

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (PUBLIC NOTIFICATION)
AMENDMENT BILL 2010**

EXPLANATORY STATEMENT

Circulated by authority of
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Minister for Planning

PLANNING AND DEVELOPMENT (PUBLIC NOTIFICATION) AMENDMENT BILL 2010

Terms used in this Explanatory Statement

- “the Act” means the *Planning and Development Act 2007*;
- “the Regulation” means the Planning and Development Regulation 2008;
- “the bill” means the Planning and Development (Public Notification) Amendment Bill 2010 that is the subject of this explanatory statement.
- “the amendment Act” is a reference to the amendment Act which this Bill will become if passed. If passed this bill will become the *Planning and Development (Public Notification) Amendment Act 2010*;
- “clause ...” or similar is a reference to a section of the bill;
- “section ...” or “existing section ...” or similar is a reference to an existing section in the Act (or Regulation) unless otherwise indicated;
- “new section ...” or similar is a reference to a new section inserted into the Act (or Regulation) by the bill whether as an entirely new section or as a substitution of a new section in the place of an existing section; and

Overview

1. This bill amends the *Planning and Development Act 2007* (the Act) and is about public notification of applications for development approval.
2. Applications for development approval under the Act which are assessed in the merit and impact assessment tracks must be publicly notified. The public notification period is 10 or 15 working days depending on the nature of the proposal. The public notification might involve a sign on the property plus notice in the newspaper or letters to adjoining properties or both. Anyone is entitled to comment (make a representation) on a development application that is publicly notified.
3. The new provisions in the bill apply to errors in the public notification. The Act as amended will require the public notification to be repeated in certain situations. In summary, the public notification must be repeated if:
 - a) the notice (letter, sign on property or newspaper notice) is defective because the content is incorrect, incomplete, misleading and ACTPLA considers the defect is likely to detract from someone’s awareness of the proposal or restrict the ability of someone to comment on the proposal; and
 - b) ACTPLA becomes aware of the defect and its impact during the original public notification period.
4. The bill also applies to the following situation. The Act requires relevant applications for development approval to be notified by a notice in the newspaper or by a sign on the relevant development site. If the required notice or sign is not put in place then the Act as amended will require this public notification to be repeated.

Part 1 Preliminary

Clause 1 Name of Act

5. Clause 1 indicates the name of the amendment Act. This Bill, if passed, will become the *Planning and Development (Public Notification) Amendment Act 2010*.

Clause 2 Commencement

6. Clause 2 indicates that the amendment Act commences on a day set by the Minister by written notice.

Clause 3 Legislation amended

7. Clause 3 notes that the Bill amends the *Planning and Development Act 2007* (the Act)

Part 2 Planning and Development Act 2007

Background – existing ss121(1), 130 and Division 7.3.4

8. All merit and impact track development applications must be publicly notified (ss121(1), 130). Code track development applications are not required to be publicly notified (s117(a)). “Publicly notifies” is defined in s152.

9. Under ss130, 152(1)(b) all impact track development applications must be publicly notified by:

- written notice to lessees of adjoining properties (s153)
- sign on the property (s155(1)(a))
- notice in the newspaper (s155(1)(b))
- if the development application involves a lease variation, by written notice to holders of a registered interest in the land (ie registered in the Register of Land Titles) (s154).

10. For the purposes of public notification of merit track applications there are two groups as follows.

11. The first group of merit track development applications are those prescribed under s 152(1)(a) of the Act in s27 of the Regulation. This group includes items 1 to 8 in schedule 2 of the Regulation (refer ss27(3), 27(4) of the Regulation) as well applications for an estate development plan in a future urban area (s27(2) of the Regulation). These applications are typically relatively minor in scale and impact compared to the second group of merit track applications. With one exception, this first group of merit track applications must be publically notified under s153 of the Act ie by written notice to the lessee of adjoining land ie by letters to lessees of neighbouring properties and there is no requirement to also notify by notice in the newspaper and sign on the property (refer to ss152(1)(a), 152(2)(b), 153 of the Act and s27(3) of the Regulation). In addition, if the development application involves a lease variation, holders of a registered interest in the land (ie registered in the Register of Land Titles) must be notified (ss152(1)(a), 152(2)(b), 154 of the Act and s27(3) of

the Regulation). Development applications for estate development plans in a future urban area must be publicly notified by a sign on the property and notice in the newspaper but are not required to be notified by letter to adjoining properties (ss152(1)(a), 152(2)(a), 155 of the Act and s27(2) of the Regulation).

12. The second group of merit track development applications are applications other than those in the above first group. This second group includes items that are relatively more significant in scale and impact compared to the first group of merit track applications. Section 152(1)(b) of the Act requires this second group of merit track applications to be publically notified in the same way as impact track development applications ie by:

- written notice to lessees of adjoining properties (s153)
- sign on the property (s155(1)(a))
- notice in the newspaper (s155(1)(b))
- if the development application involves a lease variation, by written notice to holders of a registered interest in the land (ie registered in the Register of Land Titles) (s154).

13. Failure to comply with the requirements for public notification does not affect the validity of any ensuing development approval (ss153(5), 154(3), 155(5)). This principle applies to public notification of any development application whether it is a first group merit, second group merit or impact track development application. This same principle will apply to errors, if any, in a repeat public notification required under new ss153(3A), 154(2A), 155(1A), 155(1C).

14. Anyone can make a representation (ie comment or objection) on a development application that has been publicly notified irrespective of whether they have been directly notified of the application (s156(1)). The representation must be made during the public consultation period (s156(2), 157). This period is:

- for group one merit track development applications - 10 working days (s157(a) of the Act and s28(1)(a) of the Regulation)
- for group two merit track applications and impact track applications – 15 working days (s157(a) of the Act and s28(1)(b) of the Regulation)

Clause 4 Public notice to adjoining premises

New section 153(3A)

15. Clause 4 inserts new section 153(3A).

16. Existing section 153 in conjunction with other provisions requires certain development applications to be publicly notified by written notice to the lessees of land adjoining the site of the proposed development. The development applications that must be publicly notified in accordance with section 153 include development applications in the:

- impact track (ss130, 152(1)(b))
- merit track – other than estate development plans in future urban areas (ss121(1), 152 of the Act, ss27(2), (3), (4) and schedule 2 of the Regulation).

17. New section 153(3A) requires the Planning and Land Authority to repeat the public notification process set out in section 153 in certain limited circumstances. The requirement to repeat the s153 public notification process only applies if:

- the planning and land authority becomes aware that a notice is defective because it is incorrect, incomplete or includes misleading information; AND
- the authority believes that the defect is:
 - likely to unfavourably affect a person's awareness of the timing, location or nature of the development proposal; or
 - deny or restrict the opportunity of the person to make representations about the application under section 156; AND
- the above occurs before the public consultation period for the original public notification ends. The public consultation period is 10 or 15 working days following the initial public notification (refer to s157(a) of the Act and s28 of the Regulation).

Clause 5 Section 153(4)

18. Clause 5 amends existing section 153(4). The amendment is made as a consequence of new s153(3A). The amendment makes it clear that there is no requirement for public notification to a premise adjoining the proposed development site under new s153(3A) if the lessee of the adjoining site is also the proponent of the relevant development proposal.

Clause 6 Public notice to registered interest-holders New section 154(2A)

19. Clause 6 inserts new section 154(2A).

20. Existing section 154 applies to development applications in the merit and impact tracks that seek approval for a lease variation. Section 154 requires the Planning and Land Authority to inform the holders of a registered interest in the relevant land (ie an interest registered in the Register of Land Titles) of the development application and to do so by written notice (eg letter).

21. New section 154(2A) requires the Planning and Land Authority to repeat the public notification process set out in section 154 in certain limited circumstances. The requirement to repeat the s154 public notification process only applies if:

- the planning and land authority becomes aware that a notice is defective because it is incorrect, incomplete or includes misleading information; AND
- the authority believes that the defect is:
 - likely to unfavourably affect a person's awareness of the nature of the development proposal; or
 - deny or restrict the opportunity of the person to make representations about the application under section 156; AND
- the above occurs before the public consultation period for the original public notification ends. The public consultation period is 10 or 15 working days following the initial public notification (refer to s157(a) of the Act and s28 of the Regulation).

Clause 7 Major public notification New section 155(1A) to (1C)

22. Clause 7 inserts new sections 155(1A), (1B), (1C).

23. Section 155 in conjunction with ss121(1), 130, 152 applies to the following development applications:

- impact track development applications(ss130, 152(1)(b))
- merit track development applications other than items 1 to 8 of schedule 2 of the Planning and Development Regulation (s121(1), 152 of the Act and s27 of the Regulation).

24. Section 155 requires relevant development applications to be publicly notified by:

- sign on the property (s155(1)(a))
- notice in the newspaper (s155(1)(b)).

25. New section 155(1A) requires the Planning and Land Authority to display a new sign under s155(1)(a) in certain limited circumstances.

26. New section 155(1A)(a) requires the Planning and Land Authority to re-display a sign if:

- the planning and land authority becomes aware that a notice is defective because it is incorrect, incomplete or includes misleading information; and
- the authority believes that the defect is:
 - likely to unfavourably affect a person's awareness of the timing, location or nature of the development proposal; or
 - deny or restrict the opportunity of the person to make representations about the application under section 156; and
- the above occurs before the public consultation period for the original public notification ends. The public consultation period is 10 or 15 working days following the initial public notification (refer to s157(a) of the Act and s28 of the Regulation).

27. New section 155(1A)(b) requires the Planning and Land Authority to re-display a sign if the sign was never displayed at all.

28. New section 155(1B) states that the requirement to re-display the sign on the property under new s155(1A) does not apply if the relevant sign was initially properly displayed with the correct content but was later moved, altered, damaged, defaced, covered or had access to it prevented.

29. New section 155(1C) is in similar terms to new s155(1A) except it applies to the publication of notices in daily newspapers.

Clause 8 Section 155(2)(a)

30. Clause 8 amends s155(2)(a). The amendment is made as a consequence of new s155(1A) inserted by clause 7.