

1993

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)(AMENDMENT) BILL 1993 (20.3)

EXPLANATORY MEMORANDUM

Circulated by Authority of Bill Wood MLA

Minister for the Environment, Land and Planning

Outline

The Land (Planning and Environment)(Amendment) Bill 1993 (the Bill) amends certain provisions of the Land (Planning and Environment) Act 1991 (the Principal Act).

The Principal Act establishes a regime for dealing with land, planning, heritage and environment matters.

In the Principal Act, Item 8 of Schedule 4 makes 'public works' a controlled activity. As such a 'public work', which is essentially the erection or installation of works by or on behalf of a government agency, is subject to the provisions of Part VI of the Act. However, public works are also a controlled activity for the purposes of the Buildings (Design and Siting) Act 1964. This recognises that public works can have an impact on Canberra's environment and these concerns should be considered in light of the town planning requirements of affected areas.

Separate approval processes are thus required under two Acts for each public work proposed. As the same processes for public works under the Principal Act and Design and Siting Act are applied, a public work may have to be notified firstly, in respect of its land use, and then for its design and siting aspects. This dual control in respect of public works makes them subject to more onerous approval requirements than similar private enterprise works.

To date, public works under the Principal Act, have been exempt from various provisions of Part VI by means of the Regulations. However, it is considered that a more certain arrangement needs to be put in place and the unnecessary duplication removed.

It is intended that the Principal Act be amended to remove the requirement that 'public works' is a controlled activity. Thus 'public works' will only be a controlled activity for the purposes of the Design and Siting Act.

The Principal Act provides that where it receives a draft Plan variation from the ACT Planning Authority the Executive can approve the draft Plan, as submitted, or return it to the Authority with directions. It has been suggested that if this occurs then the public consultation provisions for draft Plan variations come into effect. Thus, it would be necessary to, in effect, seek public comment on a draft Plan variation which had already been subject to public consultation.

To make it clear and to ensure that there is no unnecessary duplication of resources, it is intended to provide that where a draft Plan variation is returned to the Authority by the Executive then the automatic public consultation requirements will not apply. It would however be possible for the Executive to require further public consultation, if this was considered necessary.

The Principal Act enables lessees that have a lease for which they pay land rent, to vary that lease to remove the requirement to pay rent. There is a prohibition on this ability in respect of leases issued for rural purposes and for those leases, not

granted under the Land Act, that were granted for rent at less than the market rate.

Before the introduction of the Principal Act leases granted at less than the market rate (concessional leases) could vary their lease to remove the land rent commitment. The provisions of the Principal Act reflected a concern about the operation of concessional leases. However, the payout of land rent does not confer development rights and already exists for other leases.

The Principal Act does not provide for the payout of the land rent commitment of leases issued for rural purposes. A review of rural leasing policy which has recently been finalised, highlighted concerns over land rent payout for rural leases. As a result, where a rural lease is issued for a long term (21–50 years) the Bill provides that the lessee will have the option of paying out the land rent commitment.

Financial Implications

The Bill may have some revenue impact if lessees take up the option of paying out their land rent, though this cannot be forecast with any certainty.

CLAUSE NOTES

Clauses 1, 2 and 3

Clauses 1, 2 and 3 are machinery provisions that specify the short title of the Bill, provide for the commencement of the Bill and identify the Act being amended.

Clause 4 – Interpretation

Clause 4 omits the definition of the term 'public works' from section 4 of the Principal Act. This amendment is a consequence of the amendment to Schedules 4 and 5 which remove 'public works' as a controlled activity under the Land Act.

Clause 5 – Public Consultation

Clause 5 will amend section 19 of the Principal Act. Section 19 sets out the public consultation requirements that have to be complied with before a draft Plan variation can be submitted to the Executive. Clause 5 amends section 19 by adding a new subsection (8). The new subsection (8) will specify that section 19 will not apply to a draft Plan variation that has been revised by the ACT Planning Authority pursuant to a direction issued by the Executive under paragraph 26(1)(b). The effect of this amendment is to make clear that where the Executive returns a draft Plan variation to the Authority, with directions, as set out in paragraph 26(1)(b), the public consultation requirements of section 19 do not apply.

Clause 6

Clause 6 repeals section 187 of the Principal Act. Section 187 prohibits certain leases from being varied so that the land rent commitment can be paid out. The effect of the amendment is to remove the prohibition on those leases of paying out the land rent.

Schedule 4 and Schedule 5

Schedule 4 and Schedule 5 of the Principal Act are amended. The amendment omits 'public works' as a controlled activity from both Schedules. This amendment has the effect of removing the requirement to obtain an approval to conduct a public work, or initiate an order in respect of a public work, under the Land Act. This amendment does not affect the requirement of "public works" in respect of the *Buildings (Design and Siting) Act 1964*.