

2000

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) BILL 2000

EXPLANATORY MEMORANDUM

Circulated by Authority of
Brendan Smyth MLA
Minister for Urban Services

Outline

The Land (Planning and Environment) (Amendment) Bill 2000 (the Bill) amends certain provisions of the *Land (Planning and Environment) Act 1991* (the Act).

The Bill comprises a range of amendments that reflect policy changes and administrative requirements over several years. The objective of many of the amendments is to streamline or simplify processes, particularly in relation to development assessment, carried out under the Act. The amendments are summarised as follows:

- The Act will allow the Australian Capital Territory Planning Authority to give notice that the 'defined period', during which a variation to the Territory Plan would have interim effect, will not apply in respect of a particular variation;
- Notification periods for Territory Plan variations, preliminary assessments and environmental assessments are made more flexible to allow the various processes to run concurrently in appropriate circumstances;
- A re-grant under section 171A of a rural lease will not be required to be made for payment of the full market value of the lease. The amendment to section 169 corrects a previous omission of a reference to section 171A;
- The power to make regulations, prescribing that certain activities are not "development" for the purposes of the Act, has been deleted;
- Registration of "lease and development" conditions, in relation to the grant of certain leases, is now provided for under section 227;
- The requirement to give notice of a development application to an adjoining lessee is modified so that notice need not be given if the adjoining lessee is also the applicant;
- All development applications relating to the Gungahlin Central Area are to be referred to the Gungahlin Development Authority for comment;
- The power to make regulations under section 229, exempting development applications from notification requirements, has been deleted, as the power is provided in section 282. As a consequence, the right of review of a decision on an application, to which such a regulation would apply, has been deleted from section 276 as it is no longer required;
- The power of the relevant authority to approve a development application, after the expiration of the prescribed period, has been clarified;
- The Minister may now extend the period within which a person may object to a development application;

- Where a development application is approved, it will no longer be necessary to notify all persons who were previously notified of the application – only those who objected to that application. That requirement will not apply if the relevant authority certifies that an environmental impact statement or inquiry has substantially dealt with the subject matter. Objectors are also to be notified when an application is refused.
- The power to make regulations for the exemption of certain development or activity from the application of Part 6 of the Act (Approvals and Orders) has been clarified ;
- Certain signs may now be exempted by regulations from the notification, appeals or approval requirements of Part 6 of the Act. The regulations may also authorise the Minister to grant such exemptions;
- It is, once again, possible to make an order against a person who does not comply with the provisions of their lease or development agreement; and
- Various references in the Act to “days” have been amended to “business days”, without changing the length of periods.

Financial Implications

The Government, business and the general community will benefit from less resource-intensive processes, more efficient assessment and notification processes and the savings and higher quality results of an improved system. Overall, the costs of administration of functions under the Act should decrease for industry and community.

CLAUSE NOTES

Clauses 1 and, 2 – Name of Act and Commencement - are machinery provisions that specify the name of the amending Act, and provide for the commencement of its provisions.

Clause 3 – Act amended - identifies the Act being amended as the *Land (Planning and Environment) Act 1991*.

Clause 4 – Effect of draft plan variation – amends section 9 to make it clear that a notice given under section 19 may state that section 9 does not apply and, in effect, there is no period of interim effect of a specified draft variation to the Territory Plan.

Clause 5 – Public consultation – amends section 19 by inserting subsections (1A), (1B) and (1C), which allow the Planning Authority to give notice stating whether sections 9 or 11 (relating to the period of interim effect of a draft Territory Plan variation and draft variations to the Heritage Places Register), or both, apply. If section 9 applies, the notice under subsection (1A) must also state the maximum period of interim effect of a draft plan variation, which must not exceed 1 year.

Clause 5 also inserts subsections 19(1D) and (1E), which allow extensions of the notification period for draft variations to the Territory Plan. This flexibility assists concurrent notification of Plan variations with other related activities such as development applications or environmental impact assessments. References to “days” are amended to “business days”.

Clause 6 – Public inspection - amends section 117 by inserting subsections (1A) and (1B), which allow extensions of the notification period for preliminary assessments. This flexibility assists concurrent notification of preliminary assessments with other related activities such as development applications or draft variations to the Territory Plan. References to “days” are amended to “business days”.

Clause 7 – Decisions to direct assessments – amends subsection 121(1) and inserts a new subsection (1A). The effect of the amendment is that a direction to proceed from a preliminary assessment to a full environmental impact assessment must be made within the time prescribed by the Regulations, unless the Environment Minister allows (in writing) a further time.

Clause 8 – Environment impact statement – consultation and public inspection - References in section 125 to “days” are amended to “business days”.

Clause 9 – Payment for leases - amends section 169 by inserting a reference to section 171A of the Act into paragraph 169(2)(b). The amendment corrects a former omission of that reference, to the effect that it is possible to grant a further rural lease for payment of an amount that is less than the market value of that lease.

Clause 10 – Interpretation – amends section 222 by omitting subsection 222(4), which provides for the making of regulations that prescribe activities that are taken not to be “development” for the purposes of Part 6 of the Act.

Clause 11 – Register of applications, approvals, orders and lease and development conditions – amends section 227 by adding a new paragraph (1)(f), which requires the registration of “lease and development conditions” – those are defined in a new subsection (3). A new subsection (1A) provides that the Minister may also register lease and development conditions applicable to a lease granted before the commencement of the new paragraph (1)(f).

Clause 12 – Notice of application – amends paragraph 229(1)(a) to clearly provide that written notification of a development application is required only to owners and occupants of leased land.

Subsection 229(2) is amended by exempting development applications from the requirement to notify the owners of adjoining leased land, if the lessee of the adjoining place (or the lessee’s appointed representative in relation to the application) is also the applicant.

A new paragraph 229(4)(ac) is inserted, requiring a copy of each development application relating to land in the Gungahlin Central Area to be given to the Gungahlin Development Authority for comment.

Clause 13 – Approvals – amends subsection 230(3) to make it clear that the relevant authority may only approve an application after the period prescribed for subsection (2) if the approval is given before the earliest of the dates referred to in paragraphs (3)(a), (b) or (c).

Clause 14 – Objections – general – amends section 237 by inserting a new subsection (1A) which provides that the period prescribed by the Regulations, within which a person may object to a development application, may be extended by notice in a daily newspaper. Under subsection (1B), the period may be extended even though it has expired.

Clause 15 – Notification of approval or refusal of application – simplifies the requirement for notification of a decision to approve a development application. Subsection (1) now requires notice to be given only to a person who objected (under section 237) to the proposal. For that reason subsection (2) is not required. It has been replaced by a new subsection (2) which provides that notice under subsection (1) is not required if the relevant authority has issued a certificate that an environmental impact statement, or an inquiry conducted under Part 4 of the Act, has substantially dealt with the matters to which form the basis of the decision.

Subsection 243(4) is similarly amended so that notice of a refusal of a development application must be given to the applicant and every person who objected to the application.

Subsections 243(3) and (6) are amended, in effect, by changing “shall” to “must”.

Clause 16 – Review – objectors, third parties – omits subsection 276(4) of the Act. That subsection is no longer required, as subsection 229(8) has been omitted.

Clause 17 – Regulations – amends section 282 by omitting paragraphs (da) and (e) and substituting new paragraphs (da) and (e) which clarify the power to make regulations exempting certain development or controlled activities from the application of provisions of Part 6 of the

Act. The exemption may be absolute or conditional, and may be from all of Part 6 or any of its provisions.

Subsections 282(2) and (3) have been inserted, providing for regulations to be made exempting the erection, fixing or displaying of a sign or advertising material (not already authorised by a lease or licence) from Part 6 or any of its provisions. The exemption may be conditional. Subsection (2) also allows the regulations to authorise the Minister to grant such an exemption.

Clause 18 – Schedule 5 – Schedule 5 to the Act is amended by inserting a new item 2, which makes the failure to comply with a lease or a development agreement a “controlled activity” which is subject to an order under Part 6 of the Act.