

1992

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**LAND (PLANNING AND ENVIRONMENT) REGULATIONS**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of Bill Wood  
Minister for the Environment, Land and Planning**

## LAND (PLANNING AND ENVIRONMENT) REGULATIONS

The Land (Planning and Environment) Regulations are made under the Land (Planning and Environment) Act 1991 (the Land Act).

The Land Act establishes an integrated planning, heritage, environmental protection and lease management system for the Territory. Throughout the Land Act there are provisions for Regulations concerning, amongst other things:

- . the content of environmental impact statements and public environmental reports;
- . criteria for the appointment of a consultant to assist in the preparation of an Environmental assessment;
- . the calculation of, and remission of betterment charges;
- . the exemption of certain activities from the operation of the provisions of Part VI (Approvals and Orders) of the Act; and
- . prescribed periods for the carrying out of activities or making decisions on applications;

Details of the Land (Planning and Environment) Regulations are set out in the Attachment.

NOTES ON REGULATIONS

Regulation 1 provides that these Regulations may be cited as the Land (Planning and Environment) Regulations.

Regulation 2 sets out definitions for the purposes of the Regulations. The "Act" is the Land (Planning and Environment) Act 1991.

Regulation 3 specifies that for the purposes of paragraph (c) of the definition of "public works" in section 4 of the Act, "prescribed works" are public works for which funding from public money was authorised by the Territory before 2 April 1992.

Regulation 4 sets out matters to be included in environment reports and environmental impact statements that may be required. Section 120 of the Act provides that public environment reports and environmental impact statements are to include matters that are prescribed and those that are directed under section 123.

Regulation 5 specifies that the period for the purposes of subsection 121(1) of the Act is 42 days. Subsection 121(1) provides that the relevant Minister may within the prescribed period after the submission of a preliminary assessment, if the proposal will be of sufficient significance, direct that an Assessment of the proposal be made.

Regulation 6 specifies the criteria for engaging a consultant in accordance with subsection 123(4). Subsection 123(4) of the Act enables a Minister who directs that an Assessment be made, to direct the proponent to engage a consultant, in accordance with prescribed criteria, to assist in the preparation of the Assessment.

Regulation 7 specifies that the period for the purposes of subsection 129(1) of the Act is 42 days. Subsection 129 (1) provides that after the submission of a public environment report or an environmental impact statement, the Environment Minister may, within the prescribed period, direct the proponent to provide further information.

Regulation 8 specifies that the period for the purposes of subsection 130(1) of the Act is 42 days. Subsection 130(1) of the Act provides that, within the prescribed period after the

submission of a public environment report or an environmental impact statement, the Environment Minister may request the proponent to revise the report or statement.

Regulation 9 provides that the period for the purposes of subsections 131(1) and (2) of the Act is 56 days. Subsections 131(1) and (2) of the Act provide that, within the prescribed period after the submission of a public environment report or an environmental impact statement, the Environment Minister is to prepare an evaluation of it.

Regulation 10 provides that where a lease is forwarded to the Planning Authority under section 165 of the Act, the Authority has 14 days within which to advise whether a lease may or may not appropriately be granted. Under subsection 165(3) the Executive is to advise the ACT Planning Authority of its intention to grant a lease of Territory Land, not being land in a Designated Area.

Regulation 11 provides that the period for the purposes of subsection 170(1) of the Act is 28 days from the day on which the person is notified that the lease is available for execution. Subsection 170(1) provides that where a person who is entitled to the grant of a lease, fails within the prescribed period to accept and execute their lease or pay any amount required under the lease, their right to the grant of the lease may be terminated.

Regulations 12 to 14 set out how an amount to be paid to the Executive, where a variation of a lease increases the market value of the lease, will be determined. Paragraph 184(b) of the Act provides that where the variation of a lease would increase the market value of the lease, the variation shall not be executed unless the lessee has paid an amount determined as prescribed in respect of the increase in the value of the lease which would result from the variation.

Subregulation 12(1) provides that the prescribed amount shall be determined in accordance with Regulations 13 and 14.

Subregulation 12(2) provides definitions for the purposes of Regulations 13 and 14:

"added value": is the amount by which the value of the land, with the relevant clause of the lease changed, would exceed the value of the land immediately before the lease is varied; and

"classification": means a classification specified in paragraph (b) of the definition of "prescribed lease" in subregulation 14(1).

Regulation 13 sets out the formula which will be used to calculate the amount payable, or "betterment charge", in respect of the variation of a lease.

Subregulation 13(1) provides that the amount of the betterment charge payable in respect of a variation of a lease will be an amount equal to the added value. However, if a lease attracts a

remission rate (in accordance with subregulation 14(3)) the betterment charge will be the added value less an amount which is ascertained by applying the appropriate remission rate.

Subregulation 13(2) requires the Minister to determine the added value for the purposes of determining the betterment charge payable in respect of a variation of a lease.

Subregulation 13(3) provides that no reduction in the added value shall be allowed where the variation of the lease is conditional upon the lessee financing or undertaking certain works on the land or any unleased Territory Land.

Regulation 14 establishes the basis on which remission rates are calculated for betterment charges. Remission rates will be determined according to the length of time since the issue of the lease and whether the lease was granted at full market value, a concessional price or granted free of charge.

Subregulation 14(1) defines "prescribed lease" as a lease:

- . for which a variation of the lease is proposed; and
- . which is classified as either a full-charge grant, a concessional charge grant or a grant free of charge.

Subregulation 14(2) defines the remission rate applicable in respect of a prescribed lease. The rates are set out in the Schedule 3 to the Regulations.

Subregulation 14(3) specifies the circumstances in which a lease shall be classified a full charge grant, a concessional grant or a grant free of charge.

Subregulation 14(4) provides that a lease shall be taken to be a prescribed lease classified as a full charge grant where, since the grant of the lease, it has in whole or in part been replaced by a further lease, and the further lease does not require any particular part of the land to be occupied by the original grantee or to be used for the original purpose.

Subregulation 14(5) specifies that for the purpose of subregulation 14(4) the relevant period shall be taken to have commenced on the date of grant of the further lease.

Subregulation 14(6) provides that, where two or more leases of differing sizes are amalgamated into one lease, and those leases would have had more than one classification under this regulation, the composite lease has the classification of the larger of the amalgamated leases.

Subregulation 14(7) specifies that for the purpose of subregulation 14(6) the relevant period shall be taken to have commenced on the date of the grant of the larger or largest of the amalgamated leases.

Subregulation 14(8) provides that, where two or more leases of the same area are amalgamated into a single lease and those leases would have had differing classifications under this regulation, the composite lease has the classification which would attract the greater or greatest remission rate.

Subregulation 14(9) specifies that for the purposes of subregulation 14(8) the relevant period shall be taken to have commenced on the date of the grant of whichever of the of the amalgamated leases would , if varied separately, have attracted the greater or greatest remission rate.

Subregulation 14(10) provides that where a prescribed lease other than a lease referred to in subregulation 14(4) is granted for a lease that has been surrendered to:

- . vary the term;
- . correct an error; or
- . subdivide the land into parcels under leases having the same purposes as permitted under the surrendered lease;

the period since the grant of the prescribed lease shall commence on the date of the grant of the surrendered lease.

For the purposes of subregulation 14(10), leases referred in subregulation 14(4) are excluded, because those are leases in respect of which only the purpose of the lease has been changed.

Regulation 15 establishes a prescribed set of leases for the purposes of paragraph 186(1)(a) of the Act. Subsection 186(1) provides that a rental lease has to be included in a prescribed class of lease if it is to be varied to a nominal rent.

Regulation 16(1) specifies that the prescribed periods for each controlled activity are those specified at Schedule 1 of the Regulations. Subsection 230(4) of the Act provides that if the Minister fails to make a decision, within the prescribed period, on an application to conduct a controlled activity specified in Schedule 4 of the Act, the application is taken to have been refused. The prescribed period will vary, depending on whether or not the application has to be publicly notified in accordance with subsection 229(1) or paragraph 229(1)(a) or (b) of the Act, and whether it is the Minister or the applicant who gives notice of the application.

Subregulation 16(2) provides that the periods specified in subregulation 16(1) commence on the day that the application is lodged with the Minister, in accordance with paragraph 226(1)(a) of the Act.

Regulation 17 specifies that, for the purposes of subsection 235(1), the prescribed period within which a concurring authority must advise the Minister of its decision on an application that has been referred to that authority by the Minister. The prescribed periods are set out in Schedule 2 and vary according to whether or not the application has to be publicly notified.

Regulation 18 sets out, for the purposes of subsection 237(1) of the Act, that where an application has been notified in a daily newspaper, the prescribed period for objection is 21 days, commencing on the date on which it was published in the newspaper. In all other cases, the period is 42 days from the day the application is lodged with the Minister. Subsection 237(1) provides that any person affected by the approval of an application to conduct a controlled activity may, within the prescribed period, object to the grant of the approval.

Regulation 19 provides that the period for the purposes of subsection 246(3) of the Act is 14 days. Subsection 246(3) provides that where the Minister is of the opinion that there is an inconsistency between the conditions imposed by concurring authorities and notifies the concurring authorities that he is of that opinion, the concurring authorities must advise the Minister if they have or have not been able to resolve the inconsistency, within a prescribed period. This Regulation does not affect applications to which clauses 240 and 241 apply. r

Regulation 20 specifies for the purposes of subsection 256(6) of the Act that, where an order is made in respect of Items 2 & 3 of Schedule 5, and an application has been made to conduct the activity to which the order relates, the prescribed period does not commence until the Minister has made a decision on the application to conduct the activity.

If the Minister approves the application to conduct the activity, the prescribed period in relation to the activity is 21 days from the day on which the approval of the application takes effect. Where the Minister refuses to approve the application to conduct the activity, the prescribed period is 21 days, commencing on the day the applicant for approval is notified of the decision to refuse to approve the application.

In any other case the prescribed period is 21 days from the day on which the Minister receives the application for an order.

Subsection 256(6) of the Act provides that where the Minister fails to make an order within the prescribed period, the Minister is taken to have refused to make an order.

Regulation 21 exempts from the provisions of Part VI of the Act various "controlled activities".

Subregulation 21(1) exempts from Part VI those public works that consist of:

- . the construction of residential accommodation by the Commissioner for Housing for the Australian Capital Territory for sale or letting;
- . work affecting the interior of a building;
- . works carried out by the lessee in accordance with the terms of a lease;

- . the connection of a dwelling to electricity, water, sewerage or drainage facilities; or
- . the construction of driveways from a public street to a lease boundary.

**Subregulation 21(2)** provides that Part VI of the Act does not apply where:

- . a lease is varied to reduce the rent payable to a nominal rent;
- . a lease is varied to permit 2 self-contained dwellings to be erected on the land comprised in lease, as an application for dual occupancy can require a variation to the lease, if the lease purpose clause only permits the land to be used for the purposes of a single residential unit. Such a variation would be a controlled activity (Item 2 of Schedule 4 of the Act);
- . a lease is varied to reduce the area of land comprised in the lease which is in accordance with the provisions of the lease; and
- . a lease is surrendered and a new lease granted for the purposes of sections 171 and 172 of the Act. Sections 171 and 172 provide for the renewal of residential leases and leases that are not residential or rural leases.

**Subregulation 21(3)** provides that Part VI of the Act does not apply where a lease that was issued for the subdivision and resale of land, before these Regulations commenced, is varied to enable new leases to be granted, in accordance with the terms of the lease. The land is to be developed in accordance with the provisions of the lease.

**Subregulation 21(4)** provides that Part VI of the Act does not apply in respect of the execution of a new lease where leases of Territory Land are consolidated.

**Subregulation 21(5)** specifies that paragraph 229(1)(a) and (b) and section 276 do not apply in respect of a variation of a lease where the land comprised in the lease, both before and after the variation, is defined land. Sections 31 and 32 of the Act provide for the identification of "defined land" in the Territory Plan.

**Subregulation 21(6)** specifies that paragraph 229(1)(b) and section 276 do not apply in respect of an application to conduct a controlled activity under Item 1 of Schedule 4 of the Act, being work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an Interim Heritage Places Register, where the Minister is satisfied that the work proposed is consistent with the conservation requirements specified in the Heritage Places Register.



**Regulation 22** addresses circumstances in which it is necessary to extend the prescribed period for certain controlled activities.

**Subregulation 22(1)** provides that, where an application seeks approval for a number of controlled activities, with one controlled activity being dependent upon the approval of another controlled activity, the prescribed period for the first-mentioned application, will be extended by the prescribed period for the other controlled activity.

**Subregulation 22(2)** provides that where, under subsection 228(1), the Minister refuses a request by an applicant to delete part of the application from public inspection, the prescribed period for the application is extended by a period equal to the period commencing on the day that notice is received that an appeal against the decision has been lodged, and ending on the day the decision of the Tribunal is given.

**Subregulation 22(3)** provides, for the purposes of subsection 233(1), that where the Minister requires an applicant to provide further information, the prescribed period shall be extended for a period commencing on the day the applicant is notified of the requirement to provide further information, and ending on the day after the information is supplied or on the day by which the applicant is to have furnished the information.

**Subregulation 22(4)** specifies that if the Minister requires an applicant to prepare a preliminary assessment of the environmental impact of the proposed controlled activity, the prescribed period for the application will be extended by a period equal to the period commencing on the day on which the applicant is notified of the need to prepare the preliminary assessment and ending on the day on which the assessment is submitted to the Environment Minister.

**Subregulation 22(5)** provides that if the Minister requires the applicant to prepare an Assessment, the prescribed period for the application is extended by a period equal to the period commencing on the day the Minister directs the assessment to be made and ending on the day the Assessment (section 131) is completed.

**Subregulation 22(6)** provides that where the Minister establishes a panel to enquire into an application, the prescribed period for the application will be extended by a period equal to the period commencing on the day the Minister establishes the panel to conduct the Inquiry and ending on the day the report of the panel's findings and recommendations are tabled in the Legislative Assembly (section 141).

**Subregulation 22(7)** provides that in circumstances where extensive discussions are required with the applicant the prescribed period shall be such as has been agreed in writing with the applicant and the Minister.