see section 366 (1).

366 Declared leases

(1) The Minister and another Minister may together declare a prescribed lease to be a ***declared lease*** if satisfied it is in the public interest.

(2) In deciding whether it is in the public interest to make a declaration, the Ministers must consider the following:

(a) whether making the declaration is likely to encourage development of the land under the declared lease that has a substantial benefit to the public;

(b) whether making the declaration would cause any disadvantage to the public taking into account potential uses of the land under the declared lease that are consistent with the territory plan, whether or not those uses are authorised by the lease;

(c) whether any development of part of the land under the declared lease is likely to be part of a larger development and, if so, what that development will involve;

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(d) whether making the declaration is likely to encourage development of the land under the declared lease that is likely to substantially facilitate the achievement or development of the object of the territory plan as set out in the planning strategy and any relevant district strategy that applies to the land under the declared lease;

(e) whether making the declaration raises a major policy issue.

(3) A declaration is a notifiable instrument.

(4) A declaration—

(a) may only be amended or revoked to correct an error and if a declaration is amended, or revoked and a new declaration made, the amendment or new declaration may commence retrospectively; and

(b) continues to apply in relation to the lease that was a prescribed lease when the declaration was made even if the lease stops being a prescribed lease.

(5) The territory planning authority must give the registrar-general a copy of the declaration.

(6) In this section:

prescribed lease means—

(a) a perpetual Crown lease held by the University of Canberra; or

(b) a perpetual Crown lease held by the Australian National University prescribed by regulation.

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Part 10.12 Leases—building and development provisions

Division 10.12.1 Preliminary

367 Definitions—pt 10.12

In this part:

lease includes an interest in the lease.

transfer, of a lease, means the transfer or assignment of the lease at law or in equity.

Division 10.12.2 Certificates of compliance

368 Certificates of compliance

(1) If a building and development provision of a lease has been fully complied with, the territory planning authority must, on its own initiative or on application by the lessee, issue a certificate of compliance stating that the provision has been complied with.

(2) If a building and development provision of a lease has been partly complied with, the territory planning authority may issue a certificate of compliance stating that the provision has been partly complied with.

(3) A certificate of compliance issued under subsection (2) may be subject to a condition that the lessee provide security in a stated form against failure to complete stated outstanding works.

369 Certificates of compliance—Unit Titles Act leases

(1) The territory planning authority must not issue a certificate of compliance under section 368 in relation to a building and development provision that a lease under the *Unit Titles Act 2001* is subject to unless satisfied under subsection (2).

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(2) The territory planning authority must be satisfied—

(a) for every other lease in relation to the same subdivision under the *Unit Titles Act 2001* that is subject to a building and development provision—that the provision has been complied with, or a certificate of compliance has been issued under section 368 in relation to the provision; or

(b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being undertaken, or that are to be undertaken, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 2001* is subject.

(3) For subsection (2) (b), an occupier is ***substantially inconvenienced*** by works being undertaken, or that are to be undertaken, if the works are being, or are to be, undertaken to the common property, or another unit, in the same stage of the development as the occupier's unit.

Division 10.12.3 Building and development provisions—transfer of land

370 Transfer of land subject to building and development provision

A lease that includes a building and development provision cannot be transferred unless—

(a) the lessee has died; or

(b) the transfer is made under—

(i) an order of the Family Court; or

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth); or

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(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or

(c) the transfer happens by operation of, or under, bankruptcy or insolvency; or

(d) the lessee has a certificate of compliance under section 368; or

(e) the territory planning authority has approved the transfer under section 371 or section 372.

371 Transfer of land subject to building and development provision—approval generally

(1) The territory planning authority may, in writing, approve a transfer of a lease that includes a building and development provision if—

(a) the authority is satisfied that the proposed transferee intends to comply with the provision; and

(b) the proposed transferee has given any security required by the authority for compliance with the provision; and

(c) either—

(i) the proposed transferee has entered into a contract with the proposed transferor under which the proposed transferor is to build a home on the land described in the lease; or

(ii) the authority is satisfied that 1 or more of the matters mentioned in subsection (2) (a ***special circumstance***) applies.

(2) Each of the following is a special circumstance:

(a) the lessee cannot, for personal reasons prescribed by regulation, comply with the building and development provision;

(b) the lessee cannot comply with the building and development provision for financial reasons connected with the lease;

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(c) an unforeseen major event outside the lessee's control happened after the lessee was granted the lease, and the event has had a demonstrable effect on the lessee's ability to develop the land described in the lease;

(d) the transfer of the lease is—

(i) by the Territory, a territory entity, the Commonwealth or a Commonwealth entity (an ***entity***); and

(ii) within the entity's functions; and

(iii) necessary because of a change in a policy of the Territory, the Commonwealth or the entity that affects at least 1 other transfer.

Examples—unforeseen major events—par (c)

1 a bushfire

2 a large increase in interest rates

(3) For subsection (2) (b), a financial reason is connected with the lease unless—

(a) the reason is that the lessee has borrowed an amount, using the land as security, for a purpose other than the grant of the lease or the development of the land; and

(b) the amount is used for a purpose other than to meet an expense arising from a personal reason prescribed by regulation for subsection (2) (a).

Examples—financial reasons not connected with lease

1 expenditure on purchase of other land

2 purchase of luxury car

3 expenditure on extended overseas holiday

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372 Transfer of land subject to building and development provision—approval for first sale

The territory planning authority may, in writing, approve a transfer of a lease that includes a building and development provision if the proposed transfer is the first sale of the land by the person who provided infrastructure on the land.

373 Transfer of land subject to building and development provision—considerations for approval

In deciding whether to approve a transfer under section 371 or section 372, the territory planning authority must take into consideration any matter prescribed by regulation.

Division 10.12.4 Noncompliance with building and development provisions

374 Fee for noncompliance with building and development provision

(1) This section applies if—

(a) a lease includes a building and development provision requiring works to be completed within a stated time; and

(b) a certificate of occupancy has not been issued for the works; and

(c) the works have not been completed within the stated time.

(2) The lessee must pay the territory planning authority an amount prescribed by regulation (a ***noncompliance fee***) for each period during which the works are incomplete.

(3) The territory planning authority must, at the end of each period during which the works are incomplete, give the lessee written notice of the noncompliance fee payable for the period.

(4) A regulation may prescribe circumstances in which a lessee may apply for a reduction or waiver of a noncompliance fee.

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(5) A lessee is taken to comply with the building and development provision if the lessee pays the noncompliance fee when it is required to be paid (unless the fee is waived under the *Financial Management Act 1996*, section 131).

Note If a lessee fails to pay a noncompliance fee or complete works within a new compliance time under s 375, the territory planning authority may terminate the lease (see s 457).

375 Authority may give notice of new compliance time

(1) The territory planning authority may, at any time, give written notice to a lessee to whom section 374 applies that the works must be completed within a reasonable stated time (a ***new compliance time***).

(2) A regulation may prescribe requirements for how the territory planning authority decides a new compliance time.

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Part 10.13 Licences for unleased land

376 Criteria for granting licences for unleased land

(1) The Executive may determine criteria for the granting of licences to occupy or use unleased land.

(2) A determination is a disallowable instrument.

377 Applications for licences for unleased land

(1) A person may apply to the territory planning authority for a licence to occupy or use an area of unleased land.

(2) An application must—

(a) state—

(i) the land in relation to which the licence is sought; and

(ii) the period for which the licence is sought; and

(iii) the purposes for which it is proposed that the land should be used under the licence; and

(b) be accompanied by the written approval of the custodian of the land to the grant of the licence.

378 Decision on licence applications for unleased land

(1) On receiving an application under section 377, the territory planning authority may grant the applicant a licence to occupy or use the land, and any building or other structure on the land, stated in the application for the purposes and period stated in the application.

(2) However, the territory planning authority must not grant the licence in relation to public land unless the conservator of flora and fauna agrees in writing.

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379 Licences—form etc

A licence granted under section 378—

(a) must be in writing; and

(b) must state the period for which it is granted; and

(c) applies to the person to whom it is granted; and

(d) is subject to any conditions stated in the licence.

380 Licences—when not needed

A person need not hold a licence granted under section 378 to occupy or use an area of unleased land if—

(a) the person holds a sign approval, work approval, or public unleased land permit, to use the area under the *Public Unleased Land Act 2013*; and

(b) the person uses the area in accordance with the approval or permit; and

(c) for an occupation or use that requires development approval—

(i) the occupation or use has development approval; and

(ii) if the occupation or use has development approval subject to a condition—the person is complying with the condition.

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Part 10.14 Leases and licences—miscellaneous

381 Reservation of minerals

A reservation of minerals contained in a lease must be read as a reservation of all minerals and mineral substances in or on the land described in the lease, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

382 How land may be recovered if former lessee or licensee in possession

(1) This section applies if—

(a) a person who has been a lessee remains in possession of the land after—

(i) the term of the lease has ended; or

(ii) the lease has been surrendered or ended; or

(b) a person who has been a licensee remains in possession of the land after—

(i) the term of the licence has ended; or

(ii) the licence has been surrendered or ended.

(2) The territory planning authority may, by written notice to the person (the ***unlawful occupier***), demand that the unlawful occupier give possession of the land to the authority within the reasonable period stated in the demand.

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(3) If the demand is not complied with—

(a) the territory planning authority may apply to the Magistrates Court for an order that possession of the land be given to the authority; and

(b) the court may issue a warrant authorising a police officer, within 20 working days after the day the warrant is issued, to enter the land with any reasonable assistance or force required to give possession of the land to the authority.

(4) In this section:

licence means a licence granted by the Territory, the Commonwealth or the territory planning authority.

383 Conversion of Commonwealth leases

(1) This section applies if—

(a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1), that specified land in the Territory is national land, is amended or repealed; and

(b) because of the amendment or repeal of the declaration, the land stops being national land; and

(c) a lease granted under a prescribed law, or over all or part of the land, is in force immediately before the amendment or repeal of the declaration.

(2) The lease is taken to be granted under this Act on the amendment or repeal of the declaration.

(3) In this section:

prescribed law means—

(a) any of the following laws in effect before the law was repealed:

(i) the *Leases Ordinance 1918*;

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(ii) the *City Area Leases Ordinance 1936*; or

(b) a law mentioned in paragraph (a) as in effect under the *Australian Capital Territory National Land (Leased) Ordinance 2022* (Cwlth).

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Chapter 11 Public land

Part 11.1 Management of public land

384 Recommendations to authority about public land

(1) This section applies to an area of unleased land.

(2) The custodian of the area, or the conservator of flora and fauna, may, in writing, recommend to the territory planning authority that the territory plan be amended to—

(a) designate the area as public land and reserve it for a purpose mentioned in section 385; or

(b) in relation to an area already designated in the plan as public land—

(i) vary the boundaries of the area; or

(ii) vary the purpose for which the area is reserved; or

(iii) provide that the area is no longer public land.

385 Reserved areas of public land

Public land may be reserved in the territory plan, whether in the map or elsewhere in the plan, for any of the following purposes:

(a) a wilderness area;

(b) a national park;

(c) a nature reserve;

(d) a special purpose reserve;

(e) an urban open space;

(f) a cemetery or burial ground;

(g) the protection of water supply;

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(h) a lake;

(i) a sport and recreation reserve;

(j) a heritage area.

386 Management of public land

The custodian of an area of public land must manage the land in accordance with—

(a) the management objectives applying to the area; and

(b) the public land management plan for the area.

387 Management objectives for public land

(1) The ***management objectives*** for an area of public land reserved for a particular purpose are—

(a) the management objectives stated in schedule 3, part 3.2, column 3 for areas of land reserved for the purpose; and

(b) the management objectives determined by the conservator of flora and fauna under subsection (2).

(2) The conservator of flora and fauna may determine management objectives for an area of public land reserved for a purpose mentioned in schedule 3, part 3.2, column 2.

(3) A management objectives determination is a disallowable instrument.

(4) If there is an inconsistency between 2 management objectives stated in schedule 3, part 3.2 in relation to an area of public land, the objective appearing earlier in the schedule prevails to the extent of the inconsistency.

(5) If there is an inconsistency between a management objective stated in schedule 3, part 3.2, and a management objective determined by the conservator of flora and fauna in relation to an area of public land, the objective in the schedule prevails to the extent of the inconsistency.

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Part 11.2 Management plans for public land

Division 11.2.1 Public land management plans

388 Meaning of *public land management plan*

(1) In this Act:

public land management plan, for an area of public land, means—

(a) if the area is a reserve—a reserve management plan for the area; or

(b) if the area is not a reserve—a land management plan for the area.

Note 1 Reserves include wilderness areas, national parks, nature reserves, catchment areas and other prescribed areas of public land.

Note 2 Public land that is not a reserve may include special purpose reserves, urban open spaces, cemeteries, lakes, sport and recreation reserves and heritage areas.

(2) In this section:

reserve—see the *Nature Conservation Act 2014*, section 169.

reserve management plan, for a reserve—see the *Nature Conservation Act 2014*, section 175.

Note Under the *Nature Conservation Act 2014*, s 177, the custodian of a reserve must follow the process in that Act for preparing a draft reserve management plan for the reserve.

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Division 11.2.2 Land management plans

389 Draft land management plan—custodian to prepare

(1) The custodian of an area of public land must prepare a document (a ***draft land management plan***) for the area that—

(a) identifies the area; and

(b) describes how the management objectives for the area are to be implemented or promoted in the area.

(2) In preparing a draft land management plan, the custodian must consult—

(a) the conservator of flora and fauna; and

(b) the territory planning authority; and

(c) the environment protection authority.

390 Draft land management plan—public consultation

(1) If the custodian of an area of public land prepares a draft land management plan for the area, the custodian must also prepare a notice (a ***consultation notice***) about the draft plan.

(2) If the custodian publishes a consultation notice about the draft plan—

(a) anyone may make a written submission to the custodian about the draft plan; and

(b) submissions may be made to the custodian within 6 weeks after the day the consultation notice is published on the authority website (the ***consultation period***); and

(c) a person making a submission may, in writing, withdraw the submission at any time.

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(3) A consultation notice must—

(a) state the matters mentioned in subsection (2); and

(b) include the draft plan; and

(c) be published on the authority website.

(4) If the custodian receives a submission about the draft plan, the custodian must make a copy of the submission available on the authority website until—

(a) the Minister approves or rejects the draft land management plan; or

(b) the submission or draft land management plan is withdrawn.

391 Draft land management plan—revision and submission to Minister

(1) If the consultation period for a draft land management plan has ended, the custodian of the area of public land must—

(a) consider any submissions received during the consultation period; and

(b) make any revisions to the draft plan that the custodian considers appropriate.

(2) The custodian must then submit the draft plan to the Minister for approval.

(3) The draft plan must be accompanied by—

(a) copies of all submissions received during the consultation period; and

(b) a report—

(i) setting out the issues raised in any submissions given to the custodian during the consultation period for the draft plan; and

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(ii) if the conservator of flora and fauna or the territory planning authority made a submission during the consultation period recommending a change to the draft plan and the custodian did not revise the draft plan to incorporate the change—explaining why the custodian did not make the recommended change.

392 Draft land management plan—referral to Legislative Assembly committee

(1) This section applies if the custodian of an area of public land submits a draft land management plan to the Minister for approval.

(2) The Minister must, not later than 5 working days after the day the Minister receives the draft plan, refer the following to the relevant Assembly committee:

(a) the draft plan;

(b) the accompanying documents mentioned in section 391 (3).

(3) The committee must consider the draft plan and accompanying documents and either—

(a) recommend that the Minister approves the draft plan; or

(b) make another recommendation about the draft plan.

(4) The committee must tell the Minister about the recommendation and refer the draft plan back to the Minister.

393 Draft land management plan—committee to report

(1) This section applies if the Minister has referred a draft land management plan to the relevant Assembly committee under section 392.

(2) After the committee refers the draft plan back to the Minister, the Minister must take action under section 394 in relation to the draft plan.

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(3) If the committee has not referred the draft plan back to the Minister within 6 months after the day the draft plan was given to the committee, the Minister may take action under section 394 in relation to the draft plan.

394 Draft land management plan—Minister to approve, return or reject

(1) This section applies if—

(a) the relevant Assembly committee refers a draft land management plan back to the Minister under section 392 (4); or

(b) the Minister decides, under section 393 (3), to take action under this section.

(2) If the committee has made a recommendation about the draft plan, the Minister must consider the recommendation.

(3) The Minister must, not later than the required time—

(a) approve the draft plan; or

(b) return the draft plan to the custodian and direct the custodian to take 1 or more of the following actions in relation to it:

(i) if the committee has made a recommendation about the draft plan—consider the recommendation;

(ii) undertake stated further consultation;

(iii) consider a revision suggested by the Minister;

(iv) revise the draft plan in a stated way; or

(c) reject the draft plan.

(4) In this section:

required time means 45 working days after—

(a) if subsection (1) (a) applies—the day the committee tells the Minister about the recommendation under section 392 (4); or

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(b) if subsection (1) (b) applies—the end of the 6 month period mentioned in section 393 (3); or

(c) if section 396 applies—the day the custodian resubmits the plan to the Minister.

395 Land management plan—effect of Minister's approval

(1) A draft land management plan approved by the Minister under section 394 (3) (a) or section 398 (3) (a) is a ***land management plan***.

(2) A land management plan is a disallowable instrument.

396 Draft land management plan—return to custodian

(1) This section applies if the Minister returns a draft plan to a custodian with a direction under section 394 (3) (b).

(2) The custodian must—

(a) give effect to the direction; and

(b) resubmit the draft plan to the Minister for approval.

(3) The Minister must make a decision about the draft plan in accordance with section 394 (3).

397 Draft land management plan—rejection by Minister

(1) If the Minister rejects a draft land management plan under section 394 (3) (c), the Minister must prepare a notice stating that the draft plan is rejected (a ***rejection notice***).

(2) A rejection notice must be published on the authority website.

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398 Land management plan—minor amendments

(1) This section applies if—

(a) a land management plan for an area of public land is in force (the ***existing plan***); and

(b) the custodian of the land considers that minor amendments to the existing plan are appropriate.

(2) The custodian—

(a) may prepare a new draft land management plan for the area, incorporating the minor amendments into the existing plan; and

(b) need not comply with the requirements in this part; and

(c) may submit the new draft plan to the Minister for approval.

(3) If the custodian submits a new draft land management plan to the Minister for approval, the Minister must—

(a) approve the new draft plan; or

(b) reject the new draft plan.

Note An amended land management plan is a land management plan for the purposes of s 395.

(4) In this section:

minor amendment, of a land management plan for an area of public land, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

Examples

1 minor correction to improve effectiveness

2 omission of something redundant

3 technical adjustment to improve efficiency

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399 Land management plan—custodian to implement

If a land management plan is in force for an area of public land, the custodian of the land must take reasonable steps to implement the plan.

400 Land management plan—review

(1) This section applies if a land management plan is in force for an area of public land.

(2) The custodian of the land must report to the Minister about the implementation of the plan at least once every 5 years.

(3) The custodian of the land must review the plan—

(a) every 10 years after the plan commences; and

(b) at any other time requested by the Minister.

(4) However, the Minister may extend the time for conducting a review under subsection (3) (a).

(5) In undertaking a review, the custodian must consult the conservator of flora and fauna.

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Part 11.3 Public land—leases and miners' rights

401 Leases of public land

(1) This section applies to—

(a) public land; and

(b) future public land during the defined period.

(2) The territory planning authority may grant a lease of an area of public land only if—

(a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and

(b) the area is not reserved under the plan as a wilderness area.

(3) The territory planning authority may, during the defined period, grant a lease of an area of future public land only if—

(a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and

(b) the area is not proposed to be reserved as a wilderness area in a draft major plan amendment designating the land to become public land.

(4) In this section:

defined period, in relation to future public land, means the period of interim effect under section 64 of a draft major plan amendment designating the land to become public land.

future public land means land designated, in a draft major plan amendment publicly notified under section 63, to become public land.

402 Miners' rights in relation to public land

A miner's right must not be granted in relation to public land.

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Chapter 12 Development offences and controlled activities

Part 12.1 Development offences

403 Offence to develop without approval

(1) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

(c) the person knows that the development requires development approval.

Maximum penalty:

(a) for an individual—2 000 penalty units; or

(b) for a corporation—2 500 penalty units.

(2) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

(c) the person is reckless about whether the development requires development approval.

Maximum penalty: 1 000 penalty units.

(3) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval; and

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(c) the person is negligent about whether the development requires development approval.

Maximum penalty: 500 penalty units.

(4) A person commits an offence if—

(a) the person undertakes development without development approval; and

(b) the development requires development approval.

Maximum penalty: 60 penalty units.

(5) An offence against subsection (4) is a strict liability offence.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves—

(a) that before undertaking the development the defendant took reasonable steps to find out whether the development required development approval; or

(b) that—

(i) an exemption assessment D notice was issued before, but not more than 3 months before, the day the defendant started to undertake the development, stating that the development was an exempt development under section 145; and

(ii) the defendant was not aware, and could not reasonably have been aware, that the notice was incorrect; or

(c) that—

(i) before the day the defendant started to undertake the development, a building approval or approval of amended building work plans under the *Building Act 2004* for which development approval was required was issued; and

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(ii) the building work was undertaken when the building approval, or the approval for the amended plans, was in force; and

(iii) the defendant was not aware, and could not reasonably have been aware, that the building approval, or the approval of the amended plans, should not have been issued without development approval.

Note See the *Building Act 2004*, s 28 (for issuing of building approvals) and s 32 (for amendment of approved plans).

(7) A proceeding under this part is not affected by the making of an application under section 215 (Development applications for development undertaken without approval), or the approval of the application, whether or not the proceeding starts before the application is made or approved.

(8) To remove any doubt, this section does not apply to development that is lawful because of section 407 or section 408.

Note A person also commits an offence if the person occupies or uses, or allows someone else to occupy or use, a building, or part of a building, if a certificate of occupancy has not been issued for the building or part of the building (see *Building Act 2004*, s 76 (1)).

404 Offence to undertake prohibited development

(1) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

(c) the person knows that the development is prohibited.

Maximum penalty:

(a) for an individual—2 000 penalty units; or

(b) for a corporation—2 500 penalty units.

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(2) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

(c) the person is reckless about whether the development is prohibited.

Maximum penalty: 1 000 penalty units.

(3) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited; and

(c) the person is negligent about whether the development is prohibited.

Maximum penalty: 500 penalty units.

(4) A person commits an offence if—

(a) the person undertakes development; and

(b) the development is prohibited.

Maximum penalty: 60 penalty units.

Note Section 156 and s 405 disapply s (1) to (4) in certain cases.

(5) An offence against subsection (4) is a strict liability offence.

(6) To remove any doubt, this section does not apply to development that is lawful—

(a) because of section 405, section 407 or section 408; or

(b) because it is in accordance with a development approval granted on an application mentioned in section 156 (2).

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405 Development authorised by approval before prohibition

(1) This section applies if—

(a) a person undertakes development; and

(b) the development is in accordance with a development approval given in relation to the development; and

(c) the development becomes prohibited.

(2) Section 404 (1) to (4) does not apply to the development if it is undertaken in accordance with the development approval, despite any other provision of this Act.

Note The development may still need building approval, or further building approval, under the *Building Act 2004*.

406 Offence to develop other than in accordance with approval

(1) A person commits an offence if—

(a) the person undertakes development; and

(b) the development contravenes the development approval for the development.

Maximum penalty: 60 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

Note A person contravenes an approval if the person contravenes a condition of the approval.

407 Development previously exempt—non-use

(1) This section applies if—

(a) a development, other than a development that is a use, is exempt from requiring development approval under a regulation; and

(b) a person undertakes, or begins, the development; and

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(c) after the person undertakes or begins the development, the development stops being exempt because of an amendment of this Act.

(2) The development is lawful despite any other provision of this Act.

408 Development previously exempt—use

(1) This section applies to a use of land, or of a building or other structure on land, if the use—

(a) was an exempt development when it began; and

(b) is authorised by—

(i) a lease for the land (the ***affected lease***); or

(ii) a licence under this Act; or

(iii) a public unleased land permit under the *Public Unleased Land Act 2013*; or

(iv) a sign approval or work approval under the *Public Unleased Land Act 2013*; or

(v) section 276 (Use of land for leased purpose); and

(c) stops being exempt because of an amendment of this Act.

(2) Also, this section applies in relation to a use of land, or of a building or other structure on land, even if 1 or more of the following apply in relation to the use:

(a) the use is not continuous;

(b) someone deals with the affected lease;

(c) a further lease is granted for the affected lease on application under section 289 (Grant of further leases), whether the grant happens immediately after the expiry of the affected lease or otherwise.

Note ***Deal***, with a lease—see the dictionary.

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(3) However, this section does not apply in relation to the use of land, or of a building or other structure on land, if—

(a) the affected lease is surrendered (other than under section 289) or terminated; or

(b) the use is authorised by a relevant authorisation and the relevant authorisation ends—

(i) whether on expiry or otherwise; and

(ii) even if renewed; or

(c) the affected lease expires and no application is made under section 289 for a further lease.

Note A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease (see s 289 (1) (c)).

(4) The use of the land, building or other structure is lawful while authorised by the lease, licence, permit, approval or section 276, despite any other provision of this Act.

(5) In this section:

relevant authorisation means—

(a) a licence under this Act; or

(b) a public unleased land permit under the *Public Unleased Land Act 2013*; or

(c) a sign approval or work approval under the *Public Unleased Land Act 2013*.

409 Development that becomes exempt

(1) This section applies if—

(a) a development has been undertaken; and

(b) development approval was required for the development; and

(c) there was no development approval for the development.

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(2) If the development becomes an exempt development, the development is taken to have been an exempt development since the start of the development.

(3) A proceeding under this part is not affected by subsection (2), whether or not the proceeding starts before the development becomes exempt.

410 Victimisation

(1) A person (the ***first person***) commits an offence if the first person causes or threatens to cause a detriment to someone else (the ***other person***) because—

(a) the other person has made a complaint under part 12.2 (Complaints about controlled activities); or

(b) the first person believes that the other person has made, or intends to make, a complaint under part 12.2.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—

(a) not to make a complaint under part 12.2; or

(b) to withdraw a complaint made under part 12.2.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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Part 12.2 Complaints about controlled activities

411 Meaning of *complainant*—pt 12.2

In this part:

complainant—see section 414 (1) (b).

412 Meaning of *controlled activity*

In this Act:

controlled activity means—

(a) an activity mentioned in schedule 4; or

(b) an activity, including an activity under another Act, prescribed by regulation.

413 Complaints about controlled activities

(1) Anyone who believes a person was, is or will be undertaking a controlled activity may complain to the territory planning authority.

(2) The following are taken to be complaints made under this section:

(a) notice of a suspicion of noncompliant site work given under the *Building Act 2004*, section 50A;

(b) a complaint referred to the territory planning authority under the *Construction Occupations (Licensing) Act 2004*, section 123 (Action after investigating complaint).

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414 Form of complaints

(1) A complaint must—

(a) be in writing; and

(b) include the name and address of the person making the complaint (the ***complainant***); and

(c) identify the conduct complained about.

(2) However, the territory planning authority—

(a) may accept a complaint for consideration even if it does not comply with subsection (1); and

(b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

(3) If the territory planning authority accepts a complaint that is not in writing, the authority must ask the complainant to put the complaint in writing unless there is a good reason for not doing so.

415 Withdrawal of complaints

(1) A complainant may withdraw their complaint at any time by written notice to the territory planning authority.

(2) If the complainant withdraws the complaint, the territory planning authority—

(a) need take no further action on the complaint; but

(b) may continue to act on the complaint if the authority considers it appropriate to do so.

(3) Also, if the complainant withdraws the complaint, the territory planning authority need not report to the complainant under section 419 (Action after investigating complaints).

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416 Additional information about complaints

(1) The territory planning authority may require a complainant to give the authority additional information about the complaint at any time.

Examples

1 whether a complaint is about controlled activity that was, or is being, undertaken

2 the grounds on which the complainant alleges a controlled activity has happened or is happening

(2) The territory planning authority must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period.

(3) If the complainant does not comply with the requirement, the territory planning authority may take no further action in relation to the complaint.

417 Investigation of complaints

The territory planning authority must take reasonable steps to investigate each complaint made in accordance with section 414 (Form of complaints).

Note A person may be required to give information to the authority for the administration or enforcement of this Act (see s 474).

418 Use of information relating to complaints

The territory planning authority may use information in a complaint, or information found during the investigation of a complaint, in deciding whether to take any action under this chapter.

Note The territory planning authority must notify a complainant about the action it decides to take (see s 419 (2) (b)).

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419 Action after investigating complaints

(1) After investigating a complaint made under this part, the territory planning authority must do 1 or more of the following:

(a) if satisfied that no further action is necessary in relation to the complaint—give the complainant notice under subsection (2) (b) and take no further action in relation to the complaint;

(b) if satisfied that the complaint can be more appropriately dealt with by another entity—refer the complaint to the other entity under section 422;

Examples

1 the complaint is about a potential fire hazard and would be better dealt with by the emergency service

2 the complaint is about a leasehold that is unclean because leftover chemicals are stored on it and would be better dealt with by the environment protection authority

3 the complaint is about an amenity impact caused by litter at an open private place and would be better dealt with by the administrative unit responsible for administering the *Litter Act 2004*

(c) if satisfied that the complaint contains evidence that suggests that a ground for occupational discipline exists in relation to a construction occupations licensee—refer the complaint to the construction occupations registrar;

(d) if the authority requires information under section 474—give someone an information requirement notice;

(e) take action under part 12.3 (Controlled activity orders) in relation to the conduct complained about;

(f) if grounds exist under a regulation to issue an infringement notice in relation to the conduct complained about—issue an infringement notice in relation to the conduct;

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(g) if satisfied that it would be appropriate for rectification work to be done—direct a person to undertake rectification work under part 12.4 (Rectification work) in relation to the conduct complained about;

(h) if satisfied that it would be appropriate to give a prohibition notice in relation to the conduct complained about—give a prohibition notice under part 12.5 (Prohibition notices) in relation to the conduct;

(i) if satisfied that there are grounds for issuing an injunction in relation to the conduct complained about—apply to the Supreme Court for an injunction under part 12.6 (Injunctions and termination of leases and licences) in relation to the conduct;

(j) take action under part 12.6 to terminate a lease or licence;

(k) take any other action the authority considers appropriate.

(2) The territory planning authority must—

(a) consider any guidelines under section 420 when taking action under this section; and

(b) give the complainant written notice about what the authority proposes to do under subsection (1).

(3) The territory planning authority may take action under subsection (1) (c) to (k) even if—

(a) the authority is not acting on a complaint; or

(b) the complaint is withdrawn.

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(4) In this section:

construction occupations licensee—

(a) means a person licensed under the *Construction Occupations (Licensing) Act 2004*; and

(b) in relation to conduct, includes a person licensed under that Act when the conduct happened.

ground for occupational discipline, in relation to a construction occupations licensee—see the *Construction Occupations (Licensing) Act 2004*, section 55.

rectification work—see section 436.

420 Guidelines for taking action on complaints

The territory planning authority may make guidelines about the action that may be taken in relation to complaints under this part and the circumstances in which the action may be taken.

421 No further action on complaints under s 419 (1) (a)

In considering whether no further action is necessary in relation to a complaint, the territory planning authority must consider whether the complaint—

(a) lacks substance; or

(b) is frivolous, vexatious or dishonest; or

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(c) has been adequately dealt with.

Examples—par (a)

1 the conduct complained about is not a controlled activity

2 the conduct complained about has development approval

3 the conduct complained about did not happen

Note The authority may take no further action on a complaint for other reasons, eg if the complainant has not complied with a requirement made under s 416 (see s 416 (3)) or if the authority considers it is appropriate after considering the guidelines under s 420.

422 Referral of complaints under s 419 (1) (b)

The territory planning authority refers a complaint to another entity by giving the other entity—

(a) a copy of the complaint or a summary of the information provided in the complaint; and

(b) any information relating to the complaint that the authority considers may be helpful to the entity; and

(c) a statement about why the authority considers that the entity is more appropriate to deal with the complaint than the authority.

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Part 12.3 Controlled activity orders

423 Definitions—pt 12.3

In this part:

complainant—see section 414 (1) (b).

ongoing controlled activity order—see section 428 (1).

424 Controlled activity orders

(1) The territory planning authority may, on its own initiative or on application by a person, make an order directed to 1 or more of the following (a ***controlled activity order***):

(a) the lessee or occupier of premises where a controlled activity was, is being, or will be, undertaken;

(b) anyone by whom or on whose behalf a controlled activity was, is being, or will be, undertaken.

(2) An application for a controlled activity order must be in writing and state the following:

(a) the applicant's name and contact address;

(b) a description of the matter about which the order is sought;

(c) whether the applicant has complained to the territory planning authority under part 12.2 about the matter;

(d) the kind of order sought by the applicant;

(e) each person to whom the order sought is to be directed;

(f) the premises in relation to which the order is sought;

(g) the grounds on which the order is sought.

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425 Show cause notices

(1) This section applies if the territory planning authority intends to make a controlled activity order on its own initiative, or receives an application to make an order, under section 424 (1).

(2) The territory planning authority must give written notice of its intention or the application (a ***show cause notice***) to—

(a) each person to whom the authority intends to direct the order, or to whom the order is sought to be directed; and

(b) if not included in paragraph (a)—the lessee or occupier of the premises in relation to which the order is to apply.

(3) A show cause notice must—

(a) state that a recipient of the notice may, not later than 10 working days after the day the territory planning authority gives the notice, give the authority written reasons explaining why the order should not be made; and

(b) for an order the authority intends to make by its own initiative—

(i) describe the controlled activity to which the notice relates; and

(ii) name each person to whom the authority intends to direct the order; and

(iii) if the controlled activity is the subject of a complaint made under part 12.2—attach a copy of the complaint; and

(c) for an order sought on application—be accompanied by a copy of the application.

(4) A show cause notice may include any other information that the territory planning authority considers appropriate.

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(5) The territory planning authority may, on application by a recipient of a show cause notice, extend the time mentioned in subsection (3) (a) if satisfied that it would be appropriate taking into account the reasons given in the application.

426 Time for making controlled activity order

(1) If the territory planning authority gives a show cause notice and does not make the controlled activity order within the time prescribed by regulation, the authority must give a new show cause notice before making the order.

(2) However, the chief planner may extend the time for making a controlled activity order.

(3) The chief planner must not delegate the function in subsection (2).

(4) For a controlled activity order sought on application, the territory planning authority is taken to have decided not to make the order if the authority fails to decide the application before the end of the period prescribed by regulation.

427 Decision on proposed controlled activity order

(1) In deciding whether to make a controlled activity order, the territory planning authority must consider any reasons given in response to the show cause notice for the order.

(2) The territory planning authority may direct a controlled activity order to 1 or more of the following:

(a) the person to whom the authority intends to direct the order, or to whom the order is sought to be directed, according to the show cause notice;

(b) if not included in paragraph (a) and the authority considers it would be more appropriate—the lessee or occupier of the premises in relation to which the order applies.

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(3) If the controlled activity order is directed to the lessee or occupier under subsection (3) (b), the territory planning authority—

(a) must give a new show cause notice to that person; and

(b) may consider any reasons given in response to the earlier show cause notice when deciding whether to make an order directed to that person.

(4) For a controlled activity order sought on application, the territory planning authority may decide—

(a) to make the order; or

(b) to make a different order that is not more burdensome than the order sought; or

(c) not to make an order.

Example—par (b)

Steve applies for an order for the demolition of an unapproved structure. Instead, the authority makes an order that the structure is to be demolished if a development approval for the structure is not obtained within a stated period.

428 Ongoing controlled activity orders

(1) The territory planning authority may make a controlled activity order (an ***ongoing controlled activity order***) that—

(a) remains in force for a stated period of 2 or more years, but not longer than 5 years; and

(b) cannot be revoked on application by the person to whom the order is directed.

(2) However, the territory planning authority must not make an ongoing controlled activity order unless—

(a) the controlled activity to which the order relates is failing to keep a leasehold clean; and

(b) the order is directed to a named person; and

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(c) each person to whom the order is directed has contravened 2 or more controlled activity orders relating to failing to keep the leasehold clean; and

(d) at least 2 of the contraventions by each person happened in the period of 5 years ending on the day the ongoing controlled activity order is made.

Example—order not directed to named person

an order directed to the occupier of the premises at 123 Licorice Street

429 Content of controlled activity orders

(1) A controlled activity order must state the following:

(a) that it is a controlled activity order under this Act made by the territory planning authority;

(b) the name of each person to whom the order is directed;

(c) the terms of the order and the address of the premises in relation to which the order applies;

(d) the grounds on which the order is made;

(e) when the order takes effect;

(f) for an order other than an ongoing controlled activity order—

(i) the period for compliance with the order; and

(ii) when the order ends (including, for example, on the happening of an event stated in the order);

(g) for an ongoing controlled activity order—

(i) when the order ends; and

(ii) that the order cannot be revoked on application;

(h) that contravention of a controlled activity order is an offence under this Act.

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(2) A controlled activity order must also state that the order operates until it is revoked or ends in accordance with the order.

(3) A controlled activity order may direct anyone to whom it is directed to do 1 or more of the following:

(a) not begin a development without development approval;

(b) not undertake a development without development approval;

(c) comply with a lease provision or development agreement;

(d) restore any land, or a building or other structure on land, that has been altered, damaged or fallen into disrepair in breach of a lease provision or development agreement;

(e) comply with the terms of a development approval to undertake a development;

(f) undertake a development in accordance with a condition under the development approval for the development;

(g) demolish a building or other structure, or a part of a building or other structure, that has been constructed without development approval or permission required under a territory law;

(h) demolish a building or other structure, or a part of a building or other structure, that encroaches onto, over or under unleased land without approval granted under a territory law;

(i) restore any land, building or other structure that has been altered without development approval or permission required under a territory law;

(j) replace with an identical building or other structure any building or other structure that has been demolished without development approval or permission required under a territory law;

(k) apply for development approval for a building or other structure, or part of a building or other structure, that has been constructed without development approval;

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(l) clean up a leasehold and keep it clean;

(m) if the person to whom the order is directed is bound by a land management agreement—comply with the land management agreement;

(n) keep from doing anything that is a controlled activity whether or not a controlled activity order has been, or could be, made under paragraphs (a) to (m).

430 Notice of making of controlled activity orders

(1) If the territory planning authority makes a controlled activity order, the authority must give notice of the making of the order to the following:

(a) each person to whom the order is directed;

(b) if the order is made in response to a complaint under part 12.2—the complainant;

(c) if the order is made on application under section 424 —the applicant;

(d) the lessee or occupier of the premises in relation to which the order applies;

(e) the registrar-general;

(f) if the order relates to the pruning of a protected tree—the decision-maker under the *Urban Forest Act 2023*;

Note Pruning of a protected tree may be restricted under the *Urban Forest Act 2023*, pt 3.

(g) anyone else whose interests the authority believes are adversely affected by the order.

(2) If a person is given a notice under section 505 (Reviewable decision notices) in relation to the making of a controlled activity order, the person need not be given a separate notice under this section in relation to the making of the order.

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431 Who is bound by a controlled activity order

(1) A controlled activity order binds each person to whom it is directed.

(2) If a controlled activity order binds the lessee of the premises in relation to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes the lessee of the premises after the order is made to the same extent as if the order had been directed to that person.

(3) If a controlled activity order binds the occupier of the premises in relation to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes an occupier of the premises after the order is made to the same extent as if the order had been directed to that person.

432 Contravention of controlled activity orders

(1) A person commits an offence if—

(a) the territory planning authority makes a controlled activity order directed to the person; and

(b) the order requires the person to do, or not do, something stated in the order; and

(c) the person is given notice of the making of the order (whether by being given a copy of the order or otherwise); and

(d) the person contravenes the order.

Maximum penalty: the amount stated in schedule 4, column 3 in relation to the activity for which the order was made.

(2) An offence against this section is a strict liability offence.

433 Notice of appeal against controlled activity orders

(1) This section applies if—

(a) a person complains about conduct under part 12.2; and

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(b) because of the complaint, or investigations arising from the complaint, the territory planning authority makes a controlled activity order directed to a person (the ***directed person***); and

(c) the directed person appeals to the ACAT for review of the decision to make the order.

(2) The territory planning authority must tell the complainant in writing about the appeal.

434 Ending controlled activity orders

(1) A controlled activity order operates until it is revoked or ends in accordance with the order.

(2) A person bound by a controlled activity order (other than an ongoing controlled activity order) may apply in writing to the territory planning authority for the revocation of the order.

(3) The application must state the grounds on which the revocation of the controlled activity order is sought.

(4) The territory planning authority may revoke the controlled activity order if satisfied on reasonable grounds that the order is no longer necessary or appropriate.

435 Notice ending controlled activity orders

(1) If a controlled activity order ends other than by being revoked, the territory planning authority must give written notice of the ending of the order to the registrar-general.

(2) If the territory planning authority revokes a controlled activity order, the authority must give written notice of the revocation to each person given notice of the making of the order under section 430.

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Part 12.4 Rectification work

Division 12.4.1 Preliminary

436 Meaning of *rectification work*

In this Act:

rectification work—

(a) means—

(i) work in relation to premises where a controlled activity is being undertaken to ensure compliance with the development approval for the activity; or

(ii) the undertaking of an activity required under a controlled activity order that was not undertaken within the period stated in the order; and

(b) in relation to an authorised person—means the rectification work the authorised person is authorised to undertake.

Division 12.4.2 Directions for rectification work

437 Direction to undertake rectification work

(1) The territory planning authority may direct 1 or more of the following to undertake rectification work in relation to a controlled activity:

(a) the lessee or occupier of premises where the activity was or is being undertaken;

(b) anyone by whom or on whose behalf the activity was or is being undertaken.

(2) The territory planning authority must give notice of the direction to—

(a) the person required to comply with the direction; and

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(b) if different from the person mentioned in paragraph (a)—the lessee or occupier of the premises to which the direction applies.

(3) The notice must state the following:

(a) that it is a direction under this Act made by the territory planning authority;

(b) the name of the person required to comply with the direction;

(c) the address of the premises in relation to which the direction applies;

(d) the rectification work required;

(e) the grounds on which the direction is given;

(f) that the rectification work must be completed not later than 5 working days after the day the notice is given to the person or any longer period stated in the notice.

(4) The notice must also state that, if the rectification work is not completed by the end of the period required by the notice—

(a) the territory planning authority may authorise someone else to undertake the work; and

(b) the reasonable cost of undertaking the work is a debt to the Territory by the person required to comply with the direction.

(5) The territory planning authority is not required to give notice of its intention to make a direction.

(6) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

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438 Contravention of direction to undertake rectification work

(1) A person commits an offence if—

(a) the territory planning authority directs the person to undertake rectification work in relation to a controlled activity; and

(b) the person is given notice of the direction; and

(c) the person contravenes the direction.

Maximum penalty: 60 penalty units.

(2) An offence against this section is a strict liability offence.

Division 12.4.3 Authorisations for rectification work

439 Authorisation to undertake rectification work

(1) The territory planning authority may authorise a person (an ***authorised person***) to enter the premises to which a direction under section 437 (Direction to undertake rectification work) applies to undertake the rectification work required by the notice under that section if the work is not completed by the end of the period stated in the notice.

(2) However, the territory planning authority must not give the authorisation—

(a) until the end of the period for making an application to the ACAT for the review of the decision to make the controlled activity order to which the rectification work relates (the ***relevant order***); or

(b) if an application is made to the ACAT for review of the decision to make the relevant order—unless the decision is upheld or the application is withdrawn or dismissed.

(3) The territory planning authority is not required to give notice of its intention to authorise a person under subsection (1).

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440 Obligation and powers of authorised people

(1) An authorised person must undertake rectification work in accordance with the directions of an inspector.

(2) The authorised person may do anything required to undertake the rectification work including, for example, the following:

(a) construction work;

(b) alteration;

(c) demolition;

(d) remove earth, fixtures and construction material;

(e) remove car bodies, vegetation, machinery or anything else that has to be removed to clean up a leasehold.

(3) Anything removed from premises to undertake rectification work is not required to be returned and may be disposed of.

441 Entry to premises by authorised people

(1) An authorised person may enter premises to undertake rectification work at the premises—

(a) during business hours with the consent of an occupier; or

(b) in accordance with a rectification work order.

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 467.

(2) An authorised person who enters premises may remain at, and re-enter, the premises to undertake the rectification work during business hours, or at another time authorised by a rectification work order, whether or not the inspector remains at the premises.

Note If entry is made under a rectification work order, see s 445 for re-entry to the premises.

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(3) However—

(a) an authorised person must not enter premises for the first time unless accompanied by an inspector; and

(b) if the authorised person enters or re-enters the premises with consent under subsection (1) (a), the person must leave the premises if an occupier withdraws consent to the person being on the premises.

Division 12.4.4 Rectification work orders

442 Application for rectification work order

(1) An inspector may apply to a magistrate for an order authorising entry to premises to undertake rectification work (a ***rectification work order***) if—

(a) the territory planning authority gives a direction for rectification work to be done at the premises; and

(b) notice of the direction is given under section 437; and

(c) the rectification work is not undertaken in accordance with the notice; and

(d) a person is authorised to undertake the rectification work; and

(e) 1 or more of the following circumstances apply in relation to the premises:

(i) the proposed rectification work cannot reasonably be undertaken, or consent to entry cannot be obtained, during business hours;

(ii) an inspector, or an accompanying authorised person, is refused entry in accordance with an intention to enter notice given under section 467;

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(iii) consent to the entry of an inspector or an accompanying authorised person to undertake the rectification work is withdrawn;

(iv) consent to the entry or re-entry of an authorised person to undertake or complete the rectification work is withdrawn.

(2) An application for a rectification work order must be sworn and state the following:

(a) the grounds for making the application;

(b) why the order is sought;

(c) if the order sought is for undertaking rectification work at stated times outside business hours—why the work needs to be undertaken at the stated times;

(d) whether police assistance, or any other assistance, is likely to be needed to execute the order;

(e) if the application is made remotely under section 446—why the application is being made remotely.

443 Decision on application for rectification work order

(1) A magistrate may refuse to consider an application for a rectification work order until the inspector gives the magistrate any additional information the magistrate requires for subsection (2).

(2) The magistrate must not make the rectification work order unless satisfied that—

(a) there are grounds for making the application; and

(b) if the order is for undertaking rectification work at stated times outside business hours—it is reasonably necessary to undertake the work at the stated times; and

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(c) if the application states that assistance is likely to be necessary to execute the order—the assistance mentioned in the application is reasonably necessary to execute the order; and

(d) if the application is made remotely under section 446—the application has been made in accordance with that section.

(3) A rectification work order may not be made in relation to an inspector other than the applicant.

(4) However, a rectification work order may authorise another inspector to accompany the applicant to execute the order.

444 Content of rectification work order

A rectification work order must state the following:

(a) the address of the premises to which the order relates;

(b) the name of the inspector authorised to enter the premises;

(c) the name of the authorised person authorised to enter the premises with the inspector;

(d) that the inspector and authorised person may use reasonable force to enter the premises;

(e) if the order authorises using assistance in executing the order—the assistance that may be used in executing the order;

(f) that entry is authorised during business hours or, if authorised outside business hours, at stated times outside business hours;

(g) the date, not later than 4 working days after the day the order is made, when the rectification work must begin.

445 Authorisation by rectification work order

A rectification work order authorises the following:

(a) the undertaking of the rectification work to which the order applies;

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(b) the stated inspector to enter premises in accordance with the order;

(c) the stated authorised person to enter premises in accordance with the order if accompanied by the inspector;

(d) if the order authorises assistance—the inspector and authorised person to enter with assistance in accordance with the order;

(e) the inspector to remain on the premises, or to re-enter the premises, to give directions to the authorised person;

(f) the authorised person—

(i) to remain on the premises to undertake the rectification work, whether or not the inspector remains on the premises; and

(ii) to re-enter the premises to complete the rectification work.

Note Also, an inspector may require a person's name and address for a believed contravention of this Act (see s 473).

446 Remote application for rectification work order

(1) An inspector may apply for a rectification work order in relation to premises by phone, email or other form of communication (a ***remote application***) if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.

(2) Before applying for the order, the inspector must prepare an application in accordance with section 442 (2).

(3) However, the inspector may apply for the order before the application is sworn.

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447 Documents given after order made on remote application

(1) After making a rectification work order on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.

(2) If it is not practicable to provide a written copy of the rectification work order to the inspector—

(a) the magistrate must tell the inspector—

(i) the order's terms; and

(ii) the date and time the order was issued; and

(b) the inspector must complete a form of order (the ***rectification work order form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the order; and

(iii) the order's terms.

(3) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application mentioned in section 446 (2); and

(b) if the inspector completed a rectification work order form—the completed form.

(4) On receiving the documents mentioned in subsection (3), the magistrate must attach them to the rectification work order.

(5) A court must find that a power exercised by an inspector was not authorised by a rectification work order made on a remote application if—

(a) a question arises in a proceeding in the court whether the exercise of power was authorised by a rectification work order; and

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(b) the order is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a rectification work order made on a remote application.

(6) In this section:

remote application—see section 446 (1).

448 Entry under rectification work order—no occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a rectification work order; and

(b) the inspector believes on reasonable grounds that no occupier is present at the premises.

(2) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

(3) However, only a police officer may use force against a person.

449 Entry under rectification work order—occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a rectification work order; and

(b) an occupier is present at the premises.

(2) The inspector must—

(a) produce the inspector's identity card to the occupier; and

(b) give the occupier a copy of the rectification work order; and

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(c) tell the occupier that, under the order—

(i) the authorised person accompanying the inspector is authorised to undertake rectification work under the order; and

(ii) the inspector may, but need not, remain on the premises to give directions to the authorised person; and

(d) tell the occupier that—

(i) hindering the inspector or authorised person may be an offence; and

(ii) the inspector and anyone authorised under the order to provide assistance may use reasonable force to enter if entry is refused.

(3) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

(4) However, only a police officer may use force against a person.

Division 12.4.5 Liability for rectification work

450 Liability for cost of rectification work

A person required to comply with a direction under section 437 (Direction to undertake rectification work) must pay to the Territory the reasonable cost of any rectification work undertaken by an authorised person to which the direction related.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

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451 Protection of authorised people from liability

(1) An authorised person does not incur civil liability for rectification work undertaken in accordance with the directions of an inspector.

(2) A civil liability that would, apart from this section, attach to the authorised person attaches instead to the Territory.

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Part 12.5 Prohibition notices

452 Giving prohibition notices

(1) This section applies if the territory planning authority believes on reasonable grounds that the giving of a notice under this section (a ***prohibition notice***) is necessary—

(a) to prevent an entity starting, or continuing, to undertake prohibited development; or

(b) to prevent an entity from continuing to undertake development if—

(i) the entity has started to undertake the development; and

(ii) the development requires development approval; and

(iii) there is no development approval for the development; or

(c) to prevent an entity from continuing to undertake development other than in accordance with the conditions of a development approval if—

(i) the entity has started to undertake a development; and

(ii) there is development approval for the development; and

(iii) the development undertaken is not in accordance with the conditions of the development approval.

(2) Also, this section applies to an activity under subsection (1) whether or not—

(a) a controlled activity order is made, or is proposed to be made, in relation to the activity; or

(b) a proceeding for an offence against this chapter in relation to the activity has begun or is about to begin.

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(3) The territory planning authority may give a prohibition notice to either or both of the following:

(a) the lessee or occupier of premises to which the activity mentioned in subsection (1) relates;

(b) an entity by which or on behalf of which the activity—

(i) was, is, or will be, undertaken; or

(ii) is likely to be undertaken.

(4) The prohibition notice must state the following:

(a) that it is a prohibition notice under this Act;

(b) the name of each entity to which it is directed;

(c) that the notice takes effect when it is given to an entity to which it is directed;

(d) the grounds on which the notice is given;

(e) the activity, and the address of the premises, in relation to which the notice applies;

(f) that the activity—

(i) must not be carried on by the entity; or

(ii) must not be carried on by the entity except in accordance with the notice;

(g) when the notice ends.

Example—par (g)

on the happening of an event stated in the notice

(5) A prohibition notice takes effect when it is given to an entity to which it is directed.

(6) The territory planning authority is not required to give notice of its intention to give a prohibition notice.

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453 Contravention of prohibition notices

(1) A person commits an offence if—

(a) the territory planning authority gives a prohibition notice to the person; and

(b) the notice is directed to the person; and

(c) the notice states that an activity must not be carried on by the person in relation to premises; and

(d) the person carries on the activity in relation to the premises.

Maximum penalty: 60 penalty units.

(2) A person commits an offence if—

(a) the territory planning authority gives a prohibition notice to the person; and

(b) the notice is directed to the person; and

(c) the notice states that an activity must not be carried on by the person in relation to premises except in accordance with the notice; and

(d) the person carries on the activity in relation to the premises otherwise than in accordance with the notice.

Maximum penalty: 60 penalty units.

(3) An offence against this section is a strict liability offence.

454 Ending prohibition notices

A prohibition notice remains in force until the earliest of the following:

(a) the date the notice ends in accordance with the notice;

(b) the date the notice is revoked.

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455 Application for revocation of prohibition notices

(1) A person to whom a prohibition notice is directed may, in writing, apply to the territory planning authority for the revocation of the notice.

(2) The application must state the grounds on which the revocation is sought.

(3) The territory planning authority may revoke the prohibition notice if satisfied on reasonable grounds that the notice is no longer necessary or appropriate.

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Part 12.6 Injunctions and termination of leases and licences

456 Injunctions to restrain contravention of controlled activity orders and prohibition notices

(1) This section applies if a person (the ***relevant person***) has engaged, is engaging, or proposes to engage, in conduct contravening a controlled activity order or prohibition notice.

(2) The territory planning authority or anyone else may apply to the Supreme Court for an injunction.

(3) On application under subsection (2), the Supreme Court may grant an injunction—

(a) restraining the relevant person from engaging in the conduct; and

(b) if satisfied that it is desirable to do so—requiring the relevant person to do anything.

(4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—

(a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

(5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

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457 Termination of leases

(1) This section applies if—

(a) a lessee—

(i) contravenes this chapter or the lease; or

(ii) fails to pay a noncompliance fee or complete works within a new compliance time ; or

(iii) receives a compliance reminder notice and fails to comply with the notice; and

(b) the territory planning authority has complied with section 459 (Notice of termination) in relation to the lessee.

(2) The territory planning authority may, by written notice (a ***termination notice***) given to the lessee, terminate the lease.

(3) A termination notice takes effect 10 working days after the day the notice is given.

(4) At the same time as, or as soon as practicable after, the termination notice is given to the lessee, the territory planning authority must give a copy of the termination notice to—

(a) the registrar-general; and

(b) any person having an interest in the land described in the lease that is registered under the *Land Titles Act 1925*.

(5) The validity of the termination of a lease is not affected by a failure to comply with subsection (4).

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(6) In this section:

compliance reminder notice means a notice by the territory planning authority to the lessee of a community lease stating that—

(a) the lessee must, within 15 days after the day the lessee receives the notice—

(i) if the lessee has failed to give the authority a community use report for a financial year—give the authority the community use report; or

(ii) if the lessee has failed to give the authority additional information requested under section 296 (4) in relation to a community use report—give the authority the additional information; or

(iii) if the lessee has failed to commission an audit as required by the authority under section 297 (1)—commission the audit; and

(b) if the lessee fails to comply with the notice within the stated time, the lessee's lease may be terminated.

458 Termination of licences

(1) This section applies if—

(a) a person who occupies land under a licence from the Commonwealth or the Territory contravenes this chapter or the licence; and

(b) the territory planning authority has complied with section 459 (Notice of termination) in relation to the licensee.

(2) The territory planning authority may terminate the licence by written notice given to the licensee.

(3) A notice under subsection (2) takes effect 5 working days after the day the notice is given to the licensee.

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459 Notice of termination

(1) The territory planning authority must not terminate a lease or a licence under this part unless it has—

(a) by written notice given to the lessee or licensee—

(i) told the lessee or licensee that it is considering terminating the lease or licence; and

(ii) stated the grounds on which it is considering taking that action; and

(iii) invited the lessee or licensee to tell the authority in writing, not later than 15 working days after the day the lessee or licensee receives the notice, why the lessee or licensee considers that the lease or licence should not be terminated; and

(b) for the termination of a lease—given a copy of the notice under paragraph (a) to each person with a registered interest in the lease; and

(c) taken into account any reasons for not terminating the lease or licence given to the authority by the lessee or licensee in accordance with the notice served on the lessee or licensee under paragraph (a).

(2) The territory planning authority may extend the time for responding to the notice under subsection (1) (a) (iii).

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Chapter 13 Enforcement

Part 13.1 Preliminary

460 Definitions—ch 13

In this chapter:

connected—a thing is ***connected*** with an offence if—

(a) the offence has been committed in relation to it; or

(b) it will provide evidence of the commission of the offence; or

(c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

(a) a person believed on reasonable grounds to be an occupier of the premises; and

(b) a person apparently in charge of the premises.

offence includes an offence for which there are reasonable grounds for believing it has been, is being, or will be, committed.

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Part 13.2 Inspectors

461 Appointment of inspectors

The territory planning authority may appoint a public servant as an inspector for this Act.

Note For laws about appointments, see the Legislation Act, pt 19.3.

462 Identity cards

(1) The territory planning authority must give a person appointed as an inspector an identity card stating the person's name and that the person is an inspector.

(2) The identity card must show—

(a) a recent photograph of the person; and

(b) the card's date of issue and expiry; and

(c) anything else prescribed by regulation.

(3) A person commits an offence if—

(a) the person stops being an inspector; and

(b) the person does not return the person's identity card to the territory planning authority as soon as practicable, but not later than 5 working days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

(4) An offence against this section is a strict liability offence.

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Part 13.3 Powers of inspectors

463 Entry to premises

(1) For this Act, an inspector may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or

(b) if entering without an authorised person—at any time, enter premises with the occupier's consent; or

(c) if entering with an authorised person—during business hours, enter the premises with the occupier's consent; or

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 467.

(d) enter premises with an authorised person in accordance with a rectification work order; or

(e) enter premises in accordance with a search warrant or monitoring warrant.

(2) However, subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes.

(3) If an inspector wants to ask for consent to enter a building or other structure on premises, the inspector may, without the occupier's consent, enter any land that forms part of the premises to—

(a) ask for the consent; or

(b) give an intention to enter notice under section 467.

(4) To remove any doubt—

(a) an inspector may enter premises under subsection (1) without payment of an entry fee or other charge; and

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(b) for subsection (3), it does not matter whether someone is on the premises or not when the inspector enters.

464 Remaining at premises

An inspector must not remain at premises entered under this part if the inspector does not show their identity card when asked by the occupier.

465 Consent to entry without authorised person

(1) This section applies if an inspector intends to ask the occupier of the premises to consent to the inspector entering the premises under section 463 (1) (b).

(2) Before asking for consent, the inspector must—

(a) show their identity card; and

(b) tell the occupier—

(i) the purpose of the entry; and

(ii) that the occupier may refuse consent to enter the premises; and

(iii) that the inspector may exercise certain powers under section 468 (General powers on entry to premises); and

(iv) that the occupier may withdraw consent to remain at the premises.

(3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consen***t) stating the following:

(a) the matters mentioned in subsection (2) (b);

(b) that the occupier was told of those matters;

(c) that the occupier consented to the entry;

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(d) the date and time that consent was given.

(4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(5) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—

(a) a question arises in a proceeding in the court whether the occupier consented; and

(b) an acknowledgment of consent is not produced in evidence; and

(c) it is not proved that the occupier consented.

466 Consent to entry with authorised person

(1) This section applies if an inspector intends to ask the occupier of the premises to consent to the inspector and an authorised person entering the premises under section 463 (1) (c).

(2) The inspector must, during business hours—

(a) show their identity card; and

(b) tell the occupier that—

(i) the territory planning authority gave a direction for rectification work to be done at the premises; and

(ii) notice of the direction was given under section 437; and

(iii) the rectification work was not undertaken in accordance with the notice; and

(iv) a person has been authorised to undertake the rectification work; and

(v) entry is sought to allow the authorised person to undertake the rectification work; and

(vi) the authorised person is accompanying the inspector; and

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(vii) the inspector may, but need not, remain at the premises to give directions to the authorised person; and

(viii) the authorised person may return during business hours as required to complete the work; and

(ix) the occupier may refuse consent to enter the premises; and

(x) the occupier may withdraw consent to remain at the premises.

(3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***) stating the following:

(a) the matters mentioned in subsection (2) (b);

(b) that the occupier was told of those matters;

(c) that the occupier consented to the entry;

(d) the date and time that consent was given.

(4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(5) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—

(a) a question arises in a proceeding in the court whether the occupier consented; and

(b) an acknowledgment of consent is not produced in evidence; and

(c) it is not proved that the occupier consented.

467 Entry on notice for rectification work and monitoring

(1) This section applies to an inspector proposing to enter premises—

(a) under section 463 (1) (b) to check whether a controlled activity has happened, or is happening, in relation to the premises; or

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(b) under section 463 (1) (b) to check whether 1 or more of the following in relation to the premises is being complied with:

(i) a controlled activity order;

(ii) a direction under section 437 to undertake rectification work;

(iii) a prohibition notice;

(iv) an injunction under section 456; or

(c) with an authorised person under section 463 (1) (c).

(2) The territory planning authority may give an occupier of the premises written notice of the inspector's intention to enter the premises (an ***intention to enter notice***).

(3) An intention to enter notice—

(a) must be given to the occupier at least 2 working days before the proposed entry; and

(b) may be given to the occupier without first asking for the occupier's consent to enter the premises.

(4) For a proposed entry mentioned in subsection (1) (a) or (b), an intention to enter notice must state—

(a) the reason for the proposed entry; and

(b) when the inspector proposes to enter the premises; and

(c) that the occupier may refuse consent for the inspector or authorised person to enter the premises; and

(d) that the occupier may withdraw consent for the inspector or authorised person to remain at the premises.

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(5) For a proposed entry mentioned in subsection (1) (c), an intention to enter notice must state—

(a) that—

(i) the territory planning authority gave a direction for rectification work to be done at the premises; and

(ii) notice of the direction was given under section 437; and

(iii) the rectification work was not undertaken in accordance with the notice; and

(iv) a person has been authorised to undertake the rectification work; and

(v) the inspector proposes to enter the premises with an authorised person to allow the authorised person to undertake the rectification work; and

(vi) the inspector may, but need not, remain at the premises to give directions to the authorised person; and

(vii) the occupier may refuse consent for the inspector or authorised person to enter the premises; and

(viii) the occupier may withdraw consent for the inspector or authorised person to remain at the premises; and

(b) when, during business hours, the work is proposed to be undertaken.

(6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—

(a) tell the occupier that—

(i) the inspector proposes to enter the premises with an authorised person to allow the authorised person to undertake the rectification work to which the notice relates; or

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(ii) the inspector proposes to enter the premises to check whether a controlled activity has happened, or is happening; or

(iii) the inspector intends to enter the premises to check compliance in accordance with the notice; and

(b) tell the occupier that, if the occupier does not consent to the inspector or authorised person entering, or remaining at, the premises, an application may be made to a court for a rectification work order or a monitoring warrant; and

(c) give the occupier a copy of the notice.

(7) If an inspector gives the occupier an intention to enter notice, the inspector must ask the occupier to sign a written acknowledgment that the occupier was told that—

(a) the inspector—

(i) proposes to enter the premises with an authorised person to allow the authorised person to undertake the rectification work to which the notice relates; or

(ii) proposes to enter the premises to check whether a controlled activity has happened, or is happening; or

(iii) intends to enter the premises to check compliance in accordance with the notice; and

(b) if the occupier does not consent to the inspector or authorised person entering or remaining at the premises—an application may be made to a court for a rectification work order or a monitoring warrant.

(8) If the occupier signs an acknowledgment under subsection (7), the inspector must immediately give a copy to the occupier.

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468 General powers on entry to premises

(1) For this Act, an inspector who enters premises under this chapter may do 1 or more of the following in relation to the premises or anything at the premises:

(a) inspect or examine anything;

(b) take measurements or conduct tests;

(c) take photographs or audio, video or other recordings, or make sketches;

(d) ask the occupier, or anyone else at the premises—

(i) to give information to the inspector; or

(ii) to produce documents to the inspector.

Note An inspector who enters premises under a search warrant may also exercise power under s 470, s 471 and s 472. An inspector who enters premises under a monitoring warrant may also exercise powers under s 470 and s 472. See also s (3) in relation to the exercise of power under warrants.

(2) An inspector must not exercise a power under subsection (1) unless the inspector believes on reasonable grounds that the exercise relates to 1 or more of the following:

(a) a controlled activity or possible controlled activity;

(b) a prohibition notice;

(c) a direction under section 437 to undertake rectification work;

(d) an injunction under section 456;

(e) an offence or possible offence, or a thing or activity connected with an offence or possible offence, against this Act.

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(3) If the inspector enters the premises under a search warrant or monitoring warrant, the inspector may only exercise a power under subsection (1) in relation to a matter mentioned in subsection (2) if the warrant relates to the matter.

(4) This section does not apply to an inspector who enters premises under section 463 (1) (c) or (d).

469 Power on entry for rectification work

For this Act, an inspector who enters premises under section 463 (1) (c) or (d) may give directions to the authorised person undertaking rectification work about how the work is to be undertaken.

470 Power to require help on entry under warrant

(1) An inspector who enters premises under a search warrant or monitoring warrant may require the occupier, or anyone at the premises, to give the inspector reasonable help to exercise a power under this chapter.

(2) A person commits an offence if the person fails to take all reasonable steps to comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

471 Power to take samples on entry under warrant

(1) An inspector who enters premises under a search warrant or monitoring warrant may take samples of anything the inspector believes on reasonable grounds is connected with the matter to which the warrant relates.

(2) The inspector must—

(a) give a receipt for the sample to the occupier of the place from where the sample was taken; and

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(b) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other; and

(c) ensure that each part is suitable for the purpose of analysis; and

(d) place each part in a separate container and seal the containers; and

(e) attach to each container a label that is signed by the inspector and states the date and time when, and the place where, the sample was taken; and

(f) give 1 of the containers to the occupier.

472 Power to seize things on entry under search warrant

An inspector who enters premises under a search warrant may seize anything at the premises that the inspector is authorised to seize under the warrant.

473 Power to require name and address

(1) An inspector may require a person to state the person's name and home address if the inspector believes on reasonable grounds that the person is committing or has just committed an offence against this Act.

(2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.

(3) The person may ask the inspector to show their identity card for inspection by the person.

(4) A person must comply with a requirement made of the person under subsection (1) if the inspector—

(a) tells the person the reason for the requirement; and

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(b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

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Part 13.4 Information requirements

474 Information requirements

(1) This section applies if the territory planning authority suspects on reasonable grounds that a person—

(a) has information reasonably required by the authority for the administration or enforcement of this Act; or

(b) has possession or control of a document containing that information.

(2) The territory planning authority may give the person a written notice requiring the person to give the information or produce the document to the authority (an ***information requirement notice***).

(3) The notice must include details of the following:

(a) the identity of the person to whom it is given;

(b) why the information is required;

(c) the time by which the notice must be complied with;

(d) the operation of subsection (4).

(4) A person commits an offence if the person intentionally contravenes an information requirement notice.

Maximum penalty: 100 penalty units.

(5) A person does not incur any civil or criminal liability only because the person gives information or a document to the territory planning authority in accordance with an information requirement notice.

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475 Treatment of documents provided under information requirement

(1) The territory planning authority must return a document produced in accordance with an information requirement notice to the person who produced the document as soon as practicable.

(2) The territory planning authority may make copies of, or take extracts from, the document.

476 When authority may ask for information from commissioner for revenue

(1) This section applies if the territory planning authority may or must notify, or intends to take action under this Act in relation to, an uncontactable person or a person the authority reasonably believes is an uncontactable person.

Examples

1 giving a person notice of the making of a development application under div 7.5.4 (Public notification of development applications)

2 giving a person who made a representation about a development application notice of the approval of the application

3 action under s 382 (How land may be recovered if former lessee or licensee in possession) or this chapter.

(2) The territory planning authority may, in writing, ask the commissioner for revenue to provide the person's name or the person's home address or other contact address.

(3) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (2).

Note See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

(4) In this section:

uncontactable person—a person is an ***uncontactable person*** if the territory planning authority does not have complete or up-to-date information about the person's name or the person's contact address.

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477 When authority may ask for information about leases from commissioner for revenue

(1) The territory planning authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

(a) the lessee's name;

(b) the lessee's home address or other contact address.

(2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

Note See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

(3) The territory planning authority must not make a request under subsection (1) in relation to a lease more often than—

(a) once every month; or

(b) if a regulation prescribes a longer period—once each period.

(4) Nothing in this section prevents the territory planning authority from asking for information under section 476.

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Part 13.5 Search warrants

478 Application for search warrant

(1) An inspector may apply to a magistrate for a warrant to enter premises (a ***search warrant***).

(2) The application must be sworn and state the grounds on which the search warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

(4) The magistrate may issue a search warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity connected with an offence against this Act; and

(b) the thing or activity—

(i) is, or is being engaged in, at the premises; or

(ii) may be, or may be engaged in, at the premises within the next 14 days.

(5) The search warrant must state the following:

(a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this chapter;

(b) the offence for which the warrant is issued;

(c) the things that may be seized under the warrant;

(d) the hours when the premises may be entered;

(e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

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479 Remote application for search warrant

(1) An inspector may apply for a search warrant by phone, email or other form of communication (a ***remote application***) if the inspector considers it necessary because of urgent or other special circumstances.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) However, the inspector may apply for the warrant before the application is sworn.

480 Documents given after warrant issued on remote application

(1) After issuing a search warrant on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.

(2) If it is not practicable to give a written copy to the inspector—

(a) the magistrate must tell the inspector—

(i) the warrant's terms; and

(ii) the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

(3) The written copy of the search warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this chapter.

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(4) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application mentioned in section 479 (2); and

(b) if the inspector completed a warrant form—the completed warrant form.

(5) On receiving the documents mentioned in subsection (4), the magistrate must attach them to the search warrant.

(6) A court must find that a power exercised by an inspector was not authorised by a search warrant issued on a remote application if—

(a) a question arises in a proceeding in the court whether the exercise of power was authorised by a search warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a search warrant issued on a remote application.

(7) In this section:

remote application—see section 479 (1).

481 Search warrants—announcement before entry

(1) Before anyone enters premises under a search warrant, an inspector must—

(a) announce that the inspector is authorised to enter the premises; and

(b) give anyone at the premises an opportunity to allow entry to the premises; and

(c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themself to the person.

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(2) The inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—

(a) the safety of anyone (including the inspector or any person assisting); or

(b) that the effective execution of the warrant is not frustrated.

482 Details of search warrant must be given to occupier

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

(a) a copy of the warrant; and

(b) a document setting out the rights and obligations of the person.

483 Occupier may be present during search

(1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

(2) However, the person is not entitled to observe the search if—

(a) to do so would impede the search; or

(b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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Part 13.6 Monitoring warrants

484 Application for monitoring warrant

(1) An inspector may apply for a warrant in relation to premises (a ***monitoring warrant***) if—

(a) any of the following apply:

(i) the inspector believes on reasonable grounds that a controlled activity has happened, or is happening, at the premises;

(ii) there is a controlled activity order in relation to a controlled activity at the premises;

(iii) there is a prohibition notice in relation to the premises;

(iv) a direction was given under section 437 to undertake rectification work at the premises;

(v) an injunction under section 456 is in force in relation to the premises; and

(b) any of the following apply:

(i) an inspector has been refused entry in accordance with an intention to enter notice given under section 467;

(ii) the occupier—

(A) is given an intention to enter notice under section 467; and

(B) consents to the entry of an inspector in accordance with the notice; and

(C) withdraws the consent.

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(2) An application for a monitoring warrant must be sworn and state—

(a) the grounds on which the applicant relies to make the application; and

(b) why the warrant is sought; and

(c) whether police assistance, or any other assistance, is likely to be needed to execute the warrant; and

(d) if the application is made remotely under section 488—why the application is being made remotely.

485 Decision on application for monitoring warrant

(1) A magistrate may refuse to consider an application for a monitoring warrant until the inspector gives the magistrate any additional information the magistrate requires for subsection (2).

(2) The magistrate must not issue the monitoring warrant unless satisfied that—

(a) there are grounds for making the application; and

(b) if the application states that assistance is likely to be necessary to execute the warrant—that the assistance mentioned in the application is reasonably necessary to execute the warrant; and

(c) if the application is made remotely under section 488—the application has been made in accordance with that section.

(3) A monitoring warrant may not be issued in relation to an inspector other than the applicant.

(4) However, a monitoring warrant may authorise another inspector to accompany the applicant to execute the warrant.

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486 Content of monitoring warrant

A monitoring warrant must state the following:

(a) the address of the premises to which the warrant relates;

(b) the name of the inspector authorised to enter the premises;

(c) that the inspector may use reasonable force to enter the premises;

(d) if the warrant authorises using assistance in executing the warrant—the assistance that may be used in executing the warrant;

(e) that the warrant ends—

(i) if the ground for applying for the warrant is a circumstance mentioned in section 484 (1) (a) (i)—5 working days after the day the warrant is issued; or

(ii) if the ground for applying for the warrant is a circumstance mentioned in section 484 (1) (a) (ii) to (v)—on the earliest of the following:

(A) when the circumstance no longer applies;

(B) 3 months after the day the warrant is issued.

487 Authorisation by monitoring warrant

The monitoring warrant authorises the stated inspector, and anyone authorised by the warrant to provide assistance, to enter premises in accordance with the warrant.

Note 1 While on the premises, the inspector may exercise power under s 468.

Note 2 For when an inspector may require a person to state the person's name and address, see s 473.

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488 Remote application for monitoring warrant

(1) An inspector may apply for a monitoring warrant in relation to premises by phone, email or other form of communication (a ***remote application***) if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.

(2) Before applying for the warrant, the inspector must prepare an application in accordance with section 484 (2).

(3) However, the inspector may apply for the warrant before the application is sworn.

489 Documents given after warrant issued on remote application

(1) After issuing a monitoring warrant on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.

(2) If it is not practicable to provide a written copy of the monitoring warrant to the inspector—

(a) the magistrate must tell the inspector—

(i) the warrant's terms; and

(ii) the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the ***warrant form***) and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the warrant's terms.

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(3) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application mentioned in section 488 (2); and

(b) if the inspector completed a warrant form—the completed warrant form.

(4) On receiving the documents mentioned in subsection (3), the magistrate must attach them to the monitoring warrant.

(5) A court must find that a power exercised by an inspector was not authorised by a monitoring warrant issued on a remote application if—

(a) a question arises in a proceeding in the court whether the exercise of power was authorised by a monitoring warrant; and

(b) the warrant is not produced in evidence; and

(c) it is not proved that the exercise of power was authorised by a monitoring warrant issued on a remote application.

(6) In this section:

remote application—see section 488 (1).

490 Entry under monitoring warrant—no occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a monitoring warrant; and

(b) the inspector believes on reasonable grounds that no occupier is present at the premises.

(2) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

(3) However, only a police officer may use force against a person.

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491 Entry under monitoring warrant—occupier present

(1) This section applies if—

(a) an inspector proposes to enter premises as authorised by a monitoring warrant; and

(b) an occupier is present at the premises.

(2) The inspector must—

(a) show the inspector's identity card to the occupier; and

(b) give the occupier a copy of the monitoring warrant; and

(c) tell the occupier that—

(i) hindering the inspector may be an offence; and

(ii) the inspector may use reasonable force to enter if entry is refused.

(3) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

(4) However, only a police officer may use force against a person.

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Part 13.7 Return and forfeiture of things seized

492 Receipt for thing seized

(1) As soon as practicable after an inspector seizes a thing under this chapter, the inspector must give a receipt for it to the person from whom it was seized.

(2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 472 (Power to seize things on entry under search warrant).

(3) A receipt under this section must include the following:

(a) a description of the thing seized;

(b) an explanation of why the thing was seized;

(c) the inspector's name, and how to contact the inspector;

(d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

493 Moving thing to another place for examination or processing under search warrant

(1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—

(a) both of the following apply:

(i) there are reasonable grounds for believing that the thing is, or contains, something to which the warrant relates;

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(ii) it is significantly more practicable to move the thing taking into account the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

(b) the occupier of the premises agrees in writing.

(2) The thing may be moved to another place for examination or processing for not longer than 72 hours.

(3) An inspector may apply to a magistrate for an extension of time if the inspector believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.

(4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.

(5) If a thing is moved to another place under this section, the inspector must, if practicable—

(a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be undertaken; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

494 Action in relation to seized thing

(1) An inspector who seizes a thing under section 472 (Power to seize things on entry under search warrant) may—

(a) remove the thing from the premises where it was seized to another place; or

(b) leave the thing at the premises but restrict access to it.

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(2) A person commits an offence if—

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and

(b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

495 Access to thing seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

(a) inspect it; and

(b) if it is a document—take extracts from it or make copies of it.

496 Return of thing seized

(1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing, if—

(a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—

(i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence relating to the thing is begun within the 1-year period but the court does not find the offence proved; or

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(b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—

(i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or

(ii) a prosecution for an offence relating to the thing is so begun but the court does not find the offence proved; or

(c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 and—

(i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section that liability is disputed; or

(ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.

(2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—

(a) is forfeited to the Territory; and

(b) may be sold, destroyed or otherwise disposed of as the chief planner directs.

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Chapter 14 Access to information

Part 14.1 Public register

497 Authority to keep public register

(1) The territory planning authority must keep a register (the ***public register***).

(2) The territory planning authority may keep the public register in any form the authority considers appropriate.

498 Contents of public register

(1) The public register must contain the following:

(a) if a person applies for a declaration under section 158 (Declaration for development encroaching on adjoining land if development prohibited)—the decision on the declaration;

(b) for each development application (unless withdrawn)—

(i) the date the application was submitted; and

(ii) the lessee's name and, if a person is authorised to act on their behalf, that person's name; and

(iii) the location of the proposed development; and

(iv) a summary by the territory planning authority of the proposed development; and

(v) if the application was, or is being, publicly notified under division 7.5.4; and

(vi) whether the application was amended under section 168; and

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(vii) if representations under section 180 (other than representations that are withdrawn) have been made on the application; and

Note A person who makes a representation may apply to have the representation excluded from the public register (see s 502).

(viii) whether the Minister has decided to establish an inquiry panel to inquire about an EIS for the development proposal to which the application relates;

(c) if a development application is decided under section 185—

(i) the date the application was decided; and

(ii) whether the application was approved, approved subject to a condition or refused; and

(iii) whether the decision on the application was reconsidered under section 199; and

(iv) for an approved application—whether the approval was corrected under section 203 or amended under section 206; and

(v) for a decision reviewed by the ACAT—whether the ACAT confirmed or varied the decision;

(d) the offsets register;

(e) for each lease variation charge for a non-standard chargeable variation—the amounts represented by V_1 and V_2 in section 332 for the charge;

(f) for each reduction of an amount of a lease variation charge for a chargeable variation of a nominal rent lease under section 338 (Reduction of lease variation charges)—

(i) a description of the chargeable variation; and

(ii) the lease variation charge; and

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(iii) the amount of the lease variation charge reduced;

(g) for each deferral arrangement under section 343 (Approval to defer payment of lease variation charges)—

(i) the date the arrangement was entered into; and

(ii) the amount of the lease variation charge deferred under the arrangement at the date the arrangement was entered into;

(h) for each controlled activity order while the order is in force—

(i) the premises to which the order relates; and

(ii) the directions in the order (see section 429 (3)); and

(iii) the person to whom the order is directed;

(i) for each direction under section 437 to undertake rectification work while the direction is in force—

(i) the premises where the work is to be undertaken; and

(ii) the person directed to undertake the work;

(j) for each prohibition notice given under section 452 while the notice is in force—

(i) the premises to which the notice relates; and

(ii) the person to whom the notice is given.

(2) The public register may contain any other information that the territory planning authority considers appropriate.

(3) However, the public register must not contain—

(a) associated documents for development applications, development approvals or leases; or

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(b) the name of a complainant under section 414.

Note Part of a document otherwise required to be included in the register may be excluded under pt 14.2 (Restrictions on availability of information). A note about the exclusion is included in the register (see s 502 (6) or s 503 (3).

499 Inspection of public register and associated documents

(1) The territory planning authority must ensure that the public register and associated documents are available for public inspection during business hours.

(2) The territory planning authority must allow people inspecting the public register and associated documents to make copies of, or take extracts from, the register and associated documents.

500 Contents of public register on authority website

The territory planning authority must publish the following on the authority website:

(a) the information mentioned in section 498 (1) (a) to (d)—indefinitely;

(b) the associated documents for a development application mentioned in section 501 (1) (a) and (k) (i)—for 5 years after the day the development application is publicly notified under division 7.5.4;

(c) the associated documents for a development application mentioned in section 501 (1) (h), (j) and (k) (ii)—for 5 years after the day notice of the decision on the development application is given under section 196.

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501 Meaning of *associated document*—pt 14.1

(1) For this part, each of the following is an ***associated document*** for a development application (other than an application that is withdrawn):

(a) information and documents required to accompany an application under the following provisions:

(i) section 166 (2) (c);

(ii) schedule 1, part 1.2, item 1;

(iii) schedule 1, part 1.2, item 2;

(iv) schedule 1, part 1.2, item 3;

(v) schedule 1, part 1.2, item 4;

(vi) schedule 1, part 1.2, item 5;

(b) if the territory planning authority asks for more information under section 167—the information given to the authority;

(c) if the territory planning authority amends an application under section 168—the information and documents submitted under section 166 (2);

(d) if the territory planning authority corrects an application under section 169—the written notice of the correction;

(e) an agreement mentioned in section 170 (2) (b);

(f) if the territory planning authority refers an application to the conservator of flora and fauna under section 170 (1) (c)—the advice of the conservator given under section 172;

(g) if a representation is made under section 180 about an application—the representation (other than a representation that is withdrawn);

Note A person who makes a representation may apply to have the representation excluded from the public register (see s 502).

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(h) the notice of the decision on an application given under section 196;

(i) if the applicant for an application that was refused makes a reconsideration application under section 198—any information given in the reconsideration application;

(j) if the territory planning authority reconsiders a decision to refuse to approve an application under section 199—the notice of the decision on the reconsideration given under section 201;

(k) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification—

(i) is part of the application (whether as originally made or as amended); or

(ii) is approved as part of the approval of the application under section 185; or

(iii) is required to be prepared by the applicant under a condition of an approval before the development, or a stated part of it, starts;

(l) if an inquiry panel inquires about an EIS for the development proposal to which the application relates—the inquiry panel report given to the Minister under section 134;

(m) if the decision on the application is reviewed by the ACAT—the ACAT decision.

(2) For this part, each of the following is an ***associated document*** for a development approval:

(a) if the approval-holder applies under section 198 for reconsideration of the decision to approve the development subject to a condition—any information included in the application;

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(b) if the territory planning authority reconsiders the decision to approve the development subject to conditions—the notice of the decision on the reconsideration given under section 201;

(c) if the territory planning authority corrects the approval under section 203—the notice about the correction;

(d) if the approval-holder applies to amend the approval under section 205—any information included in the application;

(e) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification is required to be prepared by the applicant under a condition of an approval before the development, or a stated part of it, starts.

(3) However, for this part, an ***associated document*** does not include—

(a) a plan, drawing or specification of any residential part of a building or proposed building, other than a plan, drawing or specification that shows only the height and external configuration of the building or proposed building; or

(b) information in relation to which an exclusion application has been approved under section 502 (Restrictions on information for commercial or safety reasons); or

(c) information that must not be made available to the public under section 503 (Restrictions on information for security reasons).

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Part 14.2 Restrictions on availability of information

502 Restrictions on information for commercial or safety reasons

(1) This section applies to a document given to the territory planning authority under this Act.

Examples

1 a development application

2 a representation about a development application

3 a draft EIS

(2) The person giving the document may apply in writing to the territory planning authority for part of the document to be excluded from being made available to the public.

(3) The territory planning authority may approve or refuse to approve the application.

(4) However, the territory planning authority may approve the application only if satisfied that the part of the document to which the application relates contains information—

(a) the publication of which would disclose a trade secret; or

(b) the publication of which would, or could reasonably be expected to—

(i) endanger the life or physical safety of any person; or

(ii) lead to damage to, or theft of, property.

(5) If the territory planning authority approves an application in relation to part of the document, the part must not be made available to the public.

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(6) If part of the document is excluded from the copy of the document made available to the public, the copy must include a statement to the effect that an unmentioned part of the document has been excluded to protect the confidentiality of information included in the part.

503 Restrictions on information for security reasons

(1) This section applies if the Minister responsible for the administration of justice, or the Commonwealth Attorney-General, certifies in writing to the territory planning authority that the publication of part of a document (the ***relevant part***) might—

(a) jeopardise national security, including by jeopardising the operations of a security organisation; or

(b) expose staff of a security organisation to risk of injury; or

(c) expose the public to risk of injury; or

(d) expose property to risk of damage.

(2) The relevant part of the document must not be made available to the public.

(3) Each copy of the document made public must include a statement to the effect that an unmentioned part of the document has been excluded under this section.

(4) In this section:

security organisation means any of the following:

(a) the Australian Federal Police;

(b) the Australian Security Intelligence Organisation;

(c) the Australian Secret Intelligence Service;

(d) the police force or service of a State;

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

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(e) an entity established under a law of a State to conduct criminal investigations or inquiries;

(f) any other entity prescribed by regulation.

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Chapter 15 Notification and review of decisions

504 Definitions—ch 15

In this chapter:

decision-maker, for a reviewable decision, means—

(a) for a decision of an entity that is required, as a condition of a development approval, to be satisfied in relation to the undertaking of the development or a stated stage of the development—the entity whose satisfaction is required; or

(b) for a decision under section 337 (1) (b) (i) or (ii) (Non-standard chargeable variations—reconsideration)—the commissioner for revenue; or

(c) in any other case—the territory planning authority.

eligible entity, for a reviewable decision—

(a) means an entity mentioned in schedule 5, part 5.2, column 3 for the decision; and

(b) in relation to a development application or development approval—

(i) includes the lessee if the applicant is not the lessee; and

(ii) includes the sublessee if the applicant is not the sublessee; but

(c) in relation to a matter mentioned in schedule 6, part 6.2 (Matters exempt from third party ACAT review)—means the applicant for development approval for the matter.

interested entity, for a reviewable decision, means an entity mentioned in schedule 5, part 5.2, column 4 for the decision.

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reviewable decision means a decision mentioned in schedule 5, part 5.2, column 2 made by a decision-maker.

505 Reviewable decision notices

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to—

(a) each eligible entity for the decision; and

(b) each interested entity for the decision.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

506 Applications for review

An eligible entity for a reviewable decision may apply to the ACAT for review of the decision.

507 Applications for review by third parties

(1) This section applies to a reviewable decision in relation to a development application if the eligible entity for the decision is not the applicant for the development application.

(2) Despite the *ACT Civil and Administrative Tribunal Act 2008*, section 10 (Making an application), an application for review must be made not later than 20 working days after the day the entity was given notice of the decision.

(3) The *ACT Civil and Administrative Tribunal Act 2008*, section 10 (3) (b), does not apply to the application for review.

(4) The period for making the application for review may not be extended under the *ACT Civil and Administrative Tribunal Act 2008*.

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508 ACAT review—time for making application for deemed decisions

(1) This section applies to a reviewable decision under section 299 (Decision about whether lease concessional).

(2) The application for review must be made not later than 20 working days after the 20 working-day period mentioned in section 299 (5).

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Chapter 16 Miscellaneous

509 Declaration of authority website

(1) The Minister may declare a website to be the territory planning authority website (the ***authority website***).

(2) A declaration is a notifiable instrument.

510 Custodianship map

(1) The territory planning authority must create and maintain a map that identifies, and reflects who has administrative responsibility for, land in the ACT that is unleased land, public land or both (the ***custodianship map***).

(2) The custodianship map may include anything else the territory planning authority considers appropriate.

511 Damage etc to be minimised

(1) In the exercise, or purported exercise, by an official of a function, the official must take all reasonable steps to ensure that the official, and any person assisting the official, causes as little inconvenience, detriment and damage as practicable.

(2) If an official, or person assisting an official, damages anything in the exercise or purported exercise of a function, the official must give written notice of the particulars of the damage to the person the official believes on reasonable grounds is the owner of the thing.

(3) If the damage happens at premises entered under chapter 13 (Enforcement) in the absence of the occupier, the notice may be given by leaving it secured conspicuously at the premises.

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(4) In this section:

function means—

(a) for an authorised person—a function under chapter 12 (Development offences and controlled activities); or

(b) for an inspector—a function under division 12.4.4 (Rectification work orders) or chapter 13 (Enforcement).

official means an authorised person or an inspector.

512 Compensation for exercise of enforcement powers

(1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function by an official or person assisting an official.

(2) Compensation may be claimed and ordered—

(a) in a proceeding for compensation brought in a court of competent jurisdiction; or

(b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Examples—what may be prescribed

1 compensation is not payable for actions of authorised people that are unavoidable, like demolishing an unlawful structure if the rectification notice requires the demolition

2 compensation is payable if the damage is reasonably avoidable, like the accidental breaking of a window

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(5) In this section:

function—see section 511 (4).

official—see section 511 (4).

513 Enforcement actions unaffected by other approvals etc

(1) To remove any doubt, the territory planning authority or an official is not prevented from exercising a function in relation to a matter only because any of the following have been issued in relation to the matter:

(a) a development approval;

(b) a certificate of compliance;

(c) a certificate of occupancy.

(2) In this section:

function—see section 511 (4).

official—see section 511 (4).

514 Evidentiary certificates—offsets register

(1) The territory planning authority may give a signed certificate—

(a) stating that on a stated date, or during a stated period, a stated area of land was or was not the subject of an offset; and

(b) if the land was the subject of an offset—including the details kept in the offsets register about the land.

(2) A certificate under this section is evidence of the matters stated in it.

(3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

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515 Evidence of ending of lease

(1) The territory planning authority may certify in writing that a lease mentioned in the certificate has ended.

(2) The certificate is evidence of the matter it states.

516 Basic fences between leased and unleased land

(1) This section applies in relation to an open space boundary of a block if, whether before or after the commencement of this section, a development requirement in relation to the block requires the erection of a basic paling fence for the boundary.

(2) The development requirement is taken to have been complied with for the open space boundary if, instead of a basic paling fence, either of the following is erected:

(a) a fence that is exempt from requiring development approval;

(b) a fence in accordance with a notice under the *Common Boundaries Act 1981*, section 23 (Boundary between leased and unleased land).

(3) In this section:

basic paling fence means a fence that consists of not more than—

(a) a support structure; and

(b) timber palings only as the fence's panelling; and

(c) a capping rail.

Examples—fences that are not basic paling fences

1 a paling fence with a lattice extension or panelling

2 a fence with brick piers separating paling panels

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development requirement, in relation to a block, means—

(a) a condition in a lease for the block; or

(b) a requirement of a development approval or a corresponding approval under a repealed territory law.

open space boundary means a boundary between leased and unleased land.

517 Rights to extract minerals

(1) The territory planning authority may, by a lease or licence, grant a person the right to extract minerals from stated land.

(2) The provisions of the lease or licence are the provisions agreed between the parties.

(3) For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of ***personal property***, a right granted by licence under subsection (1) is not personal property.

518 Use and disclosure of protected information

(1) An information holder commits an offence if—

(a) the information holder uses information; and

(b) the information is protected information about someone else; and

(c) the information holder is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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(2) An information holder commits an offence if—

(a) the information holder does something that discloses information; and

(b) the information is protected information about someone else; and

(c) the information holder is reckless about whether—

(i) the information is protected information about someone else; and

(ii) doing the thing would result in the information being disclosed to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) Subsections (1) and (2) do not apply if the information holder uses or discloses protected information about someone else (the ***protected person***)—

(a) under this Act or another law applying in the ACT; or

(b) in relation to the exercise of a function, as an information holder, under this Act or another law applying in the ACT; or

(c) in a court proceeding; or

(d) with the protected person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

(4) An information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the ACT.

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(5) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

disclose includes communicate or publish.

information means information, whether true or not, in any form and includes an opinion and advice.

information holder means—

(a) a person who is or has been—

(i) the chief planner; or

(ii) a member of staff of the territory planning authority; or

(iii) a member of the staff of the commission; or

(b) anyone else who exercises or exercised a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, an information holder because of the exercise of a function under this Act by the information holder or someone else.

use, in relation to information, includes make a record of the information.

519 Ministerial guidelines

(1) The Minister may approve guidelines for the exercise of any power by the Minister under this Act.

(2) The Minister may consider advice from the territory planning authority before approving guidelines.

(3) A guideline is a notifiable instrument.

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520 Construction of outdated references

(1) In any Act, instrument made under an Act or document, a reference to a repealed Act is, in relation to anything to which this Act applies, a reference to this Act.

(2) In any Act, instrument made under an Act or document, a reference to a provision of a repealed Act is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.

(3) In any Act, instrument made under an Act or document, a reference to anything that is no longer applicable because of the repeal of the repealed Act, and for which there is a corresponding thing under this Act, is taken to be a reference to the thing under this Act, if the context allows and if otherwise appropriate.

(4) In this section:

repealed Act means—

(a) the *Land (Planning and Environment) Act 1991* (repealed); or

(b) the *Planning and Development Act 2007* (repealed).

521 Expiry of University of NSW lease provisions

(1) This section applies if a lease of land mentioned in section 274 (2) (g) is not granted to the University of NSW by 8 July 2025.

(2) This section and the following provisions expire on 8 July 2025:

(a) section 274 (2) (g) (Payment for leases generally);

(b) section 280 (2) (b) (Restriction on transfer, assignment and parting with possession);

(c) section 282 (Restriction on transfer, assignment and parting with possession—certain University of NSW leases);

(d) section 283 (Approval to transfer, assign, or part with possession—certain University of NSW leases);

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(e) schedule 2, part 2.2, item 15;

(f) schedule 5, part 5.2, item 10, column 2, everything after "direct sale";

(g) dictionary, definition of ***University of NSW***.

522 Determination of fees

(1) The Minister may determine fees for this Act

(2) A determination is a disallowable instrument.

523 Regulation-making power

(1) The Executive may make regulations for this Act.

(2) A regulation may make provision in relation to the following:

(a) contents of a supporting report;

(b) environmental impact statements prepared under part 6.3;

(c) if this Act does not prescribe when a development approval takes effect—when the development approval takes effect;

(d) inquiry panels;

(e) procedures for carrying out the territory planning authority's functions under chapter 12 (Development offences and controlled activities) and chapter 13 (Enforcement).

Examples—what may be prescribed for par (d)

1 selection process for experts to be inquiry panel members

2 establishment of a list of experts for inquiry panels

3 appointment of chair for an inquiry panel

4 procedures for dealing with absences or departures from inquiry panels

5 procedures for running inquiry panels, including the quorum, holding of hearings, conflict of interest and decision-making

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(3) A regulation may make provision about a matter by applying, adopting or incorporating (with or without change) an instrument, or a provision of an instrument, as in force from time to time.

Note The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

(4) The Legislation Act, section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under a regulation.

Note The instrument does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

(5) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

(6) In this section:

instrument includes an Australian Standard or an Australian/New Zealand Standard.

524 Review of Act

(1) The Minister must, as soon as practicable 3 years after the day this section commences—

(a) review the operation and effectiveness of this Act; and

(b) present a report of the review to the Legislative Assembly.

(2) This section expires 6 years after the day it commences.

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Chapter 20 Transitional

Note This chapter, among other things, preserves the operation of certain parts of the legislative scheme enacted under the repealed *Planning and Development Act 2007*. If a matter relating to the operation of the repealed legislative scheme is not provided for in this chapter or another territory law, the Legislation Act, s 84 applies. That provision provides that the repeal of the *Planning and Development Act 2007* does not affect the previous operation of the repealed Act or anything done, begun or suffered under the repealed Act and does not affect an existing right, privilege or liability acquired, accrued or incurred under the repealed Act.

Unless otherwise provided for in this chapter or another territory law, an investigation, proceeding or remedy in relation to an existing right, privilege or liability under the repealed Act may be started, exercised, continued or completed, and the right, privilege or liability may be enforced and any penalty imposed, as if the repeal had not happened.

Part 20.1 Transitional—general

600 Definitions—ch 20

In this chapter:

commencement day means the day this Act, section 3 commences.

repealed Act means the *Planning and Development Act 2007*.

601 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

(2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.

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(3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

Note A transitional provision under s (1) continues to have effect after its repeal, however, a modification under s (2) has no ongoing effect after its repeal (see Legislation Act, s 88).

602 Expiry—ch 20

This chapter (other than the following provisions and unless otherwise stated for a particular provision) expires 3 years after the commencement day:

(a) chapter 20 heading, except note;

(b) section 600 (Definitions—ch 20);

(c) section 618 (1), (3) and (4) (Existing rights to use land etc not affected);

(d) section 619 (Status of leases or licences in force before commencement day);

(e) section 620 (Continued application of certain repealed Acts and provisions).

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

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Part 20.2 Transitional—strategic and spatial planning

603 Planning strategy

(1) The planning strategy in schedule 1 of the *Planning and Development (Planning Strategy) Notice 2018* (NI2018-665) is taken to be the planning strategy under this Act, section 36.

(2) The *Planning and Development (Planning Strategy) Notice 2018* (NI2018-665) is taken to be a notifiable instrument made under this Act, section 36 (4).

604 District strategy

Public consultation undertaken before the day section 38 commences is taken to be public consultation for section 38 (3).

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Part 20.3 Transitional—territory plan

605 Territory plan—preparation

(1) For section 45 (Territory plan), the territory planning authority must prepare a draft of the territory plan in accordance with this part not later than 6 months after this section commences.

(2) Division 5.2.1 (Preliminary—pt 5.2), division 5.2.3 (Consultation) and division 5.2.4 (Action after consultation about draft major plan amendments) apply to the preparation of the draft territory plan (with necessary changes) as if—

(a) a reference to a major plan amendment were a reference to the territory plan; and

(b) a reference to the Minister were a reference to the Executive.

(3) Section 62 (f) (Draft major plan amendments—consultation) does not apply to the preparation of the draft territory plan.

606 Draft territory plan to be given to Executive etc

(1) This section applies to the draft territory plan prepared under section 605—

(a) after the consultation period for the draft territory plan ends; and

(b) as revised in accordance with—

(i) section 66 (2) (Revision and withdrawal of draft major plan amendments) as applied under section 605; or

(ii) a request under section 607 (1) (b).

(2) The territory planning authority must give the draft territory plan (or revised draft territory plan) to the Executive for making, together with the following documents:

(a) the background papers relating to the draft territory plan;

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(b) a written report (a ***consultation report***) about the authority's consultation with the following:

(i) the public;

(ii) the national capital authority;

(iii) the conservator of flora and fauna;

(iv) the environment protection authority;

(v) the heritage council;

(c) a copy of any written comments (including consultation comments) about the draft territory plan received from an entity mentioned in paragraph (b).

(3) The consultation report must include the issues raised in any consultation comments about the draft territory plan.

607 Territory plan—Executive's powers

(1) After the Executive receives the draft territory plan (or revised draft territory plan) under section 606 (2), the Executive must—

(a) for section 45 (Territory plan), make the territory plan in the form given; or

Note The territory plan is a notifiable instrument (see s 45 (2)).

(b) return it to the territory planning authority and request the authority to do 1 or more of the following:

(i) conduct further stated consultation;

(ii) consider any change suggested by the Executive;

(iii) change the draft territory plan in a stated way.

(2) Before taking action under subsection (1), the Executive must consider the following:

(a) the planning strategy;

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(b) any relevant district strategy;

(c) the background papers, consultation report and written comments mentioned in section 606 (2).

(3) The territory planning authority must publish on the authority website—

(a) the making of the territory plan under subsection (1) (a); and

(b) a request under subsection (1) (b).

608 Territory plan to be given to Assembly committee

(1) After the Executive makes the territory plan under section 607 (1) (a), the Minister must give the plan, as notified under the Legislation Act, to the relevant Assembly committee for inquiry.

(2) The relevant Assembly committee must—

(a) decide whether to hold an inquiry, and give the Minister written notice of its decision, within 7 days after receiving the territory plan; and

(b) if the committee decides to hold an inquiry—report to the Minister on the territory plan within 6 months after receiving it.

M 609 Interim territory plan

(1) At the same time the Minister gives the territory plan to the relevant Assembly committee under section 608, the Minister may present the territory plan, as notified under the Legislation Act, to the Legislative Assembly for approval as an interim territory plan.

(2) The Legislative Assembly may, by resolution, approve the territory plan as an interim territory plan, whether or not the relevant Assembly committee has given a report mentioned in section 608 (2) (b).

(3) Despite anything in the territory plan or the Legislation Act, section 73, an interim territory plan commences on a day fixed by the Minister by written notice.

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M 610 Approval or confirmation of territory plan

(1) If the relevant Assembly committee reports to the Minister under section 608 (2) (b), the Minister—

(a) must consider the report; and

(b) may amend the territory plan in response to the report; and

(c) may present the amended territory plan to the Legislative Assembly for approval as the territory plan, in place of the interim territory plan approved under section 609.

(2) Alternatively, the Minister may move a motion to confirm the interim territory plan under section 609 as the territory plan if the relevant Assembly committee—

(a) gives notice of its decision not to hold an inquiry under section 608 (2) (a); or

(b) reports to the Minister under section 608 (2) (b) and the Minister does not amend the territory plan; or

(c) does not report on the plan within the 6-month period mentioned in section 608 (2) (b).

(3) The Legislative Assembly may, by resolution—

(a) approve the amended territory plan presented under subsection (1) (c) as the territory plan; or

(b) confirm the interim territory plan as the territory plan.

(4) Despite anything in the territory plan or the Legislation Act, section 73, a territory plan approved under subsection (3) (a) commences on a day fixed by the Minister by written notice.

(5) An amendment incorporated in the amended territory plan approved in accordance with subsection (3) (a) is taken—

(a) to be a notifiable instrument made under section 45 (Territory plan); and

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(b) to amend the territory plan made in accordance with section 607 (1) (a).

611 Preparation of draft territory plan before commencement

(1) This section applies to—

(a) a draft territory plan prepared before the commencement of this part; and

(b) consultation undertaken before the commencement of this part in relation to the draft.

(2) If the draft was prepared in accordance with the requirements mentioned in section 605 (2) and (3)—

(a) the draft is taken to be a draft territory plan prepared under section 605; and

(b) the consultation is taken to be consultation undertaken under section 605.

Note This provision enables the preparation of a draft territory plan before the commencement of this part.

612 Expiry—pt 20.3

This part expires on the day the territory plan—

(a) is confirmed under section 610 (3) (b); or

(b) commences under section 610 (4).

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Part 20.4 Transitional—development applications and approvals

613 Development applications made before commencement day

(1) This section applies if, before the commencement day—

(a) a person made a development application under the repealed Act, chapter 7 (Development approvals); and

(b) the application has not been finally decided.

(2) The repealed Act continues to apply in relation to the development application despite its repeal.

(3) However, the development application may be amended under the repealed Act, section 144 only if the applicant asks for the amendment not later than 6 months after the commencement day.

(4) Also, the development application is taken to have been withdrawn if the application was made under any of the following provisions of the repealed Act:

(a) section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared);

(b) section 137AB (Applications in anticipation of territory plan variation—made after draft plan variation prepared);

(c) section 137AD (Applications for development encroaching on adjoining territory land if development prohibited)—if the application was accompanied by a proposed technical amendment under the repealed Act, section 90B (Rezoning—development encroaching on adjoining territory land).

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(5) In this section:

finalised means—

(a) for a non-ACAT reviewable decision—

(i) a decision on the reconsideration application has been made under the repealed Act, section 193 (1) (b); or

(ii) the original decision has been taken to be confirmed under the repealed Act, section 194 (No action by authority within time); or

(b) for a review by the ACAT—

(i) the ACAT has made an order in relation to the decision under the *ACT Civil and Administrative Tribunal Act 2008*, section 68 (3) (Review of decisions); or

(ii) the application for review has been withdrawn, dismissed or struck out.

finally decided—a development application under the repealed Act, chapter 7 is ***finally decided*** if—

(a) the application is approved under the repealed Act, section 162 (Deciding development applications); or

(b) if the application is approved subject to a condition or is refused—

(i) the review period has ended and no application for review has been made; or

(ii) if an application for review has been made in the review period—the review has been finalised.

non-ACAT reviewable decision means a decision on a development application mentioned in the repealed Act, section 175 (1) (b) (ii).

original decision—see the repealed Act, section 191 (1) (a).

reconsideration application—see the repealed Act, section 191 (3).

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review means—

(a) for a non-ACAT reviewable decision—reconsideration of a decision in relation to the development application under the repealed Act, division 7.3.10; and

(b) in any other case—review by the ACAT.

review period means—

(a) for a non-ACAT reviewable decision—the relevant period within which a reconsideration application must be made under the repealed Act, section 191 (5); and

(b) for a review by the ACAT—the relevant period within which an application for review of a decision must be made under the *ACT Civil and Administrative Tribunal Act 2008*.

614 Development approvals under repealed Act

(1) This section applies if—

(a) before the commencement day, a person has been given a development approval under the repealed Act, chapter 7 (Development approvals); or

(b) the territory planning authority or the Minister approves a development application under the repealed Act, chapter 7 on or after the commencement day because of section 613.

(2) The development approval continues in force until the time when the approval would have ended under the repealed Act (including any period extended under the repealed Act, section 188 (2)).

(3) The repealed Act, including the following provisions, continues to apply in relation to the development approval despite its repeal:

(a) if the development approval is subject to an offset condition—the repealed Act, division 7.3.6A;

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(b) if the development approval relates to a development application for a chargeable variation of a nominal rent lease—the repealed Act, division 9.6.3.

Note Despite s (3), an application to amend the development approval under the repealed Act may only be made within 6 months after the commencement day. After the 6-month period, an application to amend the development approval may only be made under this Act, s 205 as if the development approval were given under this Act. If the development approval is amended in accordance with s 616 (2), the development approval is taken to have been given under this Act and this section no longer applies to the development approval.

615 Applications to amend development approvals made before commencement day

(1) This section applies if, before the commencement day—

(a) a person applies to amend a development approval under the repealed Act, section 197 (Applications to amend development approvals); and

(b) the decision-maker has not finally decided the application.

(2) The repealed Act continues to apply in relation to the application despite its repeal.

(3) In this section:

decision-maker—see the repealed Act, section 195A.

finally decided—see section 613 (5).

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616 Applications to amend development approvals under repealed Act at least 6 months after commencement day

(1) This section applies if—

(a) a person is given a development approval under the repealed Act, chapter 7 (Development approvals); and

(b) the development proposal for which the approval is given changes so that it is not covered by the development approval; and

(c) at least 6 months has passed after the commencement day.

(2) Despite section 614, an application to amend the development approval may only be made under this Act, section 205 as if the development approval were given under this Act.

(3) If the decision-maker decides to amend the development approval under this Act, section 206, the amended approval—

(a) is taken to be an approval under this Act, chapter 7; and

(b) ends when the approval would have ended under the repealed Act if the approval had not been amended.

617 Declarations for development encroaching on adjoining territory land before commencement day

A declaration under the repealed Act, section 137AC (Declaration for development encroaching on adjoining territory land if development prohibited) as in force immediately before the commencement day is taken to be a declaration under this Act, section 159.

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Part 20.5 Transitional—existing rights to use land, buildings and structures

618 Existing rights to use land etc not affected

(1) This section applies if, before the commencement day—

(a) a person had a right to use land, or a building or structure on the land, in a particular way; and

(b) the person's right to use the land, building or structure was authorised by any of the following:

(i) a lease granted or continued under the repealed Act;

(ii) a preserved lease;

(iii) a licence granted or continued under the repealed Act;

(iv) a public unleased land permit under the *Public Unleased Land Act 2013*;

(v) a sign approval or work approval under the *Public Unleased Land Act 2013*.

(2) This section also applies if—

(a) before the commencement day—

(i) a person had a right to use land, or a building or structure on the land in a particular way; and

(ii) the person's right to use the land, building or structure was authorised by a lease (the ***old lease***); and

(iii) the old lease has expired; and

(b) the person applies for the grant of a further lease in relation to the old lease under section 289; and

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(c) section 289 applies to the person's application because of section 622.

(3) The use of the land, building or structure in the way authorised is lawful, despite any other provision of this Act.

(4) However, this section does not apply to a use of land, or a building or structure on the land, if the use—

(a) is an authorised use under part 7.2 (Exempt development); but

(b) is an exception to section 147 (1) (Exempt development—authorised use) because section 148 (Authorised use that is not exempt) applies in relation to the authorised use.

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Part 20.6 Transitional—leases and licences

619 Status of leases or licences in force before commencement day

(1) This section applies to a lease or a licence—

(a) granted or continued, or purported to have been granted or continued under the repealed Act; and

(b) in force immediately before the commencement day.

(2) The lease or licence is taken to have been granted under this Act.

620 Continued application of certain repealed Acts and provisions

(1) This section applies to certain leases continued under section 619.

(2) The *Australian National University (Leases) Act 1967* (repealed) continues to apply in relation to a lease—

(a) granted under, or continued in force by, that Act; and

(b) in force immediately before the commencement day.

(3) The *Church Lands Leases Act 1924* (repealed), sections 5, 6, 8 and 10 continue to apply in relation to a lease—

(a) granted under that Act; and

(b) in force immediately before the commencement day.

(4) In a continuing CALA lease, a reference to ***improvements*** is a reference to improvements other than improvements by way of clearing, draining, grading, filling, excavating or levelling made by the Territory or the Commonwealth or the cost of which the Territory or the Commonwealth has paid.

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(5) The following sections of the *City Area Leases Act 1936* (repealed), continue to apply:

(a) to the extent that the section relates to a variation of a continuing CALA lease in relation to which notice under that Act, section 18A was given before the commencement day—section 18B;

(b) to the extent that the section relates to a continuing CALA lease in relation to which notice under the section was given before the commencement day—section 22;

(c) to the extent that the section relates to a continuing CALA lease mentioned in that Act, section 28A (1)—section 28A;

(d) to the extent that the section relates to a continuing CALA lease mentioned in that Act, section 28DA (1)—section 28DA;

(e) to the extent that the section relates to a sublease mentioned in that Act, section 30A (2) and in force immediately before 2 April 1992—section 30A.

(6) Despite the repeal of the *Leases (Special Purposes) Act 1925* (repealed), that Act, sections 5AC, 5AD, 5A and 5B continue to apply in relation to a lease—

(a) granted under that Act, section 3 (2) as in force immediately before 11 May 1989; and

(b) in force immediately before the commencement day.

(7) The *Leases (Special Purposes) Act 1925* (repealed), section 5BA (6) continues to apply in relation to a lease—

(a) granted under that Act; and

(b) in force immediately before the commencement day.

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(8) In this section:

continuing CALA lease means a lease granted or continued, or purported to have been granted or continued, under the *City Area Leases Act 1936* (repealed).

M 621 Grants of leases commenced but not completed before commencement day

(1) This section applies if, before the commencement day—

(a) a pre-grant process has started in relation to the grant of a lease by auction, tender, ballot or direct sale under the repealed Act; and

(b) a lease to which the pre-grant process relates has not been granted under the repealed Act.

(2) To the extent that the pre-grant process is necessary for, or relevant to, the grant of a lease under this Act, part 10.2, the process is taken to have been done under this Act.

(3) In this section:

pre-grant process includes—

(a) the planning and land authority giving notice of an auction, tender, ballot or direct sale; and

(b) a government entity entering into an agreement in relation to the grant of a lease; and

Example

a deed of agreement with a developer for the development of land

(c) a community organisation applying for the grant of a lease by direct sale.

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M 622 Applications for grant of further leases

(1) Subsection (2) applies if, before the commencement day—

(a) a person applied for the grant of a further lease under the repealed Act, section 254 (Grant of further leases); and

(b) the application has not been decided.

(2) The repealed Act continues to apply in relation to the application despite its repeal.

(3) If a further lease is granted on the application, the lease is taken to be a lease granted under this Act, section 289.

(4) Subsection (5) applies if—

(a) a lease expired not more than 6 months before the commencement day; and

(b) before the commencement day, the lessee had not applied to the planning and land authority for the grant of a further lease of the land.

(5) The lessee may apply to the territory planning authority under section 289 for a further lease as if that section applied to the lease when it expired.

623 Applications by community organisations for direct sale before 6 December 2017

(1) This section applies if—

(a) before 6 December 2017, a community organisation had applied, in writing, for the grant of a lease by direct sale under the repealed Act, section 238 (1) (d) (Granting leases) (a ***new lease***); and

(b) immediately before 2 April 2020, the application had not been—

(i) withdrawn by the applicant; or

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(ii) decided by the planning and land authority and either—

(A) the lease granted; or

(B) the applicant notified that the application was refused.

(2) The repealed Act, as in force immediately before 2 April 2020, continues to apply in relation to the application until—

(a) the application is withdrawn by the applicant; or

(b) if the territory planning authority decides to grant the lease—the lease is granted; or

(c) if the territory planning authority decides to refuse the application—the later of—

(i) the end of the period in which an application for review of the decision can be made; or

(ii) an application for review is finalised.

(3) In this section, a reference to an application includes a reference to an application for confirmation of eligibility for the grant of a lease by direct sale.

(4) This section expires on 2 April 2025.

624 Applications to vary concessional leases made before 2 April 2020

(1) This section applies if—

(a) before 2 April 2020, a person made a development application to which the repealed Act, division 9.4.2 (Varying concessional leases to remove concessional status) applies; and

(b) immediately before 2 April 2020, the application had not been—

(i) withdrawn by the applicant; or

(ii) decided by the planning and land authority.

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(2) The repealed Act, section 261 (No decision on application unless consideration in public interest), as in force immediately before 2 April 2020, continues to apply in relation to the application until—

(a) the application is withdrawn by the applicant; or

(b) the territory planning authority—

(i) approves the application without conditions; or

(ii) if the territory planning authority approves the application subject to a condition or refuses the application—the later of—

(A) the end of the period in which an application for review of the decision can be made; or

(B) an application for review is finalised.

(3) This section expires on 2 April 2025.

625 Applications for licences for unleased land made before commencement day

(1) This section applies if, before the commencement day—

(a) a person applied for a licence under the repealed Act, section 302 (Applications for licences for unleased land); and

(b) the application has not been decided.

(2) The repealed Act continues to apply in relation to the application despite its repeal.

(3) If a licence is granted on the application, the licence is taken to have been granted under this Act, section 378.

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Part 20.7 Transitional—building and development provisions—extension of time to complete works

626 Extensions of time to complete works under repealed Act

(1) This section applies if, before the commencement day—

(a) the repealed Act, section 298B (1) applies to a lease; and

(b) the time to complete works has been extended because of the repealed Act, section 298B (2); and

(c) the planning and land authority has not extended the time to complete the works to a stated time under the repealed Act, section 298B (2) (a).

(2) Section 374 is taken to apply to the lease from the time the building and development provision required the works to be completed and—

(a) any required fee paid in relation to the lease is taken to be payment of the noncompliance fee; and

(b) any reduction or waiver of the required fee under the repealed Act or the *Financial Management Act 1996*, section 131 (or an application for a reduction or waiver) is taken to apply in relation to the noncompliance fee.

(3) To remove any doubt, this Act, section 374 does not apply to a lease if the planning and land authority refused to extend the time to complete the works under the repealed Act, section 298B (2) (b).

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627 Extensions of time to complete works under repealed Act—extension to another stated time

(1) This section applies if, before the commencement day—

(a) the repealed Act, section 298B (1) applies to a lease; and

(b) the planning and land authority has extended the time to complete the works to another stated time under the repealed Act, section 298B (2) (a).

(2) Section 374 is taken to apply to the lease from the time the building and development provision required the works to be completed and—

(a) any required fee paid in relation to the lease is taken to be payment of the noncompliance fee; and

(b) any reduction or waiver of the required fee under the repealed Act or the *Financial Management Act 1996*, section 131 (or an application for a reduction or waiver) is taken to apply in relation to the noncompliance fee; and

(c) the stated time is taken to be the new compliance time.

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Part 20.8 Transitional—environmental significance opinions

628 Applications for environmental significance opinion made before commencement day

(1) This section applies if, before the commencement day—

(a) the proponent of a development proposal applied to the relevant agency for an environmental significance opinion under the repealed Act, section 138AA (2) (Impact track proposals if not likely to have significant adverse environmental impact); and

(b) the application has not been decided under the repealed Act, section 138AB (Deciding environmental significance opinion applications).

(2) The repealed Act continues to apply in relation to the application despite its repeal.

629 Environmental significance opinions given under repealed Act

(1) This section applies if, before the commencement day—

(a) a relevant agency gives an environmental significance opinion under the repealed Act, section 138AB (4) (a) or (b); and

(b) the opinion has not expired under the repealed Act, section 138AD (6).

(2) This section also applies to an environmental significance opinion given under the repealed Act, on or after the commencement day, because of section 628.

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(3) The environmental significance opinion—

(a) is taken to be an opinion given under this Act, section 140 (4) (a) or (b); and

(b) expires 18 months after the day a notice including the text of the opinion was notified under the repealed Act.

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Part 20.9 Transitional—design review panel

630 Consultation with design review panel before commencement day

(1) This section applies if, before the commencement day—

(a) a proponent for a prescribed development proposal consults with the design review panel under the repealed Act, section 138AL (Consultation with design review panel); and

(b) a development application has not been made in relation to the proposal.

(2) The proponent is, on the commencement day, taken to have consulted with the design review panel under this Act, section 100.

631 Design review panel consideration before commencement day

(1) This section applies if, before the commencement day—

(a) the design review panel takes action in relation to a development proposal under the repealed Act, section 138AM (2) (b) (Design review panel may provide design advice); and

(b) a development application has not been made in relation to the proposal.

(2) The action is taken to have been done under this Act, section 101 (2) (b).

(3) Despite this Act, section 101 (3), if design advice is provided under the repealed Act and the proponent does not lodge a development application for the development proposal within 18 months after the design advice is provided under the repealed Act, the design advice expires.

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Part 20.10 Transitional—environmental impact statements

632 Applications for EIS exemption made before commencement day

(1) This section applies if, before the commencement day—

(a) the proponent of a development proposal applied to the Minister for an EIS exemption for the proposal under the repealed Act, section 211B (2); and

(b) the application has not been decided under the repealed Act, section 211H (EIS exemption—decision).

(2) The repealed Act continues to apply in relation to the application despite its repeal.

633 EIS exemptions granted under repealed Act

(1) This section applies if, before the commencement day—

(a) an EIS exemption is granted under the repealed Act, section 211H in relation to a development proposal; and

(b) the EIS exemption has not expired under the repealed Act, section 211I; and

(c) a development application has not been made in relation to the proposal.

(2) This section also applies to an EIS exemption granted under the repealed Act, on or after the commencement day, because of section 632.

(3) The EIS exemption—

(a) is taken to be an EIS finalised under this Act, section 128; and

(b) despite this Act, section 131, expires on the relevant day.

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(4) In this section:

notified means notified under the repealed Act, section 211H.

recent study—see the repealed Act, section 211A.

relevant day, for an EIS exemption granted under the repealed Act, section 211H, means—

(a) if the recent study relevant to the EIS exemption is an environmental impact statement prepared under the EPBC Act, part 8 (Assessing impacts of controlled actions) and approval of action in relation to the development was given under that Act, part 9 (Approval of actions)—when the approval expires, or 5 years after the day the exemption is notified, whichever happens later; or

(b) if the recent study relevant to the EIS exemption is an endorsed policy, plan or program under the EPBC Act, part 10 (Strategic assessments) and approval of action in relation to the development was given under that Act, part 10—when the approval expires, or 5 years after the day the exemption is notified, whichever happens later; or

(c) in any other case—

(i) 5 years after the day the EIS exemption was notified; or

(ii) if a later day is prescribed by regulation under the repealed Act, section 211I—the later day.

634 EIS completed under repealed Act

(1) This section applies if—

(a) an EIS is completed under the repealed Act, section 209; and

(b) the EIS has not expired under the repealed Act, section 227A.

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(2) The EIS—

(a) is taken to be an EIS finalised under this Act, section 128; and

(b) despite this Act, section 131, expires 5 years after the day it is completed under the repealed Act.

635 Public health-related EIS completed under repealed Act

(1) This section applies if—

(a) a s 125-related EIS is completed under the repealed Act, section 209A; and

(b) the EIS has not expired under the repealed Act, section 227A.

(2) The s 125-related EIS—

(a) is taken to be a public health EIS finalised under this Act, section 129; and

(b) despite this Act, section 131, expires 5 years after the day it is completed under the repealed Act.

636 EIS processes commenced but not completed before commencement day

(1) This section applies if, before the commencement day—

(a) the proponent of a development proposal applied to the planning and land authority under the repealed Act, section 212; and

(b) an EIS or s 125-related EIS has not been completed in relation to the development proposal.

(2) The repealed Act, chapter 8 (other than division 8.2.1) continues to apply in relation to the development proposal despite its repeal.

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Part 20.11 Transitional—rent variations and relief from provisions of leases

637 Reduction of rent and relief from provisions of lease approved before commencement day

An approval under the repealed Act, section 269 (1) (Reduction of rent and relief from provisions of lease) as in force immediately before the commencement day is taken to be an approval under this Act, section 316.

638 Reduction of rent and relief from provisions of lease approved after commencement day

(1) This section applies if, on or after the commencement day, the territory planning authority gives an approval under section 316 (1).

(2) If the reduction or grant of relief includes a period before the approval under section 316 (2)—that period may be for, or include, a period before the commencement day.

(3) This section expires 12 months after the commencement day.

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Part 20.12 Transitional—land management agreements

639 Land management agreements entered into before commencement day

A land management agreement under the repealed Act, section 283 as in force immediately before the commencement day is taken to be a land management agreement entered into under this Act, section 350.

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Part 20.13 Transitional—land management plans

640 Land management plans

Each of the following instruments is taken to be a disallowable instrument made under this Act, section 395 (2):

(a) *Land (Planning and Environment) (Plan of Management for Urban Open Space and Public Access Sportsgrounds in the Gungahlin Region) Approval 2007* (DI2007-298);

(b) *Land (Planning and Environment) Plans of Management Approval 2000* (DI2000-143);

(c) *Planning and Development (Albert Hall) Land Management Plan 2016* (DI2016-78);

(d) *Planning and Development (Canberra Urban Lakes and Ponds) Land Management Plan 2022* (DI2022-10);

(e) *Urban Services (Plans of Management) Approval 1998* (DI1998-242).

641 Draft land management plans

(1) This section applies if, before the commencement day—

(a) a draft land management plan is prepared in accordance with the repealed Act, section 321; and

(b) a public consultation notice about the draft plan has not been notified under the repealed Act, section 323.

(2) The draft land management plan is taken to have been prepared in accordance with this Act, section 389.

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Part 20.14 Transitional—controlled activities

642 Controlled activities—construction without development approval

A reference in schedule 4 (Controlled activities), item 4, column 2 to having a building or structure constructed without development approval required by this Act includes a reference to having a building or structure constructed without approval required by any of the following:

(a) the *Planning and Development Act 2007* (repealed), chapter 7 (Development approvals) as in force at any time;

(b) the *Land (Planning and Environment) Act 1991* (repealed), division 6.2 (Approvals) as in force at any time;

(c) the *Buildings (Design and Siting) Act 1964* (repealed) as in force at any time.

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Part 20.15 Transitional—review of decisions

643 Applications for review not finally decided

(1) This section applies if, before the commencement day—

(a) an application was made to the ACAT for review of a reviewable decision (other than a decision in relation to a development application) under the repealed Act; and

(b) the application has not been finally decided.

(2) The repealed Act continues to apply in relation to the application despite its repeal.

(3) In this section:

reviewable decision—see the repealed Act, section 407.

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Part 20.16 Transitional—administrative

644 Chief planning executive

(1) This section applies to a person—

(a) appointed as the chief planning executive under the repealed Act, section 21; and

(b) who was the chief planning executive immediately before the commencement day.

(2) The person is taken to be appointed as the chief planner under this Act, section 26 and the appointment continues in force until the end of the term of the appointment under the repealed Act unless ended earlier.

(3) The *Planning and Development (Chief Planning Executive) Appointment 2021* (NI2021-170) is taken to be a notifiable instrument made under this Act, section 26 (4).

645 Acting chief planning executive

(1) This section applies to a person—

(a) appointed as the acting chief planning executive under the repealed Act, section 21; and

(b) who was the acting chief planning executive immediately before the commencement day.

(2) The person is taken to be appointed as the acting chief planner under this Act, section 26 and the appointment continues in force until the end of the term of the appointment under the repealed Act unless ended earlier.

(3) The *Planning and Development (Acting Chief Planning Executive) Appointment 2022* (NI2022-190) is taken to be a notifiable instrument made under this Act, section 26 (4).

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646 Inspectors appointed before commencement day

(1) This section applies to a public servant—

(a) appointed as an inspector under the repealed Act, section 387; and

(b) who was an inspector immediately before the commencement day.

(2) The public servant is taken to have been appointed as an inspector under this Act, section 460 and the appointment continues in force until the end of the term of the appointment under the repealed Act unless ended earlier.

(3) The *Planning and Development (Inspectors) Appointment 2022 (No 1)* (NI2022-200) is taken to have been made under this Act, section 460.

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Part 20.17 Transitional—exempt development

647 Guidelines for essential work at affected residential premises

(1) This section applies if a regulation (a ***new regulation***) is made under this Act, section 145 (1) (b) substantially equivalent to the *Planning and Development Regulation 2008* (repealed), schedule 1, section 1.17A.

(2) The guidelines in schedule 1 of the *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476) are taken to be guidelines for the new regulation.

(3) The *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476) is taken to be a notifiable instrument made under the new regulation.

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Schedule 1 Information and documents for certain development applications

(see s 166 (2) (d))

Part 1.1 Preliminary

1.1 Definitions—sch 1

In this schedule:

expected greenhouse gas emissions statement, for a development, means written information stating the annual amount of expected greenhouse gas emissions from operating the development.

greenhouse gas emissions—see the *Climate Change and Greenhouse Gas Reduction Act 2010*, dictionary.

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Part 1.2 Information and documents for certain development applications

column 1 item	column 2 type of development application	column 3 required information or documents
1	application for a development proposal in relation to which design advice is given	the design advice and the proponent's response to the design advice
2	application for a development proposal in relation to which a design guide applies	the proponent's response to the design guide
3	application for a development proposal in relation to which an environmental significance opinion has been given	the environmental significance opinion for the proposal
4	application for a development proposal in relation to which an EIS is required	the finalised EIS for the proposal
5	application made under s 157 (Applications in anticipation of major plan amendment)	the draft major plan amendment
6	application made under s 159 (Applications for development encroaching on adjoining land if development prohibited)	the declaration under s 158 (4) and the proposed technical amendment
7	application for a development proposal in relation to which a guideline requires survey information	the information required by the guideline
8	application for development to which s 215 (Development applications for development undertaken without approval) applies	a plan of the development prepared by a registered surveyor that sets out the dimensions of the development
9	application for the subdivision of a units plan under the *Unit Titles Act 2001*, s 165B (Subdivision of units plan—application)	the resolution of the owners corporation under the *Unit Titles Act 2001*, s 160 (3) to cancel the units plan

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column 1 item	column 2 type of development application	column 3 required information or documents
10	application to which s 309 (Development application to remove concessional status of lease) applies	an assessment of the social, cultural and economic impacts of the proposed variation and a statement about any other proposed development (including any further proposed lease variation and design and siting elements)
11	application for approval of a non-standard chargeable variation of a nominal rent lease	a valuation by an accredited valuer that works out the amounts represented by V_1 and V_2 in s 332
12	application for a proposed development if the annual amount of the expected greenhouse gas emissions from operating the proposed development is more than the amount prescribed by regulation	an expected greenhouse gas emissions statement for the development
13	application for a proposed development in relation to which a development agreement applies	written endorsement from the Territory or a government entity that the proposal is consistent with the lessee's obligations under the agreement

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Schedule 2 Market value leases and leases that are possibly concessional

(see s 259, def ***market value lease***, par (b) and s 260 (1) (c))

Part 2.1 Preliminary

2.1 Definitions—sch 2

In this schedule:

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

rental lease—see section 256.

residential lease—see section 256.

rural lease—see section 256.

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Part 2.2 Market value leases

column 1 item	column 2 lease
1	a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in s 258 (1)
2	a rural lease
3	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the *Housing Assistance Act 2007*
4	a lease granted to the Territory or a territory entity
5	a residential lease
6	a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out— (a) in accordance with a law in force in the Territory; or (b) by agreement between the Commonwealth or the Territory and the lessee **Examples—commercial purposes** 1 industrial 2 business
7	a lease (the ***individual lease***) granted for no consideration if— (a) the individual lease is granted following the subdivision of a lease (the ***head lease***) held by the person to whom the individual lease is granted; and (b) the person has provided infrastructure on the land leased under the head lease
8	a lease granted under the *City Area Leases Act 1936*— (a) before 1 January 1971; and (b) to which that Act, s 18 (Rent) applies; and (c) that does not state, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease

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column 1 item	column 2 lease
9	a lease that includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease
10	a lease granted to an entity, other than the Territory or a territory entity, if— (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the ***lease commencement day***) earlier than the day the lease was granted; and (b) the land described in the lease was occupied by the Territory or a territory entity on the lease commencement day
11	a lease granted to the Commonwealth or a Commonwealth entity
12	a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if— (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the ***lease commencement day***) earlier than the day the lease was granted; and (b) the land described in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day
13	a lease granted under the *City Area Leases Act 1936* if, on 1 July 2009— (a) the lessee of the lease is the holder of a club licence under the *Liquor Act 1975*; and (b) at least 75% of the area of the land comprising the lease is located in 1 or both of the following: (i) a commercial zone under the territory plan; (ii) a designated area under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth); and **Example** 30% of land described in a lease is located in a commercial zone and 50% of land is located in a designated area (c) the lease does not state that there is a restriction on dealing with the lease; and (d) the lease authorises the land described in the lease to be used for both— (i) a licensed club under the *Liquor Act 1975*; and

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column 1 item	column 2 lease
	(ii) a commercial purpose unrelated to the club **Examples—commercial purpose** 1 a shop under the territory plan 2 a non-retail commercial use under the territory plan 3 a commercial accommodation use under the territory plan
14	a lease granted to the Australian National University established under the *Australian National University Act 1991* (Cwlth)
15	a lease granted to the University of NSW
16	a lease granted under the *Land (Planning and Environment) Act 1991* (repealed), s 164 (Special leases)
17	a lease granted under the *City Area Leases Act 1936* for commercial purposes
18	a lease granted after 30 March 2008 other than a lease— (a) that states, in the lease or a memorial to the lease, that the lease is a concessional lease; or (b) that satisfies the requirements under section 260 (1) *Note* Certain leases granted after 30 March 2008 under the *Land (Planning and Environment) Act 1991* (repealed) are possibly concessional (see s 260)
19	a lease granted before 31 March 2008 if— (a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but (b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease: (i) an amount in relation to the grant of the lease that was equal to the lease's market value at the time of payment or, if the amount was paid in parts, at the time of the last payment; (ii) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991* (repealed), s 186 (Variation of lease to pay out rent)

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column 1 item	column 2 lease
20	a lease granted before 1 July 2007 if— (a) the lessee applied in writing to the territory planning authority or the Minister to remove the concessional status of the lease; and (b) the territory planning authority or the Minister— (i) approved the application in writing before 31 March 2008, subject to payment of an amount (the ***application amount***), decided by the territory planning authority or the Minister, equal to the lease's market value; and (ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and (c) the lessee did not pay the application amount before 31 March 2008; and (d) the lessee pays the application amount within 6 months after the commencement of this schedule
21	a lease prescribed by regulation

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Part 2.3 Possibly concessional leases

Note A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in pt 3.2 (see s 260).

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease granted under the *Leases (Special Purposes) Act 1925*
3	a lease that states, in the lease or a memorial to the lease, that the *Land (Planning and Environment) Act 1991* (repealed), s 167 applies to the lease
4	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease
5	a lease that was granted under the *Leases Act 1918*
6	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a requirement that 1 or more stated uses of the land may only be exercised by the lessee
7	a lease granted to an incorporated association if— (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land
8	a lease— (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land described in the lease to be used for a club
9	a lease granted to a community organisation that states that the lease was granted under the *Land (Planning and Environment) Act 1991* (repealed), s 163, whether or not the community organisation is still the lessee

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column 1 item	column 2 lease
10	a lease granted to an incorporated association or community organisation over a unit in a units plan under the *Unit Titles Act 2001* if— (a) the lease (the ***original lease***) that ended on registration of the units plan was granted to the incorporated association or community organisation; and (b) the incorporated association or community organisation occupies the unit— (i) for its own purposes; and (ii) in accordance with a condition in the original lease *Note* On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see *Unit Titles Act 2001*, s 33)
11	a lease, other than a rural lease, granted for a term less than 99 years

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Schedule 3 Management objectives for public land

(see s 387 (1) (a))

Part 3.1 Preliminary

3.1 Definitions—sch 3

In this schedule:

Aboriginal object—see the *Heritage Act 2004*, section 9 (1).

Aboriginal place—see the *Heritage Act 2004*, section 9 (1).

natural environment means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

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Part 3.2 Management objectives for areas of public land

column 1 item	column 2 reserve purpose	column 3 management objectives
1	wilderness area	(a) to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal (b) to provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided
2	national park	(a) to conserve the natural environment (b) to provide for public use of the area for recreation, education and research
3	nature reserve	(a) to conserve the natural environment (b) to provide for public use of the area for recreation, education and research
4	special purpose reserve	to provide for public and community use of the area for recreation and education
5	urban open space	(a) to provide for public and community use of the area (b) to develop the area for public and community use
6	cemetery or burial ground	to provide for the interment or cremation of human remains and the interment of the ashes of human remains

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column 1 item	column 2 reserve purpose	column 3 management objectives
7	protection of water supply	(a) to protect existing and future domestic water supply (b) to conserve the natural environment (c) to provide for public use of the area for education, research and low-impact recreation
8	lake	(a) to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs (b) to prevent and control pollution of waterways (c) to provide for public use of the lake for recreation (d) to provide a habitat for fauna and flora
9	sport and recreation reserve	to provide for public and community use of the area for sport and recreation
10	heritage area	(a) to conserve natural and cultural heritage places and objects, including Aboriginal places and objects (b) to provide for public use of the area for recreation, education and research as appropriate, and having proper regard to natural and cultural values

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Schedule 4 Controlled activities

(see s 412 and s 432)

column 1 item	column 2 controlled activities	column 3 penalty
1	failing to comply with— (a) a provision of a lease, other than— (i) a building and development provision requiring works to be commenced within a stated time; or (ii) a building and development provision requiring works to be completed within a stated time if— (A) a new compliance time is notified under s 375; and (B) the noncompliance fee has been paid; and (C) the new compliance time has not ended; or (b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement	60 penalty units
2	failing to keep a leasehold clean *Note* Failure to keep a leasehold clean may also be an amenity impact under the *Litter Act 2004*.	60 penalty units
3	undertaking a development for which development approval is required— (a) without development approval; or (b) other than in accordance with the development approval	60 penalty units
4	having a building or other structure constructed without development approval required by this Act	60 penalty units

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column 1 item	column 2 controlled activities	column 3 penalty
5	failing to take reasonable steps to implement an offset management plan as required under s 250	60 penalty units
6	using unleased land in a way that is not authorised by— (a) a licence under this Act; or (b) a sign approval or work approval under the *Public Unleased Land Act 2013*; or (c) a public unleased land permit under the *Public Unleased Land Act 2013*	60 penalty units
7	managing land held under a rural lease other than in accordance with— (a) if an offset management plan is in force for the land— (i) the offset management plan; and (ii) to the extent that the land management agreement for the land is not inconsistent with the offset management plan—the land management agreement; or (b) in any other case—the land management agreement for the land	60 penalty units
8	failing to enter into a land management agreement as required under s 353	60 penalty units
9	undertaking prohibited development, other than in accordance with a development approval allowed under div 7.3.1	60 penalty units
10	failing to use land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted	60 penalty units

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Schedule 5 Reviewable decisions, eligible entities and interested entities

(see s 504)

Part 5.1 Preliminary

5.1 Meaning of *material detriment*—sch 5

In this schedule:

material detriment—

(a) means detriment suffered by an entity because of a decision if—

(i) the decision has, or is likely to have, an adverse impact on the entity's use or enjoyment of land; or

(ii) for an entity that has objects or purposes—the decision relates to a matter included in the entity's objects or purposes; but

(b) does not include detriment suffered by an entity only because of a decision that increases, or is likely to increase, direct or indirect competition with the entity's business, business partner, close friend or family member.

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Part 5.2 Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
1	decision under s 185 to approve (with or without conditions) or refuse a development application	applicant for development approval	entity that made representation under s 180 about the application
2	decision under s 185 to approve (with or without conditions) a development application, unless the development application is exempted from a public notification requirement by regulation under s 175 (3) (b)	an entity if— (a) the entity made a representation under s 180 about the application or had a reasonable excuse for not making a representation; and	applicant for development approval

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
		(b) the approval of the application may cause the entity to suffer material detriment	
3	decision of entity mentioned in s 187 (2) (a) that is required to be satisfied in relation to undertaking development or stage of development	approval-holder	territory planning authority
4	decision to refuse to endorse a plan, drawing, specification or other document mentioned s 187 (2) (o), or decision under s 187 (4) to refuse to endorse a change to an endorsed plan, drawing, specification or other document	approval-holder	entity that made representation under s 180 about the application for development approval
5	decision under s 199 (1) (b) on reconsideration	applicant for reconsideration	entity that made representation under s 180 about the original application

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
6	decision under s 199 (1) (b) to approve (with or without conditions) a development application on reconsideration, unless the development application to which the reconsideration relates is exempted from a public notification requirement by regulation under s 175 (3) (b)	an entity if— (a) the entity made a representation under s 180 about the original application or had a reasonable excuse for not making a representation; and (b) the approval of the original application may cause the entity to suffer material detriment	applicant for reconsideration
7	decision under s 206 to refuse to amend a development approval	approval-holder	entity that made representation under s 180 about the original application

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
8	decision under s 206 to amend (with or without conditions) a development approval, unless the development application to which the approval relates is exempted from a public notification requirement by regulation under s 175 (3) (b)	an entity if— (a) the entity made a representation under s 180 about the original application or had a reasonable excuse for not making a representation; and (b) the amendment of the approval may cause the entity to suffer material detriment	approval-holder
9	decision under s 204 to revoke development approval	holder of revoked approval	entity that made representation under s 180 about the application for development approval

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
10	decision under s 263 to refuse to grant a lease to a person by direct sale (other than a refusal to grant a lease to the University of NSW of land mentioned in s 274 (2) (g))	applicant for grant of lease	
11	decision under s 273 (2) to end person's right to be granted a lease	person whose right is ended	
12	decision under s 281 to refuse to approve a transfer, assignment or parting of possession of lease	lessee	
13	decision under s 284 (2) to refuse to approve a sublease of land	applicant for approval of sublease	
14	decision under s 289 to refuse to grant a further lease	applicant for grant of further lease	
15	decision under s 299 that lease is a concessional lease	lessee	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
16	decision under s 301 that lease is a concessional lease	lessee	
17	decision under s 307 to refuse to approve a dealing with a concessional lease	lessee	
18	decision under s 311 about the payout amount for a concessional lease	lessee	
19	decision under s 315 to confirm variation of rent after review	lessee	
20	decision under s 315 to set aside variation and substitute another variation of rent after review	lessee	
21	decision under s 318 adjusting rent after reassessment	lessee	
22	decision under s 321 (2) (d) about amount payable for variation to reduce rent payable under lease to a nominal rent	lessee	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
23	decision under s 337 (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
24	decision under s 337 (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
25	decision under s 343 not to approve an application to defer payment of a lease variation charge	applicant for the deferral	
26	decision under s 362 about market value of improvements on land	lessee	
27	decision under s 363 (2) to refuse to accept the surrender of a lease, or part of land described in lease	person surrendering lease or part of land described in lease	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
28	decision under s 363 (2) to accept the surrender of a lease, or part of land described in lease, subject to a condition	person surrendering lease or part of land described in lease	
29	decision under s 364 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	person surrendering lease or whose lease is terminated	
30	decision under s 368 (1) to refuse to issue a certificate of compliance	lessee	
31	decision under s 368 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	lessee	
32	decision under s 368 (2) to issue a certificate of compliance subject to condition that lessee provide security	lessee	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
33	decision under s 368 (2) to refuse to issue a certificate of compliance	lessee	
34	decision under s 371 or s 372 to refuse to approve the assignment or transfer of a lease or interest in a lease	lessee	
35	decision under s 375 (1) to set a new compliance time	lessee	
36	decision under s 424 (1) to make a controlled activity order	person to whom order directed lessee of premises to which order relates occupier of premises to which order relates	
37	decision under s 425 (5) to refuse to extend the time allowed to respond to show cause notice	applicant for extension	
38	decision under s 427 (4) to make a controlled activity order other than the order applied for	applicant for controlled activity order	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
39	decision under s 427 (4) not to make an order	applicant for controlled activity order	
40	decision under s 434 (4) to refuse to revoke a controlled activity order	applicant for revocation lessee of premises to which order relates occupier of premises to which order relates	
41	decision under s 452 (3) to give a prohibition notice	person to whom notice directed lessee of premises to which notice relates occupier of premises to which notice relates	

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column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
42	decision under s 455 (3) to refuse to revoke a prohibition notice	applicant for revocation lessee of premises to which notice relates occupier of premises to which notice relates	
43	decision under s 457 to terminate a lease	person whose lease is terminated	
44	decision under s 458 to terminate a licence	person whose licence is terminated	
45	decision under s 459 (2) not to extend the time to respond to a notice of termination	person whose lease or licence is terminated	

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Schedule 6 Matters exempt from third party ACAT review

(see s 504, def ***eligible entity***, par (c))

Part 6.1 Preliminary

6.1 Definitions—sch 6

In this schedule:

Belconnen town centre means the area outlined in bold on the plan in this schedule, division 6.3.2.

city centre means the area outlined in bold on the plan in this schedule, division 6.3.1.

Gungahlin town centre means the area outlined in bold on the plan in this schedule, division 6.3.3.

Kingston Foreshore means the area outlined in bold on the plan in this schedule, division 6.3.6.

town centre means the Belconnen town centre, the Gungahlin town centre, the Tuggeranong town centre or the Woden town centre.

Tuggeranong town centre means the area outlined in bold on the plan in this schedule, division 6.3.4.

University of Canberra site means the area outlined in bold on the plan in this schedule, division 6.3.7.

Woden town centre means the area outlined in bold on the plan in this schedule, division 6.3.5.

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Part 6.2 Matters exempt from third party ACAT review

column 1 item	column 2 matters
1	a territory priority project
2	a development, other than a significant development requiring an EIS or a subdivision design application, on land in— (a) the city centre; or (b) a town centre; or (c) an industrial zone; or (d) the Kingston Foreshore; or (e) the University of Canberra site
3	a development, other than a significant development requiring an EIS or a subdivision design application, on land in a non-residential zone if— (a) the land is at least 50m from any block within a residential zone; and (b) for a development involving the building or altering of a building or other structure on the land—the new or altered building or other structure meets the quantitative requirements for any applicable height and plot ratio provisions; and (c) for a development on land the subject of a lease or sublease which at the time of the application permits a community use—the decision does not authorise a lease variation to remove a community use; and (d) for land within a CZ4 (local centre) zone and the subject of a lease or sublease which at the time of the application permits the use of the land for a shop— (i) the decision does not authorise a lease variation to remove the use of the land for a shop; and (ii) the development would not have the effect of permitting the building of a dwelling on the land; and (e) for land in a non-urban zone—the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased, or permitted by a licence under this Act, at the time of the application

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column 1 item	column 2 matters
4	the demolition of a building or other structure in connection with a development, other than a significant development requiring an EIS or a subdivision design application, consisting of the building or alteration of a building or other structure to which this part applies
5	public works, other than a significant development requiring an EIS or a subdivision design application, consisting of the building, alteration or demolition of— (a) electricity, water, gas or communication services; or (b) a floodway or sewerage or drainage works; or (c) a public road, public path, cycleway or car park
6	the building, alteration or demolition of public facilities on unleased land, or land leased to the Territory, including barbecues, seating and playground equipment, or related landscaping
7	the putting up, attaching or displaying of a sign or advertisement on land or to a building or other structure on land

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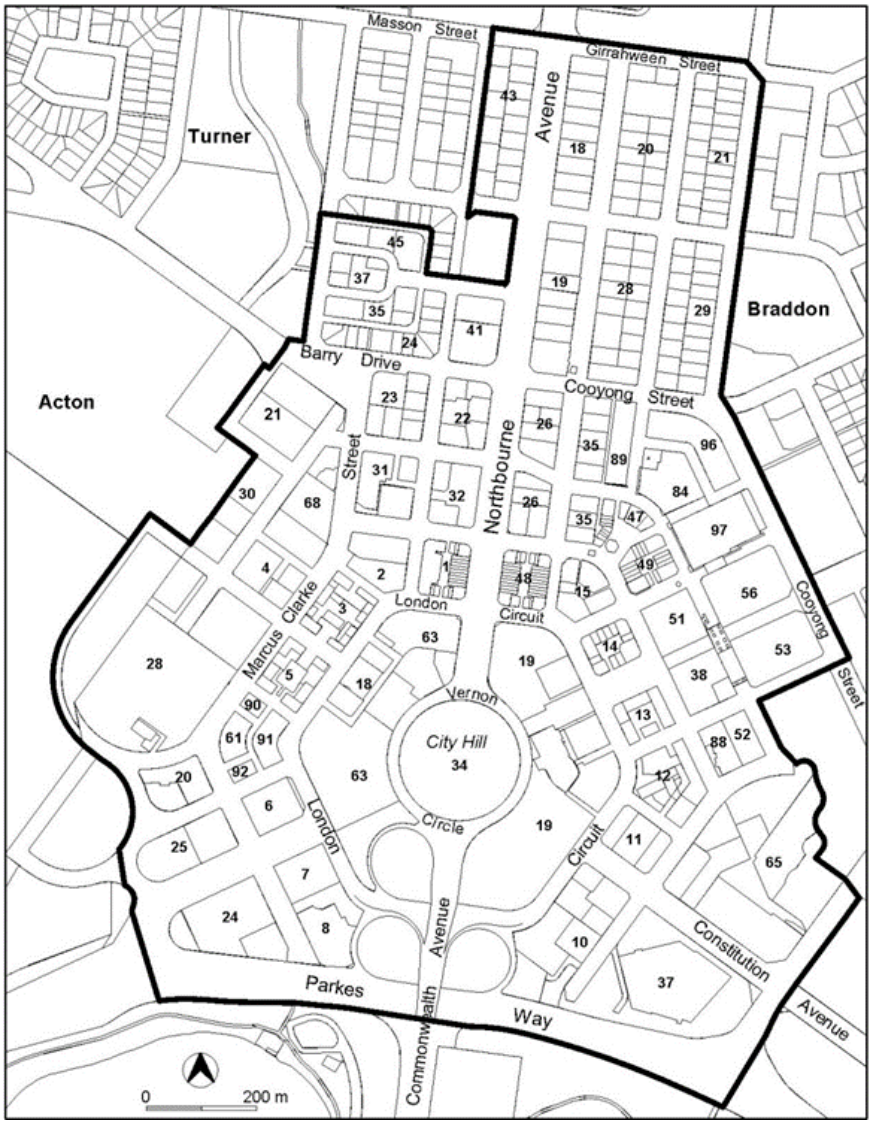
Part 6.3 Maps

Division 6.3.1 City centre



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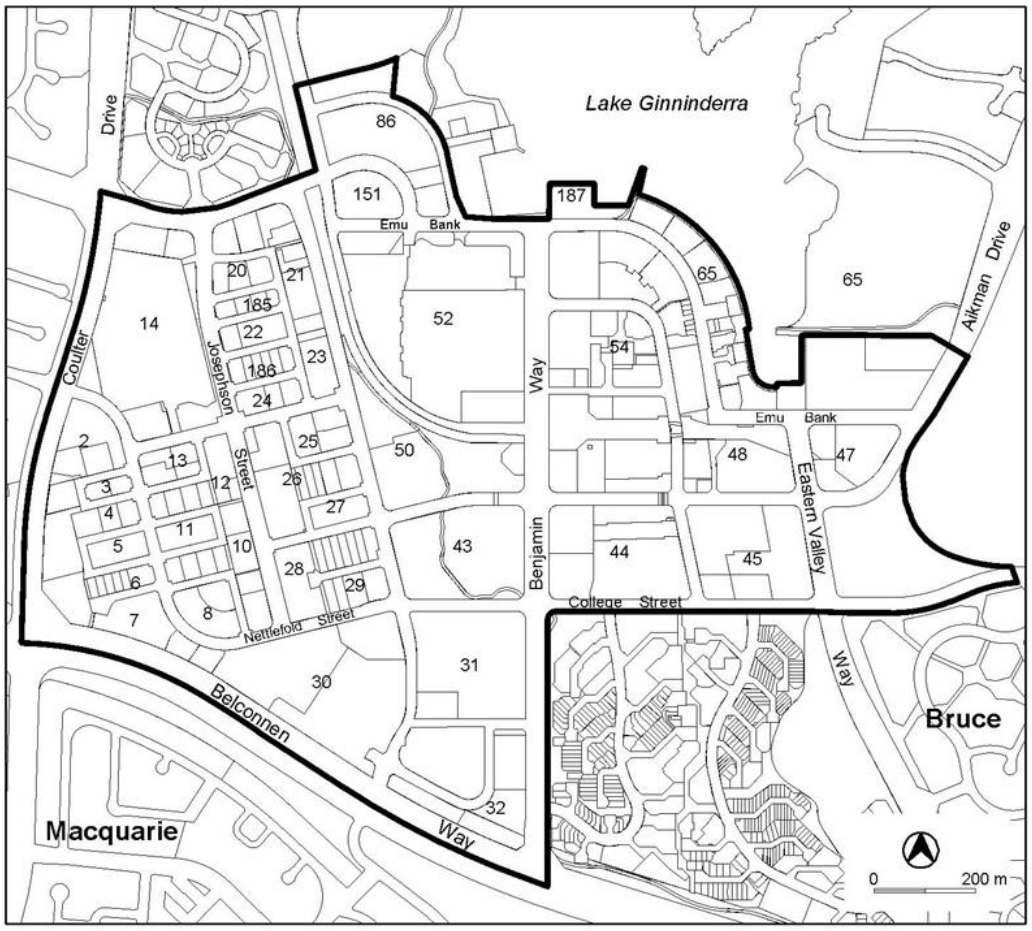
Division 6.3.2 Belconnen town centre



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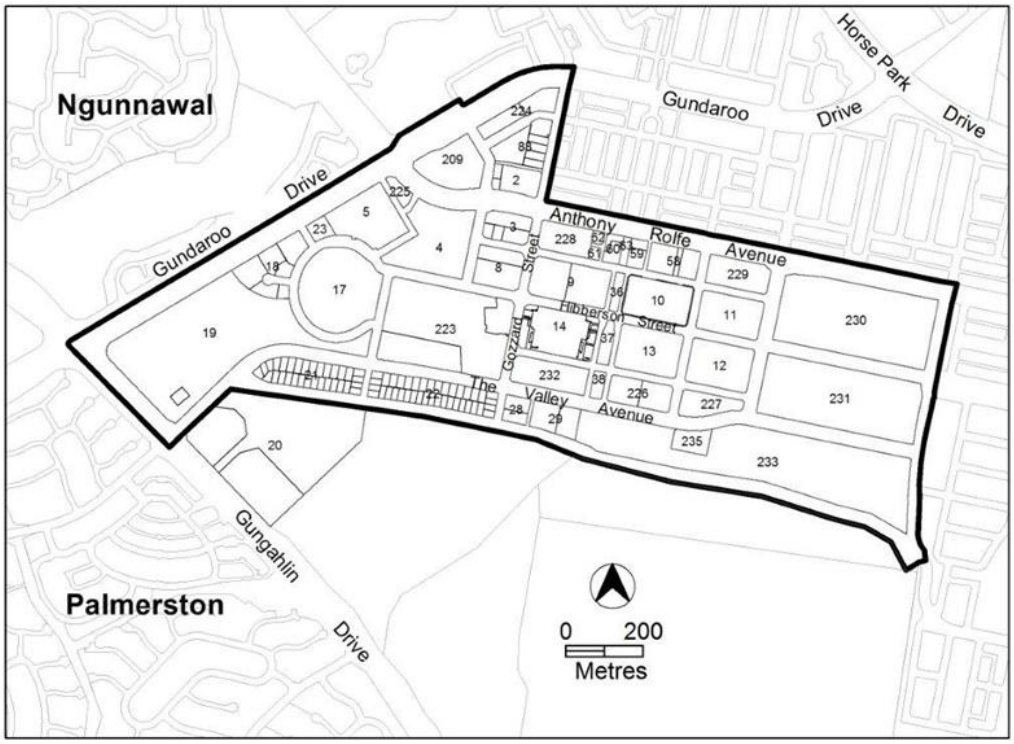
Division 6.3.3 Gungahlin town centre



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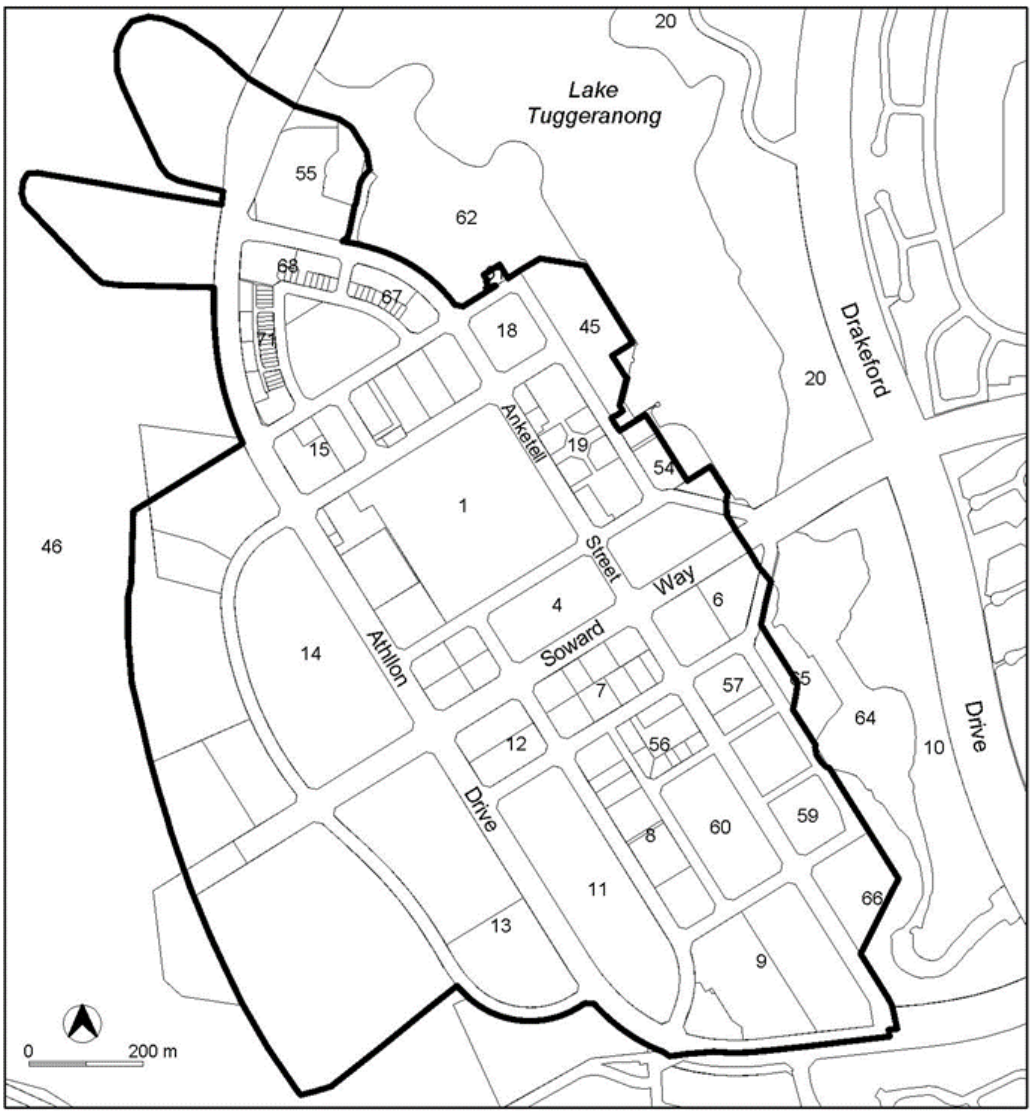
Division 6.3.4 Tuggeranong town centre



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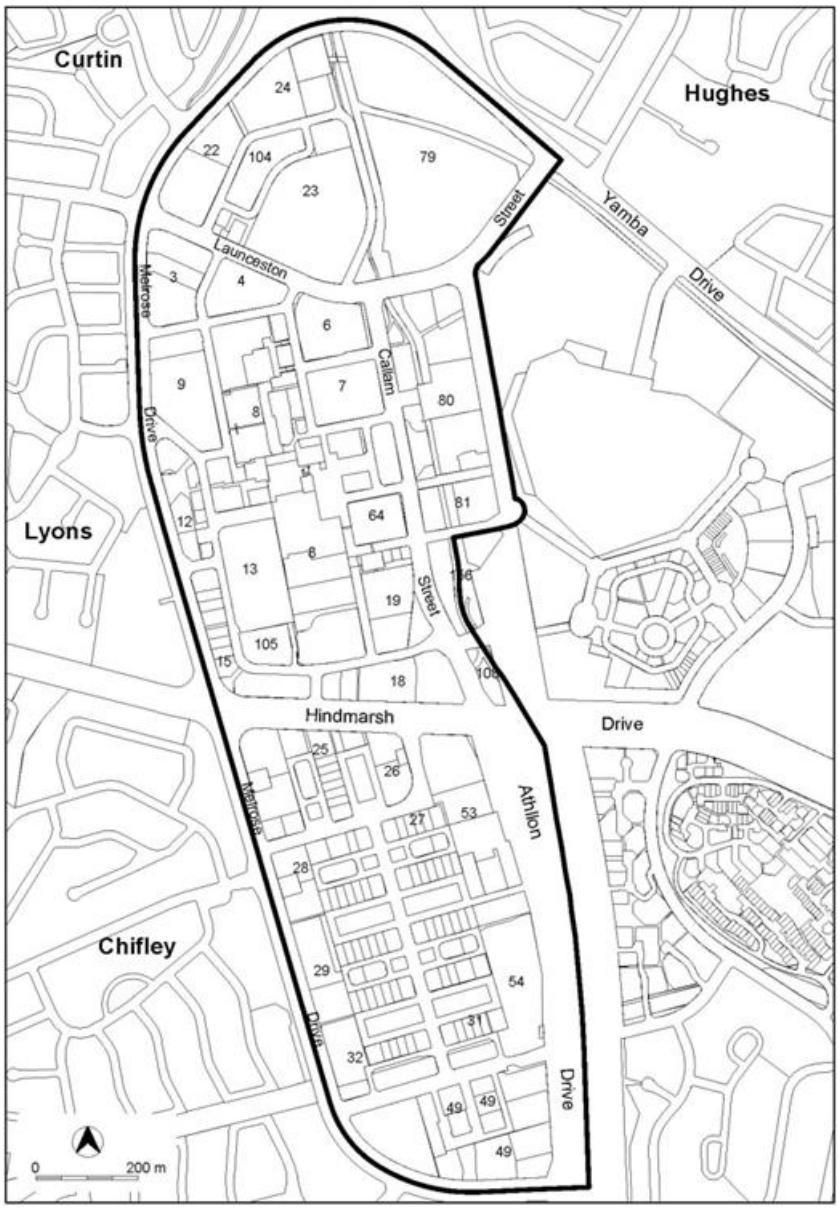
Division 6.3.5 Woden town centre



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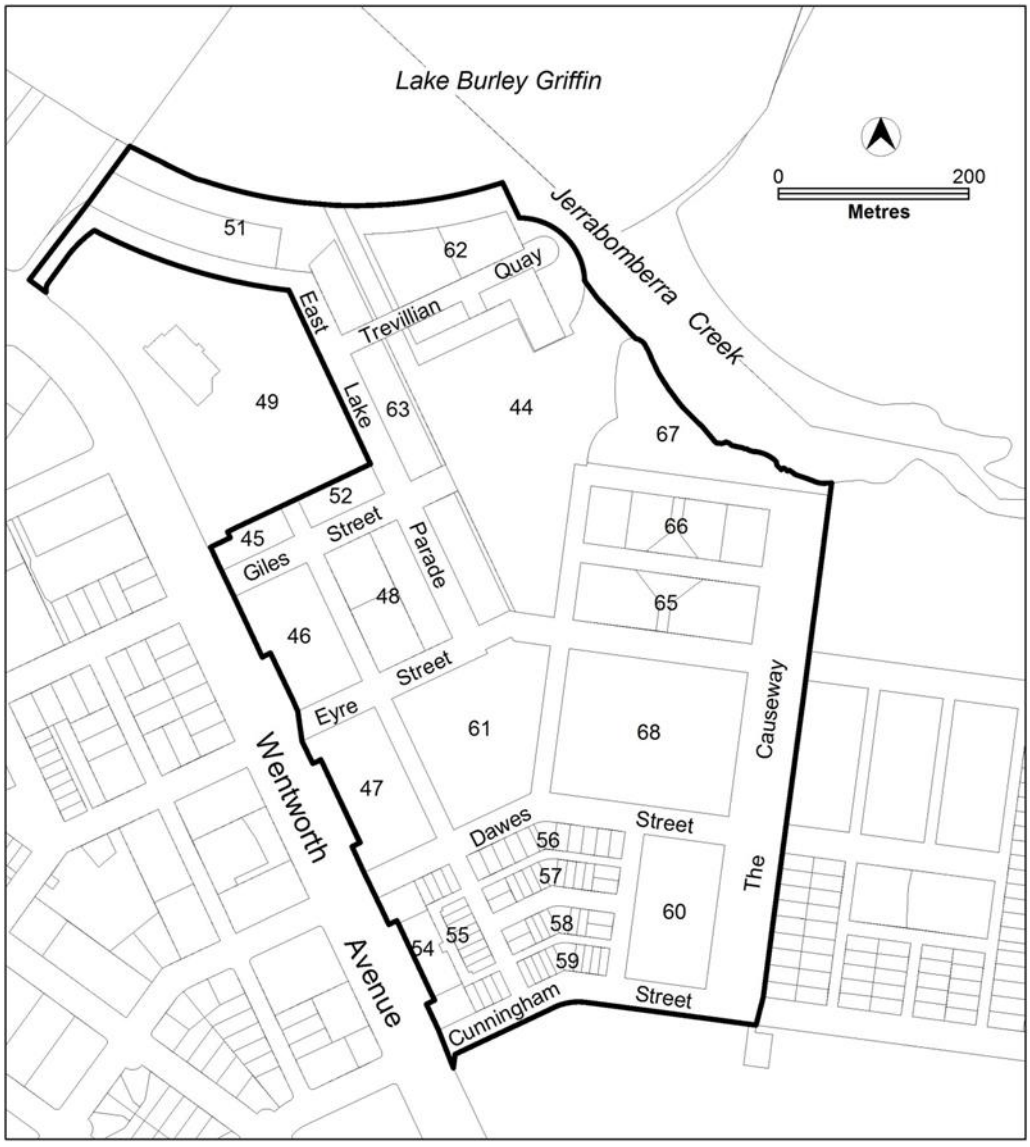
Division 6.3.6 Kingston Foreshore



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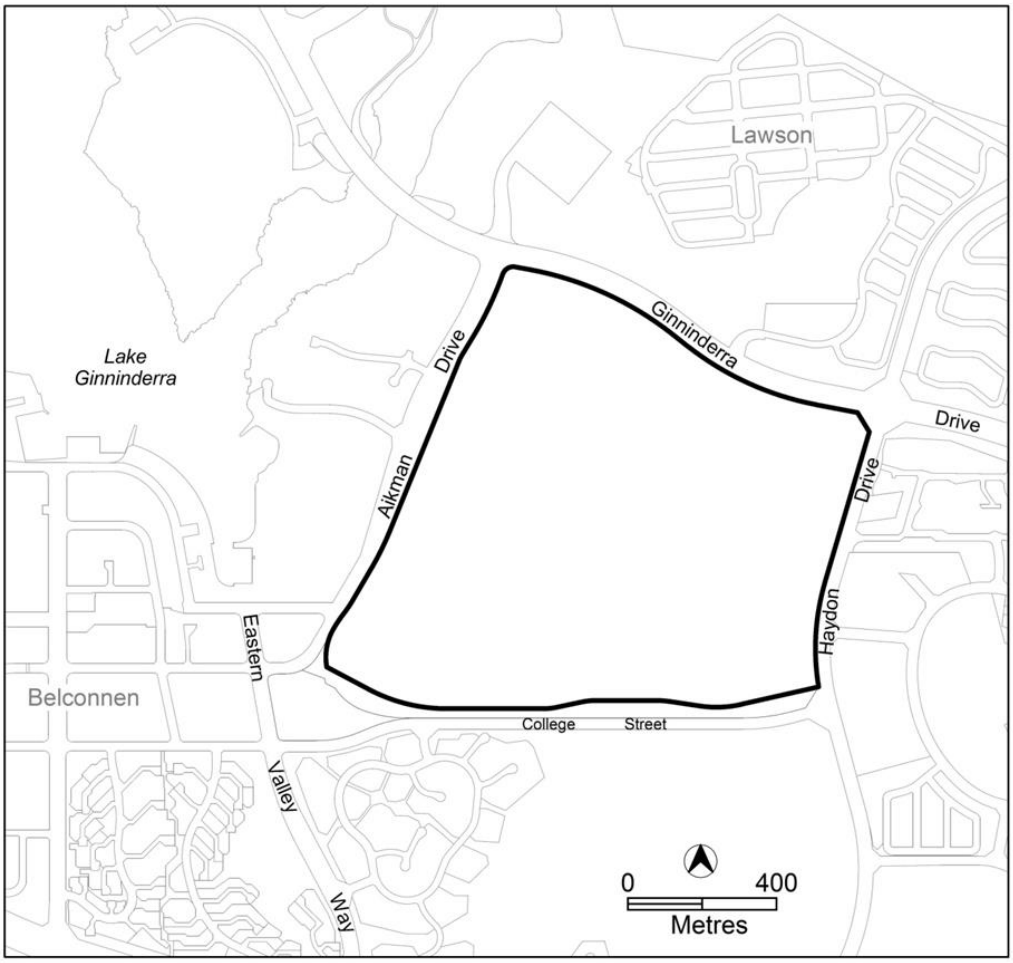
Division 6.3.7 University of Canberra site



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Schedule 7 Preserved leases

(see dict, def ***preserved lease***)

7.1 Meaning of *preserved lease*

(1) In this Act:

preserved lease means a lease—

(a) granted or continued, or purported to have been granted or continued, under the *City Area Leases Act 1936* (repealed); and

(b) to which the *Planning and Development Act 2007* (repealed), section 456 (Transitional—status of leases and licences), as in force on 25 February 2010, applied; and

(c) in which provision is made for a preserved lease use of the land, or of a building or other structure on the land.

(2) In this section:

preserved lease use, in relation to land described in a preserved lease—

(a) means the use of the land for the purpose of any of the following:

(i) 'an industry' or 'industries';

(ii) 'light industrial and commercial businesses';

(iii) conducting 'industries' in buildings on the land; and

(b) includes the use of the land, or of a building or other structure on the land, for the retail sale of any of the following:

(i) goods (other than food-stuffs, non-alcoholic beverages or new clothing) that have been manufactured or processed on the land or in the building or other structure;

(ii) building materials, building equipment, building supplies or general hardware;

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(iii) other goods ordinarily sold by sellers of goods mentioned in subparagraph (ii);

(iv) agricultural, garden or farm equipment or supplies;

(v) petrol, oil or other petroleum products;

(vi) motor vehicles, trailers, caravans, boats or machinery;

(vii) parts or accessories for goods mentioned in subparagraph (vi);

(viii) if the floor area of the building, or the part of the building where the goods are sold or displayed for sale, does not exceed 46.5m^2—

(A) food-stuffs or non-alcoholic beverages of a kind commonly known as confectionery or refreshments; and

(B) any other kind of food-stuffs or non-alcoholic beverages that have been manufactured or processed on the land or in the building; and

(C) goods (other than food-stuffs, non-alcoholic beverages, new clothing or goods mentioned in paragraph (b) (i) to (vii)) that have been stored in bulk in the building pending their sale and distribution to people engaged in retail trade elsewhere than on that land; but

(c) unless otherwise authorised by the lease (whether expressly or by implication), does not include the use of the land, or of a building or other structure on the land—

(i) for the retail sale of any other goods; or

(ii) as a boarding-house, guest-house, hostel, hotel or motel; or

(iii) as residential accommodation.

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Dictionary

(see s 3)

Note The Legislation Act contains definitions relevant to this Act. For example:

- ACAT
- appoint
- city renewal authority
- commissioner for revenue
- conservator of flora and fauna
- contravene
- corporation
- document
- emergency service
- emergency services commissioner
- entity
- environment protection authority
- Executive
- exercise
- found guilty
- function
- head of service
- heritage council
- home address
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- national capital authority
- national capital plan
- person (see s 160)
- public servant
- registered surveyor
- registrar-general
- reviewable decision notice

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- Self-Government Act
- suburban land agency
- territory authority
- territory instrumentality
- territory land
- territory-owned corporation
- the Territory
- under
- work health and safety commissioner
- working day.

Aboriginal object, for schedule 3 (Management objectives for public land)—see the *Heritage Act 2004*, section 9 (1).

Aboriginal place, for schedule 3 (Management objectives for public land)—see the *Heritage Act 2004*, section 9 (1).

accredited valuer means a valuer accredited by—

(a) the Australian Property Institute Limited ACN 608 309 128; or

(b) if another entity is prescribed by regulation—that entity.

act includes omission.

activation and liveability principles—see section 10 (2).

additional rent means amounts payable under a lease in addition to rent owed under the lease because rent or other amounts owing under the lease have not been paid as required.

adjoins, for division 7.5.4 (Public notification of development applications)—see section 174.

applicant, for a development application, includes a lessee who signs the development application.

approval-holder means a person whose application for development approval has been approved (with or without a condition) if the approval is in force.

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assessable development means development that requires development approval.

associated document, for part 14.1 (Public register)—see section 501.

authorised person—see section 439 (1).

authorised use, of land, or of a building or other structure on land, for part 7.2 (Exempt development)—see section 146.

authority website—see section 509.

background papers, in relation to a draft major plan amendment or major plan amendment, for part 5.2 (Territory plan—major plan amendments)—see section 55.

Belconnen town centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

block—see the *Districts Act 2002*, dictionary.

building and development provision, in relation to a lease, for chapter 10 (Leases and licences)—see section 256.

business hours, in relation to premises—

(a) means 9.00 am to 5.00 pm on a working day; and

(b) if the premises are not residential premises—includes any period the premises are open for business outside the period mentioned in paragraph (a).

certificate of compliance means a certificate issued under section 368.

certificate of occupancy means a certificate issued under the *Building Act 2004*, section 69.

chargeable variation, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 327.

chief planner means the Chief Planner appointed under section 26.

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city centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

Commonwealth entity means—

(a) a body established under a Commonwealth Act; or

(b) a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (Cwlth); or

(c) a Commonwealth company under the *Public Governance, Performance and Accountability Act 2013* (Cwlth); or

(d) a company in which a controlling interest is held by either or both of the following:

(i) the Commonwealth;

(ii) a Commonwealth company under the *Public Governance, Performance and Accountability Act 2013* (Cwlth).

community lease—see section 291 (1).

community lease provisions, for a community lease—see section 292.

community lease use—see section 291 (1).

community organisation means a corporation that—

(a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and

(b) is not carried on for the financial benefit of its members; and

(c) does not hold a club licence under the *Liquor Act 2010*.

community use report means a report prepared under section 296.

complainant, for part 12.2 (Complaints about controlled activities) and part 12.3 (Controlled activity orders)—see section 414 (1) (b).

concessional lease—see section 258 (1).

concessional status removed—see section 258 (2).

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concurrent development application means a development application for prohibited development made under—

(a) section 157 (Applications in anticipation of major plan amendment); or

(b) section 159 (Applications for development encroaching on adjoining land if development prohibited).

conditional environmental significance opinion—see section 140 (4) (b).

connected, for chapter 13 (Enforcement)—see section 460.

consolidation, for chapter 10 (Leases and licences)—see section 256.

consultation comments—

(a) for part 5.2 (Territory plan—major plan amendments)—see section 63 (1) (c) (i); and

(b) in relation to a minor plan amendment—see section 86 (2) (b) (i).

consultation notice—

(a) for part 5.2 (Territory plan—major plan amendments)—see section 63 (1) (c); and

(b) for a draft revised offsets policy—see section 229 (1); and

(c) for draft offsets policy guidelines—see section 236 (1); and

(d) for a draft land management plan—see section 390 (1).

consultation period—

(a) for part 5.2 (Territory plan—major plan amendments)—see section 55; and

(b) for a draft revised offsets policy—see section 229 (2) (b); and

(c) for draft offsets policy guidelines—see section 236 (2) (b); and

(d) for a draft land management plan—see section 390 (2) (b).

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controlled activity—see section 412.

controlled activity order—see section 424 (1).

corresponding major plan amendment, for a draft major plan amendment, for part 5.2 (Territory plan—major plan amendments)—see section 55.

cultural heritage conservation principles—see section 10 (2).

custodian, in relation to land, means an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both.

deal, with a lease, means—

(a) assign or transfer the lease; or

(b) sublet the land described in the lease or part of it; or

(c) part with possession of the land described in the lease or any part of it.

deciding, a development application, means approving (with or without a condition) or refusing the application.

decision-maker—

(a) for chapter 7 (Development assessment and approvals)—see section 144; and

(b) for part 9.4 (Offset conditions)—see section 243; and

(c) for chapter 15 (Notification and review of decisions)—see section 504.

declared land sublease—see section 365 (1).

declared protected matter—see section 221 (2).

declared site—see the *Urban Forest Act 2023*, dictionary.

deferral arrangement, for a lease variation charge—see section 343 (1) (c).

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design advice—see section 101 (2) (b) (i).

designated area—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4.

design guide—see section 50 (1).

design principles—see section 99 (1).

design review panel means the Design Review Panel established under section 95.

design review panel rules—see section 98 (1).

development, in relation to land—see section 14 (1).

development agreement means a deed or contract that—

(a) was entered into by the lessee and the Territory or a territory entity, as a condition of the grant of a lease; and

(b) sets out obligations with which the lessee must comply in relation to development of the land described in the lease.

development application—see section 166 (1).

development approval means approval for a development under chapter 7 (Development assessment and approvals).

development proposal means a proposal for development, whether or not in a development application.

discharge amount, for a rural lease, for division 10.8.2 (Exceptions for rural leases)—see section 349.

district—see the *Districts Act 2002*, dictionary.

district policy means a district policy in the territory plan.

district strategy—see section 38 (1).

division, in relation to land—see the *Districts Act 2002*, dictionary.

draft EIS—see section 112 (1) (a).

draft land management plan—see section 389 (1).

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draft major plan amendment, for part 5.2 (Territory plan—major plan amendments)—see section 55.

draft offsets policy guidelines—see section 235 (1).

draft review report—see section 91 (3).

draft revised offsets policy—see section 228 (2).

ecologically sustainable development—see section 9.

EIS—see section 94 (c).

EIS assessment report—see section 126 (1).

eligible entity, for chapter 15 (Notification and review of decisions)—see section 504.

ends, for an appeal, means decided, withdrawn, dismissed or struck out.

environment—each of the following is part of the environment:

(a) the soil, atmosphere, water and other parts of the earth;

(b) organic and inorganic matter;

(c) living organisms;

(d) structures, and areas, that are manufactured or modified;

(e) ecosystems and parts of ecosystems, including people and communities;

(f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;

(g) interactions and interdependencies within and between the things mentioned in paragraphs (a) to (f);

(h) social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).

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environmental impact assessment—see section 102 (1).

environmental significance opinion—see section 102 (2).

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

essential design element, of a development proposal—see section 188.

exempt development—see section 145.

exemption assessment—see section 151 (1).

exemption assessment D notice—see section 152 (2) (b).

exemption assessor—see section 151 (1).

expected greenhouse gas emissions statement, for a development, for schedule 1 (Information and documents for certain development applications)—see schedule 1, section 1.1.

finalised—

(a) for an EIS—see section 128; and

(b) for a public health EIS—see section 129.

formal error means—

(a) a clerical error; or

(b) an error arising from an accidental slip or omission; or

(c) a defect of form.

future urban area means an area of land identified in the territory plan for future urban development.

government entity includes a territory authority, territory instrumentality and an administrative unit.

granted on a concessional basis—see section 258 (3).

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greenhouse gas emissions, for schedule 1 (Information and documents for certain development applications)—see the *Climate Change and Greenhouse Gas Reduction Act 2010*, dictionary.

gross floor area, for division 10.7.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

Gungahlin town centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

high-quality design principles—see section 10 (2).

holding period, for a rural lease, for division 10.8.2 (Exceptions for rural leases)—see section 349.

housing affordability principles—see section 10 (2).

improvement, in relation to land, for part 10.9 (Leases—improvements)—see section 356.

incorporated association, for schedule 2 (Market value leases and leases that are possibly concessional)—see schedule 2, section 2.1.

information requirement notice—see section 474 (2).

inquiry means an inquiry into an EIS under section 132.

inquiry panel—see section 132 (1) (a).

inspector means a person appointed as an inspector under section 461.

integrated delivery principles—see section 10 (2).

interested entity, for chapter 15 (Notification and review of decisions)—see section 504.

interested person, in relation to land, for part 5.2 (Territory plan—major plan amendments)—see section 56.

investment facilitation principles—see section 10 (2).

Kingston Foreshore, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

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land management agreement—see section 350 (2) (a).

land management plan—see section 395 (1).

land rent lease—see the *Land Rent Act 2008*, dictionary.

land sublease means a sublease of land approved under section 284 (Restriction on subletting of land) but does not include a sublease mentioned in section 285 (Subletting part of building).

lease—

(a) for this Act generally—see section 257; and

(b) for part 10.12 (Leases—building and development provisions)—see section 367.

leasehold, of a lessee, means the land held under the lease.

lease variation charge, for a variation of a nominal rent lease, means the lease variation charge applying under division 10.7.3 (Variation of nominal rent leases).

lessee—

(a) for chapter 10 (Leases and licences)—see section 256; and

(b) for a lease that has ended, for part 10.9 (Leases—improvements)—see section 356.

light rail—see the *Road Transport (General) Act 1999*, dictionary.

limited consultation, for part 5.3 (Territory plan—minor plan amendments)—see section 86 (1).

long-term focus principles—see section 10 (2).

major plan amendment, part 5.2 (Territory plan—major plan amendments)—see section 55.

management objectives—see section 387 (1).

market value, of a lease, for chapter 10 (Leases and licences)—see section 256.

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market value lease—see section 259.

material detriment, for schedule 5 (Reviewable decisions, eligible entities and interested entities)—see schedule 5, section 5.1.

matter protected by the Commonwealth—see section 222 (1).

memorial—see the *Land Titles Act 1925*, dictionary.

Minister, for part 9.2 (Offsets policy)—see section 225.

minor plan amendment, for part 5.3 (Territory plan—minor plan amendments)—see section 84.

monitoring warrant—see section 484 (1).

natural environment, for schedule 3 (Management objectives for public land)—see schedule 3, section 3.1.

natural environment conservation principles—see section 10 (2).

new compliance time, for a building and development provision, see section 375 (1).

noncompliance fee—see section 374 (2).

nominal rent means—

(a) rent of 5 cents each year; or

(b) if another nominal amount each year is prescribed by regulation—rent of the other nominal amount.

nominal rent lease means a lease for a nominal rent.

non-standard chargeable variation, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 327.

occupier, of premises, for chapter 13 (Enforcement)—see section 460.

offence, for chapter 13 (Enforcement)—see section 460.

offset—see section 223.

offset condition, for a development approval—see section 244.

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offset management plan, for an offset—see section 245 (1).

offset manager, for an offset management plan—see section 246.

offsets policy—see section 224.

offsets policy guidelines—see section 234 (1).

offsets register—see section 242.

ongoing controlled activity order, for part 12.3 (Controlled activity orders)—see section 428 (1).

original application, for division 7.6.3 (Reconsideration of decisions on development applications)—see section 198 (1) (a).

original decision—

(a) for division 7.6.3 (Reconsideration of decisions on development applications)—see section 198 (1) (a); and

(b) for division 10.7.3 (Variation of nominal rent leases)—see section 334 (1) (b).

planning and response report—see section 39 (1).

planning strategy—see section 36 (1).

possibly concessional, in relation to a lease—see section 260.

pre-decision advice, in relation to a development application, see section 182 (1).

premises includes land.

preserved lease—see schedule 7, section 7.1 (1).

principles of good consultation—see section 11 (1).

principles of good planning—see section 10 (1).

prohibited development—see section 154 (1).

prohibition notice—see section 452 (1).

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proponent, of a development proposal, means the person proposing the proposal.

proponent-initiated amendment, for part 5.2 (Territory plan—major plan amendments)—see section 57.

protected matter—see section 221 (1).

protected tree—see the *Urban Forest Act 2023*, section 9.

provision, of a lease, for chapter 10 (Leases and licences)—see section 256.

public availability notice, for a draft major plan amendment, for part 5.2 (Territory plan—major plan amendments)—see section 68 (a).

public consultation period, for a draft EIS, means—

(a) the period stated under section 114 (a) (iii); or

(b) if the period is extended under section 115 (3)—the period as extended.

Public Health Act Minister means the Minister responsible for the *Public Health Act 1997*, section 134.

public health EIS means an EIS for a development proposal in a development application in relation to which the Public Health Act Minister has made a declaration for section 105 (When EIS is required).

public land means land identified in the territory plan as public land.

public land management plan, for an area of public land—see section 388 (1).

publicly notify—

(a) a draft EIS—see section 114; and

(b) a development application—see section 175 (1).

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public notification period, for a development application—see section 175 (2).

public register—see section 497.

reconsideration application—

(a) for division 7.6.3 (Reconsideration of decisions on development applications)—see section 198 (2); and

(b) for division 10.7.3 (Variation of nominal rent leases)—see section 335 (5).

rectification work—see section 436.

rectification work order—see section 442 (1).

referral entity—see section 170 (1) (a).

registered interest, in a lease, means an interest in the lease registered under the *Land Titles Act 1925*.

registered interest holder, for division 7.5.4 (Public notification of development applications)—see section 174.

registered proprietor, in relation to a lease, for chapter 10 (Leases and licences)—see section 256.

related to light rail—see section 217.

relevant agency, for an environmental significance opinion—see section 138 (2).

relevant Assembly committee, for a provision, means a standing committee of the Legislative Assembly nominated, in writing, by the Speaker for the provision.

rental lease, for chapter 10 (Leases and licences) and schedule 2 (Market value leases and leases that are possibly concessional)—see section 256.

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representation—

(a) about a development application, means a representation made under section 180; or

(b) about a draft EIS, means a representation made about the draft EIS under section 115.

residential lease, for chapter 10 (Leases and licences) and schedule 2 (Market value leases and leases that are possibly concessional)—see section 256.

reviewable decision, for chapter 15 (Notification and review of decisions)—see section 504.

revised EIS—see section 118 (1) (b).

rural lease—see section 256.

scoping document, for a development proposal—see section 109 (2) (b).

search warrant—see section 478 (1).

show cause notice—see section 425 (2).

significant adverse environmental impact—see section 104.

significant development—see section 94.

single dwelling house lease, for chapter 10 (Leases and licences)—see section 256.

standard chargeable variation, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 327.

statement of planning priorities—see section 42 (1).

structure includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, road, footpath, driveway, carpark, culvert or service conduit or cable.

subdivision, for chapter 10 (Leases and licences)—see section 256.

subdivision design application—see section 43 (1).

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sublease, for chapter 10 (Leases and licences)—see section 256.

supporting report, for part 5.2 (Territory plan—major plan amendments)—see section 55.

***sustainability and resilience principles*—**see section 10 (2).

territory entity means—

(a) a territory authority; or

(b) a territory instrumentality; or

(c) a territory-owned corporation.

territory plan means the territory plan under section 45.

territory plan map—see section 48 (1) (a).

territory planning authority means the Territory Planning Authority established under section 16.

territory priority project—see section 216.

territory priority project declaration—see section 218 (1).

town centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

transfer, of a lease, for part 10.12 (Leases—building and development provisions)—see section 367.

tree management plan—see the *Urban Forest Act 2023*, dictionary.

Tuggeranong town centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

undertaken, in relation to an improvement that is a building or other structure, for part 10.9 (Leases—improvements)—see section 356.

University of Canberra site, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

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University of NSW means the University of New South Wales established under the *University of New South Wales Act 1989* (NSW), section 4.

***urban regeneration principles*—**see section 10 (2).

use, of land, or of a building or other structure on land—see section 15.

variation, of a lease—

(a) includes the surrender of the lease and the grant of a new lease to the same lessee, subject to different provisions, over land that—

(i) is all or part of the land described in the surrendered lease; and

(ii) is not in an area identified in the territory plan as a future urban area; and

(b) without limiting paragraph (a), includes the surrender of a concessional lease and the grant of a new lease to the same lessee as a market value lease; and

(c) includes the consolidation, or subdivision, of the lease; but

(d) does not include—

(i) the surrender of the lease and the grant of a further lease under section 289 (Grant of further leases); or

(ii) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed.

Woden town centre, for schedule 6 (Matters exempt from third party ACAT review)—see schedule 6, section 6.1.

working out statement, for division 10.7.3 (Variation of nominal rent leases)—see section 334 (2).

zone means a zone identified in the territory plan.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Planning Act 2023 A2023-18
notified LR 19 June 2023
s 1, s 2 commenced 19 June 2023 (LA s 75 (1))
s 36, s 38, s 50, s 51, pt 20.2, pt 20.3 commenced 20 June 2023 (s 2 (1))
remainder commenced 27 November 2023 (s 2 (2) and CN2023-10)

as amended by

Planning (Consequential Amendments) Act 2023 A2023-36 sch 1 pt 1.49
notified LR 29 September 2023
s 1, s 2 commenced 29 September 2023 (LA s 75 (1))
sch 1 pt 1.49 commenced 27 November 2023 (s 2 (1) and see Planning Act 2023 A2023-18, s 2 (2) and CN2023-10)

as modified by

Planning (Transitional Provisions) Regulation 2023 SL2023-29
notified LR 24 November 2023
s 1, s 2 commenced 24 November 2023 (LA s 75 (1))
remainder commenced 27 November 2023 (s 2 and see Planning Act 2023 A2023-18, s 2 (2) and CN2023-10)

as amended by

Urban Forest (Consequential Amendments) Act 2023 A2023-52 sch 1 pt 1.5
notified LR 11 December 2023
s 1, s 2 commenced 11 December 2023 (LA s 75 (1))
sch 1 pt 1.5 commenced 1 January 2024 (s 2 and see Urban Forest Act 2023 A2023-14, s 2)

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Dictionary
s 3 am A2023-52 amdt 1.24

Subdivision design applications
s 43 am A2023-36 amdt 1.278, amdt 1.279

Contents of territory plan
s 48 am A2023-36 amdt 1.280

Rezoning—development encroaching on adjoining land
s 88 am A2023-36 amdt 1.281

Deciding environmental significance opinion application
s 140 am A2023-36 amdt 1.282

Advice on development proposals
s 165 am A2023-36 amdt 1.283

When authority must refer development application
s 170 am A2023-52 amdt 1.25

Further entity referral—more information or amended application
s 171 am A2023-36 amdt 1.284

Deciding development applications
s 185 am A2023-52 amdt 1.26, amdt 1.27

Conditional approvals
s 187 am A2023-52 amdts 1.28-1.30

Restrictions on development approval
s 189 am A2023-36 amdt 1.285; A2023-52 amdts 1.31-1.33

Applications to amend development approvals
s 205 am A2023-36 amdt 1.286, amdt 1.287

Deciding applications to amend development approvals
s 206 am A2023-36 amdt 1.288

End of development approvals generally
s 211 am A2023-36 amdt 1.289

End of development approvals for lease variations
s 212 am A2023-36 amdt 1.290, amdt 1.291; pars renum R2 LA

End of development approvals for use
s 213 am A2023-36 amdt 1.292

Payment for leases generally
s 274 (2) (g) exp 8 July 2025 (s 521 (2))

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Use of land for leased purpose
s 276 am A2023-36 amdt 1.292

Restriction on transfer, assignment and parting with possession
s 280 (2) (b) exp 8 July 2025 (s 521 (2))

Restriction on transfer, assignment and parting with possession—certain University of NSW leases
s 282 exp 8 July 2025 (s 521 (2))

Approval to transfer, assign, or part with possession—certain University of NSW leases
s 283 exp 8 July 2025 (s 521 (2))

Grant of further lease includes same authorised use
s 290 am A2023-36 amdt 1.292

Meaning of *community lease provisions*
s 292 am A2023-36 amdt 1.293

Development application to remove concessional status of lease
s 309 am A2023-36 amdt 1.294

No variation of certain leases for 5 years
s 326 am A2023-36 amdt 1.295

Approval to defer payment of lease variation charges
s 343 am A2023-36 amdt 1.296

Reservation of minerals
s 381 am A2023-36 amdt 1.297

Leases of public land
s 401 am A2023-36 amdt 1.298

Complaints about controlled activities
s 413 am A2023-36 amdt 1.299

Additional information about complaints
s 416 am A2023-36 amdt 1.300

Content of controlled activity orders
s 429 am A2023-36 amdt 1.301

Notice of making of controlled activity orders
s 430 am A2023-52 amdt 1.34, amdt 1.35

Expiry of University of NSW lease provisions
s 521 exp 8 July 2025 (s 521 (2))

Regulation-making power
s 523 am A2023-36 amdt 1.302, amdt 1.303

Review of Act
s 524 exp 27 November 2029 (s 524 (2))

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Transitional
ch 20 hdg note exp 27 November 2026 (s 602)

Transitional—general
pt 20.1 hdg exp 27 November 2026 (s 602)

Transitional regulations
s 601 exp 27 November 2026 (s 602)

Expiry—ch 20
s 602 exp 27 November 2026 (s 602)

Transitional—strategic and spatial planning
pt 20.2 hdg exp 27 November 2026 (s 602)

Planning strategy
s 603 exp 27 November 2026 (s 602)

District strategy
s 604 exp 27 November 2026 (s 602)

Transitional—territory plan
pt 20.3 hdg exp on the day the territory plan is confirmed or commences (s 612)

Territory plan—preparation
s 605 exp on the day the territory plan is confirmed or commences (s 612)

Draft territory plan to be given to Executive etc
s 606 exp on the day the territory plan is confirmed or commences (s 612)

Territory plan—Executive's powers
s 607 exp on the day the territory plan is confirmed or commences (s 612)

Territory plan to be given to Assembly committee
s 608 exp on the day the territory plan is confirmed or commences (s 612)

Interim territory plan
s 609 mod SL2023-29 mod 1.1; mod exp 27 November 2026 (s 602)
exp on the day the territory plan is confirmed or commences (s 612)

Approval or confirmation of territory plan
s 610 mod SL2023-29 mod 1.2, mod 1.3; mod exp 27 November 2026 (s 602)
exp on the day the territory plan is confirmed or commences (s 612)

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Preparation of draft territory plan before commencement
s 611 exp on the day the territory plan is confirmed or commences (s 612)

Expiry—pt 20.3
s 612 exp on the day the territory plan is confirmed or commences (s 612)

Transitional—development applications and approvals
pt 20.4 hdg exp 27 November 2026 (s 602)

Development applications made before commencement day
s 613 exp 27 November 2026 (s 602)

Development approvals under repealed Act
s 614 exp 27 November 2026 (s 602)

Applications to amend development approvals made before commencement day
s 615 exp 27 November 2026 (s 602)

Applications to amend development approvals under repealed Act at least 6 months after commencement day
s 616 exp 27 November 2026 (s 602)

Declarations for development encroaching on adjoining territory land before commencement day
s 617 exp 27 November 2026 (s 602)

Transitional—existing rights to use land, buildings and structures
pt 20.5 hdg exp 27 November 2026 (s 602)

Existing rights to use land etc not affected
s 618 (2) exp 27 November 2026 (s 602)

Transitional—leases and licences
pt 20.6 hdg exp 27 November 2026 (s 602)

Grants of leases commenced but not completed before commencement day
s 621 mod SL2023-29 mod 1.4, mod 1.5; mod exp 27 November 2026 (s 602)
exp 27 November 2026 (s 602)

Applications for grant of further leases
s 622 mod SL2023-29 mod 1.6; mod exp 27 November 2026 (s 602)
exp 27 November 2026 (s 602)

Applications by community organisations for direct sale before 6 December 2017
s 623 exp 2 April 2025 (s 623 (4))

Applications to vary concessional leases made before 2 April 2020
s 624 exp 2 April 2025 (s 624 (3))

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Applications for licences for unleased land made before commencement day
s 625 exp 27 November 2026 (s 602)

Transitional—building and development provisions—extension of time to complete works
pt 20.7 hdg exp 27 November 2026 (s 602)

Extensions of time to complete works under repealed Act
s 626 exp 27 November 2026 (s 602)

Extensions of time to complete works under repealed Act—extension to another stated time
s 627 exp 27 November 2026 (s 602)

Transitional—environmental significance opinions
pt 20.8 hdg exp 27 November 2026 (s 602)

Applications for environmental significance opinion made before commencement day
s 628 exp 27 November 2026 (s 602)

Environmental significance opinions given under repealed Act
s 629 exp 27 November 2026 (s 602)

Transitional—design review panel
pt 20.9 hdg exp 27 November 2026 (s 602)

Consultation with design review panel before commencement day
s 630 exp 27 November 2026 (s 602)

Design review panel consideration before commencement day
s 631 exp 27 November 2026 (s 602)

Transitional—environmental impact statements
pt 20.10 hdg exp 27 November 2026 (s 602)

Applications for EIS exemption made before commencement day
s 632 exp 27 November 2026 (s 602)

EIS exemptions granted under repealed Act
s 633 exp 27 November 2026 (s 602)

EIS completed under repealed Act
s 634 exp 27 November 2026 (s 602)

Public health-related EIS completed under repealed Act
s 635 exp 27 November 2026 (s 602)

EIS processes commenced but not completed before commencement day
s 636 exp 27 November 2026 (s 602)

Transitional—rent variations and relief from provisions of leases
pt 20.11 hdg exp 27 November 2026 (s 602)

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Reduction of rent and relief from provisions of lease approved before commencement day
s 637 exp 27 November 2026 (s 602)

Reduction of rent and relief from provisions of lease approved after commencement day
s 638 exp 27 November 2024 (s 638 (3))

Transitional—land management agreements
pt 20.12 hdg exp 27 November 2026 (s 602)

Land management agreements entered into before commencement day
s 639 exp 27 November 2026 (s 602)

Transitional—land management plans
pt 20.13 hdg exp 27 November 2026 (s 602)

Land management plans
s 640 exp 27 November 2026 (s 602)

Draft land management plans
s 641 exp 27 November 2026 (s 602)

Transitional—controlled activities
pt 20.14 hdg exp 27 November 2026 (s 602)

Controlled activities—construction without development approval
s 642 exp 27 November 2026 (s 602)

Transitional—review of decisions
pt 20.15 hdg exp 27 November 2026 (s 602)

Applications for review not finally decided
s 643 exp 27 November 2026 (s 602)

Transitional—administrative
pt 20.16 hdg exp 27 November 2026 (s 602)

Chief planning executive
s 644 exp 27 November 2026 (s 602)

Acting chief planning executive
s 645 exp 27 November 2026 (s 602)

Inspectors appointed before commencement day
s 646 exp 27 November 2026 (s 602)

Transitional—exempt development
pt 20.17 hdg exp 27 November 2026 (s 602)

Guidelines for essential work at affected residential premises
s 647 exp 27 November 2026 (s 602)

Repeals
ch 21 hdg om LA s 89 (3)

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Legislation repealed
s 648 om LA s 89 (3)

Market value leases
sch 2 pt 2.2 item 15 exp 8 July 2025 (s 521 (2))

Reviewable decisions, eligible entities and interested entities
sch 5 pt 5.2 item 10, column 2, everything after 'direct sale' exp 8 July 2025 (s 521 (2))

Dictionary
dict
def ***building and development provision*** sub A2023-36 amdt 1.304
def ***deciding*** ins A2023-36 amdt 1.305
def ***deciding a development application*** om A2023-36 amdt 1.306
def ***declared site*** sub A2023-52 amdt 1.36
def ***district policy*** ins A2023-36 amdt 1.307
def ***protected tree*** ins A2023-52 amdt 1.37
def ***public land*** sub A2023-36 amdt 1.308
def ***significant*** sub A2023-36 amdt 1.308
def ***tree management plan*** sub A2023-52 amdt 1.38
def ***University of NSW*** exp 8 July 2025 (s 521 (2))

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 20 June 2023	20 June 2023– 26 Nov 2023	not amended	new Act
R2 27 Nov 2023	27 Nov 2023– 31 Dec 2023	A2023-36	for commenced provisions, amendments by A2023-36 and modifications by SL2023-29

6 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

Planning (Transitional Provisions) Regulation 2023 SL2023-29 sch 1

Schedule 1 Modification of Act

(see s 4)

[1.1] New section 609 (4) to (8)

insert

(4) An interim territory plan is taken, for all purposes, to be the territory plan.

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(5) To avoid any doubt, an interim territory plan may be amended in accordance with part 5.2 (Territory plan—major plan amendments) or part 5.3 (Territory plan—minor plan amendments).

(6) If an interim territory plan is amended during the inquiry period for the plan, the territory planning authority must give the relevant Assembly committee written notice of the amendment within 5 days of the amendment being made.

(7) An amendment of an interim territory plan is not invalid only because the territory planning authority has not complied with subsection (6).

(8) In this section:

inquiry period, for an interim territory plan, means the period beginning on the day the Minister gives the relevant Assembly committee the territory plan under section 608 (1) and ending—

(a) if the committee decides not to hold an inquiry—on the day the committee gives the Minister notice of the decision under section 608 (2) (a); or

(b) if the committee decides to hold an inquiry—on the day the committee reports to the Minister under section 608 (2) (b).

[1.2] Section 610 (3) (b)

substitute

(b) confirm the interim territory plan approved under section 609 (2) (whether or not the interim territory plan has been amended).

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[1.3] New section 610 (4A)

insert

(4A) A resolution by the Legislative Assembly under subsection (3) does not affect—

(a) any major plan amendment of the interim plan started, but not commenced, before the resolution; or

(b) any minor amendment of the interim plan for which limited consultation has been undertaken, but the amendment has not commenced, before the resolution.

Note For when a major plan amendment starts, see s 53 (1).

[1.4] New section 621 (2A) and (2B)

insert

(2A) The grant of a lease to which a pre-grant process relates is taken to be a lease granted under this Act, section 263.

(2B) Despite section 52 (Effect of territory plan), the grant of the lease need not be consistent with the territory plan if the grant is consistent with the *Territory Plan 2008* (NI2008-27) (repealed), as in force immediately before the commencement day.

[1.5] Section 621 (3), definition of *pre-grant process*, paragraph (a)

substitute

(a) a government entity giving notice of an auction, tender, ballot or direct sale; and

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[1.6] New section 622 (3A)

insert

(3A) Despite section 52 (Effect of territory plan), the grant of a further lease on the application need not be consistent with the territory plan if the grant is consistent with the *Territory Plan 2008* (NI2008-27) (repealed), as in force immediately before the commencement day.

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