

2011

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (DIRECT SALES) AMENDMENT
REGULATION 2011 (No 1)**

SL2011-5

EXPLANATORY STATEMENT

Presented by
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Minister for Planning

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Development (Direct Sales) Amendment Regulation 2011 (No 1)*.

Background

In December 2005, the government announced, as part of the planning system reform project, new measures for dealing with the direct grant of leases. Under the *Land (Planning and Environment) Act 1991*, there were three provisions for the direct grant of leases (sections 161, 163 and 164). The direct grant of a lease under one of these provisions could only be done in accordance with the criteria in a disallowable instrument under the relevant section.

The new measures proposed were that:

1. there be one provision for the direct grant of leases; and
2. the criteria for the direct grant of leases should be reviewed and those criteria should be made publicly available.

As a result, section 240 (Restriction on direct sale by authority) of the *Planning and Development Act 2007* (the Act) came into being and a review of the existing disallowable instruments relevant to direct grants was undertaken with the aim of converting them to regulation. The review considered which disallowable instruments were no longer required and how the criteria in the instruments could be consolidated into general and specific and be more informative of the decision to grant a lease by direct sale. The regulations in Part 5.1 of the *Planning and Development Regulation 2008* (the regulation) are the result of that review.

The government also decided that it was more appropriate to use the term “direct sale” rather than “direct grant” as the word “grant” implied that there was no sum of money involved when this was not necessarily the case.

Overview

The proposed amendments to the regulation clarify ACTPLA’s role in the direct sales process and also provide for the direct sale of a lease after a failed tender. The amendments are the result of operational experience since the commencement of the Act and the regulation.

ACTPLA’s role in the direct sale process

The regulation (Part 5.1) provides for the operation of direct sales and includes criteria for applications and assessment methodology. In particular, it provides that the planning and land authority (alone) considers certain elements of certain direct sale applications. In particular, sections 108, 110, 112, 113, 121 and 122 provide that the planning and land authority (the authority) has to be satisfied about certain things.

Administrative practice since the commencement of the regulation has meant that while the authority retains the responsibility for issuing the lease, direct sale applications are also managed/considered by other bodies such as the Department of Land and Property Services.

The amendments take into account these administrative practices and make the criteria more attuned to the appropriate processes for direct sales for:

- Non government educational establishments
- Leases of contiguous unleased land
- Community uses
- Supportive accommodation
- The Territory

This has been done by removing the reference to ACTPLA in the relevant sections of the regulation. There is no change in the criteria that needs to be met.

Direct sales after a failed tender

Other amendments provide for the direct sale of a lease when a tender process has failed.

Section 240(1)(d) of the Act provides for a regulation to prescribe certain direct sales that do not require approval. Section 130 of the regulation is the regulation that does this. Section 130 (1) prescribes, amongst other things, a lease offered for auction but not sold; and a lease offered for ballot but not sold. Section 238 of the Act provides that the land and planning authority may grant a lease by auction, tender, ballot or direct sale. Therefore, although the authority can do a direct sale of a lease after a failed auction or ballot, there is presently no process that would facilitate a direct sale where a tender process has failed. The amending regulation inserts such a provision.

There are, however, differences between an auction or ballot process and that of a tender process. Direct sales after a failed auction or ballot usually contain the same conditions as those in the original auction or ballot documents. On the other hand, conditions associated with a lease offered for tender often are part of a contract and not necessarily a part of the lease. To obviate any potential problems, the amendment to the regulation includes a requirement that the direct sale after a failed tender has to be on conditions materially similar to those of the lease offered by tender.

Regulatory impact statement

The *Legislation Act 2001* section 36 states:

(1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

...

(b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—

- (i) adversely affecting the person's rights; or
- (ii) imposing liabilities on the person;....

A regulatory impact statement is not required for the amending regulation because it does not adversely affect any rights and does not impose liabilities, but rather operates to a direct sale applicant's advantage by allowing a direct sale after a failed tender and provides greater flexibility in the criteria for a direct sale.

Outline of Provisions

Clause 1 — Name of regulation

Names the regulation as the *Planning and Development (Direct Sales) Amendment Regulation 2011 (No 1)*.

Clause 2 — Commencement

Provides that the regulation commences on the day after its notification day.

Clause 3 — Legislation amended

Provides that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 — Section 108 (1)(b)

Omits the words "the planning and land authority is satisfied that".

Clause 5 — Section 108 (2) and (3)

Omits the words "give the planning and land authority" and substitutes the word "provide".

Clause 6 — Section 110 (1)

Omits the words "the planning and land authority is satisfied that".

Clause 7 — Section 112 (1)(a)and (b)

Omits the words "the planning and land authority is satisfied that".

Clause 8 — Section 112 (2) and (3)

Omits the words "give the planning and land authority" and substitutes the word "provide".

Clause 9 — Section 113 (1)(c)and (d)

Omits the words "the planning and land authority is satisfied that".

Clause 10 — Section 113 and 114

Omits the words "give the planning and land authority" and substitutes the word "provide".

Clause 11— Section 121 and 122

Omits the words “the planning and land authority is satisfied that”.

Clause 12 — New section 130(1)(aa)

Inserts new section (aa) in section 130 (1) that provides for the direct sale of a lease after a failed tender on conditions materially similar to those of the lease offered by tender, other than any conditions relevant only to the tender process.

Clause 13 — New section 130(2) new definition of *tender*

Inserts new definition of *tender* in section 130 (2) as a consequence of the amendment to section 130(1) in Clause 12 above. It clarifies that tender means a tender for the lease under section 238(1)(b) of the Act.