

2004

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Urban Services)

# Gungahlin Drive Extension Authorisation Bill 2004

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# **Gungahlin Drive Extension Authorisation Bill 2004**

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## **A Bill for**

An Act to facilitate the construction of the Gungahlin Drive extension, and for other purposes

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1     **Preamble**

- 2             1   Canberra is a growing, thriving city.
- 3             2   It is an important part of planning for the ACT that the needs of all
- 4                 Canberrans are weighed in any decision.
- 5             3   The Gungahlin Drive extension (the **GDE**), including alternatives to
- 6                 it, has been considered at length by the community and its
- 7                 representatives. Preliminary assessments covering environmental
- 8                 issues have been undertaken as well as an extensive process of
- 9                 public consultation.
- 10            4   The GDE is designed to provide appropriate access for all
- 11                 Canberrans to and from Gungahlin, and is a crucial link in
- 12                 Canberra's transport network.
- 13            5   After careful consideration, and weighing the advantages and
- 14                 disadvantages to different community groups, the Legislative
- 15                 Assembly considers that—
- 16                 •   Canberrans should be able to enter and leave Gungahlin with
- 17                     ease
- 18                 •   the GDE is the best way to facilitate this
- 19                 •   work for the GDE should be allowed to proceed
- 20                 •   further litigation about the GDE is expensive and divisive and
- 21                 does not reflect the wishes of the Canberra community as a
- 22                 whole.
- 23            6   For these reasons, the Legislative Assembly wishes to facilitate the
- 24                 construction of the GDE, and the carrying out of all works related to
- 25                 the construction of the GDE.

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

1     **1           Name of Act**

2           This Act is the *Gungahlin Drive Extension Authorisation Act 2004*.

3     **2           Commencement**

4           This Act commences the day after its notification day.

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

7     **3           Dictionary**

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

9         *Note 1*   The dictionary at the end of this Act defines certain terms used in this  
10                   Act.

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

15    **4           Notes**

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

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

18    **5           Meaning of *GDE***

19           (1) In this Act:

20            ***GDE*** means—

21           (a) the Gungahlin Drive extension, proposed to run from the  
22                Barton Highway to the Glenloch Interchange, substantially as  
23                shown in the plans mentioned in the following reports:

24                (i) Gungahlin Drive Extension Document Readiness Report,  
25                    February 2004 Package A, Project No US 01176C-01,  
26                    plan numbers 32416A-PP-061, 062, 063, 064, 065 and  
27                    066;

- 1 (ii) Gungahlin Drive Extension Document Readiness Report,  
2 February 2004 Package B, Project No US 01176C-02,  
3 plan numbers 32416B-PP-061 and 062; or

4 *Note 1* The plans are available for public inspection at Roads ACT, level 7,  
5 Macarthur House, 12 Wattle Street, Lyneham ACT 2602.

6 *Note 2* The plans are also available for public inspection at  
7 [www.gde.act.gov.au/download/alignment\\_details.htm](http://www.gde.act.gov.au/download/alignment_details.htm).

- 8 (b) if the Minister approves an amendment of a plan mentioned in  
9 paragraph (a)—the Gungahlin Drive extension as described in  
10 paragraph (a), as amended.

- 11 (2) The Minister may, in writing, approve an amendment of a plan  
12 mentioned in subsection (1), definition of **GDE**, paragraph (a).

- 13 (3) An approval is a notifiable instrument.

14 *Note* A notifiable instrument must be notified under the Legislation Act.

## 15 **6 Declaration of works for GDE**

- 16 (1) The Minister may, in writing, declare that stated works are—

17 (a) part of the construction of the GDE; or

18 (b) related to the construction of the GDE.

- 19 (2) A declaration is a disallowable instrument.

20 *Note* A disallowable instrument must be notified, and presented to the  
21 Legislative Assembly, under the Legislation Act.

- 22 (3) If the Minister makes a declaration under subsection (1) (a) in  
23 relation to works, the works are taken to be part of the construction  
24 of the GDE for this Act.

- 25 (4) If the Minister makes a declaration under subsection (1) (b) in  
26 relation to works, the works are taken to be related to the  
27 construction of the GDE for this Act.

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1     **7           Amendments of Land (Planning and Environment)**  
2           **Regulations**

3           The amendments of the *Land (Planning and Environment)*  
4           *Regulations 1992* made by the *Land (Planning and Environment)*  
5           *Amendment Regulations 2004 (No 1)* SL2004-12 have effect, and  
6           are taken to have had effect from the day after their notification day,  
7           as if they had been enacted by an Act.

8     **8           Environmental assessments for the GDE**

9           (1) In this section:

10           ***GDE*** includes works that are part of, or related to, the construction  
11           of the GDE (see section 6).

12           ***Land Act*** means the *Land (Planning and Environment) Act 1991*.

13           ***preliminary assessment***—see the Land Act, section 111.

14           (2) Nothing in the Land Act is to be taken to require—

15           (a) a further or additional preliminary assessment of the  
16           environmental impact of the GDE to be undertaken; or

17           (b) any other assessment or inquiry in relation to the GDE to be  
18           undertaken under the Land Act, part 4 (Environmental  
19           assessments and inquiries); or

20           (c) any other action in relation to the GDE to be taken under the  
21           Land Act, part 4.

22           (3) Subsection (1) applies whether or not a preliminary assessment  
23           already undertaken in relation to the GDE complied with the Land  
24           Act.

25           (4) This section has effect despite any other Territory law, whether  
26           passed before or after the commencement of this Act.

**9 Future authorisations relating to the GDE**

(1) In this section:

**authorisation** means—

- (a) an approval, licence, permit or consent (however described) required or allowed to be given under a relevant law; or
- (b) anything else prescribed under the regulations that is required or allowed to be given under a relevant law.

**in relation to** the GDE includes—

- (a) in relation to works that are part of the construction of the GDE under section 6; and
- (b) in relation to works that are related to the construction of the GDE under section 6.

**relevant decision-maker**, for an authorisation required or allowed to be given under a relevant law, means the person authorised under the relevant law to give the authorisation.

**relevant law** means each of the following:

- (c) the *Environment Protection Act 1997*;
- (d) the *Heritage Act 2004*;
- (e) the *Nature Conservation Act 1980*;
- (f) the *Land (Planning and Environment) Act 1991*;
- (g) a Territory law prescribed under the regulations.

(2) The Minister may, in the Minister's absolute discretion and in writing, give any authorisation in relation to the GDE.



- 1 (3) The authorisation may be given on conditions decided by the  
2 Minister, in the Minister's absolute discretion.

3 **Example**

4 The Minister may impose stated environmental controls on the authorisation.

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

- 8 (4) To remove any doubt and without limiting subsection (2) or (3), in  
9 making a decision under this section in relation to an authorisation  
10 required or allowed to be given under a relevant law, the Minister  
11 may have regard to (but is not required to have regard to, consider  
12 or otherwise comply with) any requirement, precondition or other  
13 provision relating to the making of a decision of that kind under the  
14 relevant law.

15 **Example**

16 In deciding under the *Land (Planning and Environment) Act 1991*, section 230, an  
17 application for a development approval in relation to the GDE, the Minister is not  
18 required to consider the matters mentioned in section 231 (1) (a). However, the  
19 Minister may consider some or all of those matters if the Minister chooses to do  
20 so.

- 21 (5) The Minister may give an authorisation (the ***later authorisation***)  
22 under this section in relation to a matter whether or not the relevant  
23 decision-maker has already given an authorisation under the  
24 relevant law in relation to the matter.

- 25 (6) However, if the relevant decision-maker has already given an  
26 authorisation (the ***original authorisation***) under the relevant law in  
27 relation to the matter, the original authorisation is, by force of this  
28 subsection, taken to have been revoked by the giving of the later  
29 authorisation.

- 1           (7) If the Minister gives an authorisation under this section, the relevant  
2           law and all other Territory laws apply in relation to the authorisation  
3           as if—
- 4           (a) the Minister were the relevant decision-maker for the  
5           authorisation; and
- 6           (b) the authorisation were given under this Act and the relevant  
7           law; and
- 8           (c) all necessary changes, and any changes prescribed under the  
9           regulations, were made.
- 10          (8) This section has effect despite any other Territory law, whether  
11          passed before or after the commencement of this Act, but subject to  
12          section 10.
- 13          (9) An authorisation under subsection (2) is a notifiable instrument.
- 14          *Note*     A notifiable instrument must be notified under the Legislation Act.
- 15      **10           Standing to bring proceeding in relation to authorisations**
- 16          (1) In this section:
- 17                *authorisation* means a section 9 authorisation.
- 18          (2) The giving of an authorisation does not create a right, other than a  
19          right given under the authorisation to—
- 20                (a) the person (the *recipient*) to whom the authorisation is given;  
21                or
- 22                (b) anyone acting under the authorisation with the recipient's  
23                authority.
- 24          (3) Accordingly, a decision to give (or not give) an authorisation is final  
25          and conclusive.
- 26          (4) The imposition of a condition on an authorisation does not create a  
27          right in anyone other than the Territory.

- 1 (5) Accordingly, a decision to impose (or not to impose) a condition on  
2 an authorisation is final and conclusive.
- 3 (6) To remove any doubt and without limiting subsections (3) and (5),  
4 the following provisions do not apply to decisions mentioned in  
5 those subsections:
- 6 (a) the *Environment Protection Act 1997*, part 14 (Administrative  
7 review);
- 8 (b) the *Heritage Act 2004*, part 17 (AAT review of decisions);
- 9 (c) the *Land (Planning and Environment) Act 1991*, part 7  
10 (Administrative appeals);
- 11 (d) the *Nature Conservation Act 1980*, part 11 (Review by the  
12 administrative appeals tribunal);
- 13 (e) a Territory law relating to the review of decisions that is  
14 prescribed under the regulations.
- 15 (7) This section has effect despite any other Territory law, whether  
16 passed before or after the commencement of this Act.

## 17 **11 Time limit for bringing proceedings about authorisations**

- 18 (1) A person must not bring a court proceeding in relation to a section 9  
19 authorisation unless the proceeding is brought within 21 days after  
20 the day the authorisation is notified under the Legislation Act.
- 21 (2) This section has effect despite any other Territory law, whether  
22 passed before or after the commencement of this Act.

## 23 **12 Required authorisations not given**

- 24 (1) This section applies if an authorisation required in relation to the  
25 GDE, or to works that are part of, or related to the construction of  
26 the GDE, has not been applied for or otherwise sought.

27 *Note* For works that are part of, or related to, the construction of the GDE,  
28 see s 6.

1           (2) A person must not bring a court proceeding alleging, in substance or  
2           effect, that the authorisation has not been given unless the person  
3           has given the Minister written notice of the allegation at least  
4           14 days before the day the person brings the proceeding.

5           (3) This section has effect despite any other Territory law, whether  
6           passed before or after the commencement of this Act.

7           (4) In this section:  
8           *authorisation*—see section 9 (1).

9       **13           Regulation-making power**

10           The Executive may make regulations for this Act.

11           *Note*     Regulations must be notified, and presented to the Legislative  
12           Assembly, under the Legislation Act.

13       **14           Expiry of Act**

14           (1) This Act expires—

15           (a) 5 years after the day it commences; or

16           (b) if another date is prescribed under the regulations—on the date  
17           prescribed.

18           (2) This Act is a law to which the Legislation Act, section 88 (Repeal  
19           does not end effect of transitional laws etc) applies.

20       **15           Administrative Decisions (Judicial Review) Act 1989,**  
21       **sch 1, new clause 7**

22           insert

23           7 This Act does not apply to decisions under the *Gungahlin Drive*  
24           *Extension Authorisation Act 2004*.

- 1     **16     Land (Planning and Environment) Act 1991,**
- 2     **section 229B (6) (c)**
- 3     *substitute*
- 4     (c) approve or refuse the application under section 230.
- 5     **17     Land (Planning and Environment) Act 1991,**
- 6     **section 231 (1)**
- 7     *omit*
- 8     planning and land authority shall
- 9     *substitute*
- 10    relevant authority must

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- change
- in relation to
- must (see s 146)
- under.

***court*** includes the AAT.

***GDE***—see section 5.

***give*** includes grant and issue (however described).

***section 9 authorisation*** means an authorisation under section 9 (2).

***works*** includes the following:

- (a) the construction, alteration, extension or demolition of buildings or structures;
- (b) landscaping;
- (c) tree-felling;
- (d) excavations;
- (e) the installation, or relocation, of utilities;
- (f) earthworks;
- (g) any other activity prescribed under the regulations.

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## Endnotes

**1      Presentation speech**

Presentation speech made in the Legislative Assembly on      2004.

**2      Notification**

Notified under the Legislation Act on      2004.

**3      Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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