

Australian Capital Territory

Planning (General) Regulation 2023

Subordinate law SL2023-20

made under the

Planning Act 2023, 523 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning (General) Regulation 2023* (the regulation) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform any debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE REGULATION

Over the past four years, the Government has been reviewing the ACT planning system to improve and modernise the way the city's future is planned and to create a planning system which delivers for the people of the ACT.

The purpose is to deliver a planning system that is clear, easy to use and facilitates the realisation of long-term aspirations for the growth and development of Canberra while maintaining its valued character.

The regulation contains administrative and process provisions to support the operation of the *Planning Act 2023* (the Act) in the reformed planning system. This regulation will replace the existing *Planning and Development Regulation 2008*.

The regulation provides the requirements of development proposals for significant development, including:

- development proposals that require consultation with the design review panel;
- development proposals that require an assessment of environmental impact and the requirements needed to be undertaken to prepare the assessment;

- environmental impact assessment panel formation and operation;
- referral entities for significant development and the timeframes they must comply with;
- public notification periods and exemptions; and
- prohibited development.

The regulation provides for the direct sale of leases, including:

- direct sales requiring approval by Executive;
- direct sale criteria for territory and Commonwealth entities;
- direct sale criteria for non-government educational establishments;
- direct sale criterion for unallocated land for housing commissioner;
- direct sale criteria for leases of contiguous unleased land that is public land;
- direct sale criteria for UNSW campus land for University of NSW;
- direct sale criteria for community organisations;
- direct sale criteria for supportive accommodation;
- direct sale criteria for rural leases
- direct sales requiring approval by Minister
- direct sale criteria for territory;
- direct sale criteria for leases of contiguous unleased land other than public land; and
- direct sales not requiring approval.

The regulation provides for the grant of leases, subletting of leases and grants of further leases, as well as community leases granted by tender.

The regulation provides for lease variations, discharge amounts for rural leases, surrendering and terminating leases and leases with building and development provisions.

SCRUTINY OF BILLS COMMITTEE PRINCIPLES AND HUMAN RIGHTS

During the development of the regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act).

The regulation promotes section 12 (right to privacy and reputation) of the HR Act.

The right to privacy protects individuals from unlawful or arbitrary interference with privacy and home and encompasses the idea that individuals should have a separate area of autonomous space free from excessive government intervention and unsolicited intrusion by other individuals.

The *Planning Act 2023* promotes an outcomes-focused approach to planning. It provides that development applications will be considered against the planning outcomes set out in the ACT's various plans and strategies. It seeks to reduce government intervention in prescribing how development should be undertaken on their properties. Instead, it provides space for developers, and

therefore home-owners, to meet planning outcomes in ways that they believe best meet the particular conditions and circumstances in which development is to take place. The outcomes-focused approach does not mean that no restrictions exist in seeking to meet planning outcomes.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Planning (General) Regulation 2023*.

Clause 2 Commencement

This clause provides that the regulation commences on the commencement of the *Planning Act 2022*, section 523 (Regulation-making power).

Clause 3 Dictionary

This clause provides that the dictionary at the end of the regulation is part of the regulation. It contains terms used in the regulation and these terms apply to the entire regulation unless a provision provides otherwise.

Clause 4 Notes

This clause provides that a note contained in the regulation is not part of the regulation. It is intended to be explanatory in nature.

Clause 5 Offences against regulation – application of Criminal Code etc

This clause provides that the regulation does not prevent other legislation from applying in relation to offences against this regulation. The *Legislation Act*, section 133, applies in relation to the meaning of all penalty units.

Clause 6 Meaning of dwelling

This clause defines the term *dwelling* for the regulation.

Part 2 Strategic and spatial planning

Clause 7 Entities that may prepare planning and response reports—Act, s 39 (2)

This clause prescribes the entities that may prepare planning and response, other than the Territory Planning Authority.

Clause 8 Additional requirements for planning and response reports—Act, s 39 (4)

This clause sets out the spatial scales at which a planning and response report must be prepared and details relating to structure and concept planning documents.

Clause 9 Matters that may be included in a subdivision design application—Act, s 43 (2)

This clause sets out matters that may be included in a subdivision design application.

Part 3 Territory Plan

Clause 10 People to be given extension notice—Act, s 63(4) (b)

This clause prescribes the category of zones when a draft major plan amendment changes a zone.

Part 4 Significant development

Division 4.1 Design review panel

Clause 11 Development proposals requiring design review panel consultation—Act, s 100 (1)

This clause outlines development proposals that require consultation with the design review panel prior to submitting a development application.

Division 4.2 Environmental impact assessment

Clause 12 Development proposals requiring EIS—Act, s 105 (1) (a)

This clause sets out development proposals that require an environmental impact assessment. These capture proposals that are likely to have a significant environmental impact.

Clause 13 Entities to consult in preparing scoping document—Act, s 109 (3)

This clause sets out consultation arrangements with referral entities for significant development. It also provides that the territory planning authority may also consult with the ACT community and any other entity, such as a territory-owned corporation.

Clause 14 Time for consulting entities in preparing scoping document—Act, s 109 (3)

This clause sets out the timeframes under which the territory planning authority must consult with, and receive feedback from, relevant entities, upon receipt of application for an environment impact statement scoping document.

Clause 15 Extension of time to comment on scoping documentation—Act, s 109 (3)

This clause enables an entity who has given scoping documentation to seek an extension before the end of the 15-working day period.

Clause 16 Minimum content of scoping documents—Act, s 110 (1)

This clause sets of what a scoping document for an Environmental Impact Statement must contain.

Clause 17 Criteria for consultants—Act, s 110 (3), def consultant

This clause sets out the criteria that the territory planning authority requires from a person preparing an Environmental Impact Statement.

Clause 18 Draft EIS requirements—Act, s 523 (2) (b)

This clause sets out the criteria that the territory planning authority requires from a person preparing an Environmental Impact Statement.

Clause 19 Revised EIS requirements—Act, s 523 (2) (b)

This clause sets out that a revised EIS has the same requirements as a draft EIS and must also include a summary of the representations made during the public consultation period.

Clause 20 When environmental significance opinions may be given—Act, s 138

This clause sets out the circumstances in which an environmental significance opinion may be produced instead of an Environmental Impact Statement.

Division 4.3 EIS Inquiry Panels

Clause 21 Definitions—div 4.3

This clause provides a definition of a member and presiding member of an Environmental Impact Statement Inquiry Panel.

Clause 22 Disclosure of interests by panel members—Act, s 523 (2) (d)

This clause sets out the process for an inquiry panel member to disclose any direct or indirect financial or personal interest in an issue, including the presiding member's responsibilities.

Clause 23 Presiding member's functions—Act, s 523 (2) (d)

This clause sets out the functions of the presiding member of an inquiry panel.

Clause 24 Formation of inquiry panel—Act, s 523 (2) (d)

This clause sets out when an inquiry panel can exercise its functions and what needs to happen in the case of a member stops being a member of the panel.

Clause 25 Inquiry to be public—Act, s 523 (2) (d)

This clause establishes the general principle that an inquiry conducted by an inquiry panel to be conducted in public and the exceptions to this principle. It also creates a strict liability offence for contravention of inquiry panel directions.

Clause 26 General procedure for inquiry panel—Act, s 523 (2) (d)

This clause provides a definition of *interested person* for an inquiry in relation to an Environmental Impact Statement. It also sets out the general procedure to be following by an inquiry panel and enables the panel to decide its own procedures.

Clause 27 Arrangements for the use of staff and facilities—Act, s 523 (2) (d)

This clause provides that an inquiry panel may arrange with the territory planning authority for the use of the services of public servants.

Part 5 Prohibited development

Clause 28 Prescribed encroachment onto, over or under adjoining land—Act, s 158 (1) (b)

This clause prescribes a distance of 20m for development encroaching on adjoining territory land.

Clause 29 Sites that are not waste facilities—Act, s 161 (2), def waste facility, par (b) (ii)

This clause prescribes a site, other than an incineration facility, that is used to handle not more than 15kt of waste each year.

Part 6 Development applications

Clause 30 People to sign development applications—Act, s 166 (2) (a)

This clause sets out who must sign an application for development approval.

Clause 31 Requirements for design responses

This clause set out the requirements for a design response where a design guide applies in relation to a development application for a development proposal and the application is required to be accompanied by the proponent's response to the design guides.

Clause 32 Annual amount of expected greenhouse gas emissions—Act, sch 1, pt 1.2, item 12

This clause prescribes the annual amount of expected greenhouse gas emissions from operating a development is 250t.

Clause 33 Referral entities for development generally—Act, s 170 (1) (a)

This clause prescribes the entities for a development application.

Clause 34 Referral entities for proposals requiring EIS—Act, s 170 (1) (a)

This clause prescribes the entities for a development application in relation to a development proposal requiring an Environmental Impact Statement.

Clause 35 Response time for entity advice—Act, s 172 (2)

This clause prescribes the number of days permitted for entity advice for different development applications.

Clause 36 Public notification period—Act, s 175 (2) (a)

This clause prescribes the period for public notification for different development applications.

Clause 37 Public notification exemption—Act, s 175 (3) (a)

This clause sets out the types of development application for a development proposal that are exempt from a public notification requirement.

Clause 38 Public notification exemptions—Act, s 175 (3) (b)

This clause sets out the types of development application for a development proposal that are exempt from a public notification requirement.

Part 7 Direct sale of leases

Division 7.1 Interpretation—div 7.1

Clause 39 Definitions—div 7.1

This clause defines several terms used in this division, including *allocated land*, *business-case criteria*, *business-case documentation*, *direct sale*, *educational establishment*, *retirement complex*, *supportive accommodation* and *territory entity*.

Clause 40 Meaning of business-case criteria and business-case documentation—div 7.1

This clause further elaborates the definition of *business-case criteria* and *business-case documentation*.

Clause 41 Meaning of UNSW campus and UNSW precinct deed—div 7.1

This clause defines *UNSW campus* and *UNSW precinct deed*.

Division 7.2 Direct sales approved by Executive

Clause 42 Direct sales requiring approval by Executive—Act, s 266 (1) (a)

This clause prescribes leases that require approval by Executive.

Clause 43 Direct sale criteria for territory and Commonwealth entities—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a lease to a territory entity and Commonwealth entity.

Clause 44 Direct sale criteria for non-government educational establishments—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a lease to a person for an educational establishment.

Clause 45 Direct sale criterion for unallocated land for housing commissioner—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a lease of land that is not allocated land to the housing commissioner.

Clause 46 Direct sale criteria for leases of contiguous unleased land that is public land—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a lease of public land to the lessee of a lease that is contiguous with the proposed lease.

Clause 47 Direct sale criteria for UNSW campus land for University of NSW—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a lease of land in the UNSW campus to the University of NSW.

Clause 48 Direct sale criteria for community organisations—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a market value lease to a community organisation.

Clause 49 Direct sale criteria for supportive accommodation—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a market value lease for supportive accommodation.

Clause 50 Direct sale criteria for rural leases—Act, s 266 (1) (a) (i)

This clause sets out the criteria for the direct sale of a rural lease to a person.

Division 7.3 Direct sales approved by Minister

Clause 51 Direct sales requiring approval by Minister—Act, s 266 (1) (b)

This clause prescribes leases requiring approval by Minister as including leases granted to the Territory, other than a lease to which section 52 (1) (g) (Certain direct sales not requiring approval—Act, s 266 (1) (e)) and a lease of unleased land, other than public land, to the lessee of a contiguous lease.

Clause 52 Direct sale criteria for Territory—Act, s 266 (1) (b) (i)

This clause sets out the criteria for the direct sale of a lease to the Territory.

Clause 53 Direct sale criteria for leases of contiguous unleased land other than public land—Act, s 266 (1) (b) (i)

This clause sets out the criteria for the direct sale of a lease of unleased land other than public land to the lessee of a lease that is contiguous with the proposed lease.

Division 7.4 Certain direct sales not requiring approval

Clause 54 Certain direct sales not requiring approval—Act, s 266 (1) (e)

This clause prescribes the direct sales that do not require approval.

Clause 55 Direct sales of affected leases—Act, s 266 (1) (e)

This clause prescribes the direct sale of affected leases.

Clause 56 Required provisions in direct sale leases for UNSW campus land—Act, s 269 (2)

This clause sets out the provisions required in a lease for land in the UNSW campus to the University of NSW.

Part 8 Grants of leases generally

Clause 57 Period for failure to accept and execute lease—Act, s 273 (1)

This clause provides that the period for failure to accept and execute leases is 20 working days after the day the territory planning authority notifies the person entitled to the grant of the lease that the lease is available for execution.

Clause 58 Exemptions from restrictions on dealings with certain leases—Act, s 280 (3)

This clause sets out the types of leases that are exempt from restrictions on transfer, assignment and parting with possession.

Part 9 Subletting of leases

Clause 59 Criteria for giving approval of sublease of land—Act, s 284 (3) (a)

This clause sets out the criteria for giving approval of a sublease of land.

Clause 60 Prescribed matters in land sublease—Act, s 284 (7)

This clause provides prescribed matters that must appear in a land sublease.

Part 10 Grants of further leases

Clause 61 Criteria for grant of further leases for unit title schemes—Act, s 289 (1) (f)

This clause provides criteria for a further lease of a unit or the common property of in a unit plan.

Clause 62 Criteria for grant of further leases for community title schemes—Act, s 289 (1) (f)

This clause provides the criteria for a further lease of a lot in a community title scheme.

Clause 63 Criteria for grant of further community leases—Act, s 289 (1) (f)

This clause prescribes the criteria for a further lease of a community lease.

Part 11 Community leases—grant by tender

Clause 64 Definitions—pt 11

This clause defines proposed lease and threshold criteria for the purposes of this part.

Clause 65 Community lease provisions—Act, s 292, def community

lease provisions, par (g)

This clause prescribes a provision stating the additional uses for the land described in the lease is prescribed.

Clause 66 Tender process—expressions of interest—Act, s 295 (1) (d)

This clause sets out what needs to be included in a tender process before granting a community lease by tender.

Clause 67 Tender process—content of tenders—Act, s 295 (1) (d)

This clause provides what a community organisation's tender must include if the territory planning authority invites a community organisation to tender for the grant of a community lease.

Clause 68 Grant by tender—threshold criteria—Act, s 295 (1) (e)

This clause sets out the threshold criteria for granting a community lease by tender.

Clause 69 Tender process—assessment of tenders—Act, s 295 (1) (d)

This clause provides the criteria that the planning and land authority must use to assess the suitability of the tender if the territory planning authority receives a tender for a community lease from a community organisation.

Part 12 Lease variations

Division 12.1 Variation of rental leases

Clause 70 Lease classes for variation to pay out rent—Act, s 320 (1) (b)

This clause provides the classes of leases for variation to pay out rent.

Clause 71 Decision on rent payout lease variation application—Act, s 321 (1)

This clause prescribes the period of 20 working days for decision on rent payout lease variation applications.

Division 12.2 Chargeable variations of nominal rent leases

Clause 72 Meaning of added value—div 12.2

This clause defines the term *added value* for the purposes of this division.

Clause 73 Meaning of recently commenced lease—div 12.2

This clause defines the terms *recently commenced lease* for the purposes of this division.

Clause 74 Exempt variations—Act, s 327, def chargeable variation, par (c)

This clause sets out the types of variation that are not chargeable variations.

Clause 75 Standard chargeable variations—Act, s 327, def standard chargeable variation

This clause sets out different types of chargeable variations.

Clause 76 Combination of standard and non-standard chargeable variations—Act, s 330 (c)

This clause provides that the lease variation charge is the total of the determined charge for the variation for each standard chargeable variation for which a charge is determined and the charge worked out for each non-standard chargeable variation.

Clause 77 Appointment of independent valuer—Act, s 336 (4) (b) (ii)

This clause prescribes the president of the ACT division of the Australian Property Institute Limited as the independent valuer.

Clause 78 Requirements for independent valuer—Act, s 336 (4) (c)

This clause provides that a valuer preparing an independent valuation must be a current member of the Australian Property Institute Limited.

Clause 79 Increase of lease variation charge for concessional leases—Act, s 339 (1)

This clause provides the conditions under which a variation of concessional lease is prescribed and that lease variation charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

Clause 80 Increase of lease variation charge for recently commenced leases—Act, s 339 (1)

This clause provides the conditions under which the variation of a recently commenced lease is prescribed and that lease variation charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

Part 13 Discharge amounts for rural leases

Clause 81 Definitions—pt 13

This clause defines *earlier index number*, *excluded amount*, *index number* and *special Pialligo lease* for the purposes of Part 10.

Clause 82 Discharge amount for rural leases other than special Pialligo leases—Act, s 349, def discharge amount

This clause provides the formula for working out the discharge amount in relation to a dealing with a rural lease, other than a defined rural lease. The discharge amount in relation to a dealing with a defined rural lease is the owed amount plus \$10 for each year, or part of a year, of the remainder of the holding period for the lease. The clause does not apply to special Pialligo leases.

Clause 83 Discharge amount for special Pialligo leases—Act, s 349, def discharge amount

This clause provides the formula for working out the discharge amount for a special Pialligo lease.

Part 14 Surrendering and terminating leases

Division 14.1 Payment of amount on surrender or termination of leases—certain leases

Clause 84 Application—div 14.1

This clause provides that this division applies to residential leases granted for not more than 3 residential dwellings, leases granted to a community organisation, and leases terminated for breach of a building and development provision.

Clause 85 Amount of refund on surrender or termination of certain leases—Act, s 364 (2)

This clause sets out the amount of refund on surrender or termination of leases.

Clause 86 Requirements for refund on surrender or termination of leases—Act, s 364 (3)

This clause provides the conditions under which the territory planning authority may pay an amount for refund on surrender or termination of leases.

Division 14.2 Payment of amount on surrender of leases—LAIE buyback program

Clause 87 Definitions

This clause defines the terms *affected lease*, *LAIE buyback program valuation procedure*, *loose-fill asbestos insulation eradication buyback program (LAIE Buyback Program)*, *affected residential premises*, and *residential premises*.

Clause 88 Payment amount—contract entered before 19 February 2014—Act, s 364 (2)

This clause provides the prescribed payment amount if a lessee enters into a contract for sale to purchase land described in an affected lease before 18 February 2014, the contract is completed before 28 October 2014 and the lessee surrenders the affected lease under the LAIE Buyback Program.

Clause 89 Payment amount—contract entered after 18 February 2014 and completed before 29 October 2014—Act, s 364 (2)

This clause provides the prescribed payment amount if a lessee enters into a contract for sale of land described in an affected lease after 18 February 2014, the contract for sale was completed before 29 October 2014, and the lessee surrenders the affected lease under the LAIE Buyback Program.

Clause 90 Payment amount—contract entered after 18 February 2014 and completed after 28 October 2014—Act, s 364 (2)

This clause provides the prescribed payment amount if a lessee enters into a contract for sale of land described in an affected lease after 18 February 2014 but before 28 October 2014, the contract for sale is completed after 28

October 2014 and the lessee surrenders the affected lease under the LAIE Buyback Program.

Clause 91 Payment amount—lease acquired before 18 February 2014 other than by contract—Act, s 364 (2)

This clause provides the prescribed payment amount if a lessee before 19 February 2014, acquires an interest in land described in an affected lease other than by entering into a contract for sale and surrenders the affected lease under the LAIE Buyback Program.

Clause 92 Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease before 18 February 2014—Act, s 364 (2)

This clause provides the prescribed payment amount if a person acquires an interest in land described in an affected lease before 19 February 2014, after 18 February 2014, a lessee acquires from the transferor an interest in the land other than by entering into a contract for sale and the lessee surrenders the affected lease under the LAIE Buyback Program.

Clause 93 Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease after 18 February 2014—Act, s 364 (2)

This clause provides that if a person enters into a contract for sale of land described in an affected lease after 18 February 2014 but before 28 October 2014, after 18 February 2014, a lessee acquires from the transferor an interest in the land other than by entering into a contract for sale and the lessee surrenders the affected lease under the LAIE buyback program, then the prescribed amount is the greater of the amount of the purchase price set out in the contract for sale, the amount payable to the lessee.

However, if a lessee makes a submission to the territory planning authority before surrendering the affected lease, stating that the transferor or lessee undertook improvements to the land after the day the transferor completed the contract for sale and on or before 28 October 2014 (the after-purchase improvements) and the territory planning authority is satisfied that the after-purchase improvements have had a significant effect on the value of the affected lease including improvements, then the prescribed amount is the greater of the amount of the purchase price set out in the contract for sale, plus the value of the after-purchase improvements or the amount payable to the lessee.

Clause 94 Requirements for refund on surrender of leases—LAIE buyback program—Act, s 364 (3)

This clause provides that the territory planning authority may pay an amount only if all outstanding amounts payable to the territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid.

Clause 95 Payment amount under this division includes payment for improvements

This clause provides that an amount paid to a lessee is taken to include any payment the territory planning authority may be liable to pay to the lessee under the Act in relation to the surrender.

Part 15 Leases with building and development provisions

Clause 96 Meaning of noncompliance period—pt 15

This clause defines the term noncompliance period.

Clause 97 Approval of transfer for personal reasons—Act, s 371 (2) (a)

This clause provides that approval of transfers may be based on the mental or physical illness or trauma to the lessee, or a member of the lessee's immediate family, after the purchase of the lease that has a demonstrable effect on the lessee's ability to develop the lease, the lessee moving to a place interstate or overseas because the lessee's or the lessee's domestic partner's employment is or will be at the place, and the lessee, or the lessee's domestic partner, has been unemployed for at least 3 months before the request for the assignment or transfer of the lease is made, if the lessee satisfies the territory planning authority that reasonable attempts have been made to obtain alternative employment.

Clause 98 Considerations for transfer of leases—Act, s 373

This clause provides that a number of matters need to be considered in relation to the transfer of a lease. These matters include: the proposed transferee's financial ability to comply with the lease's building and development provision, the proposed transferee's history of compliance with building and development provisions in relation to leases in which the proposed assignee or transferee has, or has had, an interest, the lessee's history of compliance with building and development provisions in relation to leases in which the lessee has, or has had, an interest, the time remaining for compliance with the lease's building and development provision when the application to the territory planning authority for its approval of the transfer of the lease is made, and a written undertaking from the proposed transferee that the transferee will comply with the lease's building and development provision.

Clause 99 Noncompliance fee—Act, s 374 (2)

This clause sets out the fee to be paid, and sets out the formula to be used to determine the required fee, when the time required to complete works under a building and development provision in a lease is extended.

Clause 100 Application for reduction or waiver for hardship—Act, s 374 (4)

This clause provides that a lessee may apply to the Territory Planning Authority with hardship reasons to have the required fee reduced or waived in relation to an extension of time to complete works.

The term 'hardship reason' is defined.

Clause 101 Decision on application for reduction or waiver for hardship—Act, s 374 (4)

This clause provides for the Territory Planning Authority to make a decision on an application seeking to have the required fee either reduced or waived in relation to an extension of time to complete works for hardship reasons.

Clause 102 Application for waiver for lease transferred or assigned in special circumstances—Act, s 374 (4)

This clause provides that where a lease has been transferred or assigned, a lessee may apply to the Territory Planning Authority under special circumstances to have the required fee for an extension of time to complete the work waived.

Clause 103 Decision on application for waiver for lease transferred or assigned in special circumstances—Act, s 374 (4)

This clause provides for the Territory Planning Authority to make a decision on an application seeking to have the required fee for an extension of time to complete the work waived where a lease has been either transferred or assigned under special circumstances.

Clause 104 Application for waiver for external reasons—Act, s 374 (4)

This clause provides that a lessee may apply to the Territory Planning Authority with external reasons to have the required fee waived in relation to an extension of time to complete the work.

Clause 105 Decision on application for waiver for external reasons—Act, s 374 (4)

This clause provides for the Territory Planning Authority to make a decision on an application seeking to have the required fee for an extension of time to complete the work waived under external reasons applying to the Lessee.

Part 16 Controlled activities

Clause 106 Time to decide application for controlled activity order—Act, s 426 (4)

This clause prescribes the period of 20 working days for when a decision on an application for a controlled activity order must be made by.

Part 17 Miscellaneous

Clause 107 Expiry of University of NSW lease provisions

This clause applies if a lease of land in the UNSW campus is not granted to the University of NSW before 9 July 2025. The clause and several provisions set out in the provisions expire on 9 July 2025.

Schedule 1 Development proposals requiring environmental impact assessment

Part 1.1 Interpretation—sch 1

Clause 1.1 Definitions

This clause defines terms used in schedule 1.

Part 1.2 Development proposals requiring environmental impact assessment

This part provides the development proposals that require environmental impact assessment, including environmental significance opinions. They include:

Item 1) A development proposal for construction of a transport corridor including a major road, a dedicated bus way, a railway, or a light rail corridor, on any land, other than on land designated under the territory plan as a future urban area or in a transport and services zone.

Item 2) A development proposal that involves electricity transmission line construction, including additions or realignment works, exceeding 500m in length, that are intended to carry underground or above-ground transmission lines with a voltage of 132kV or more; or a coal electricity generating station; or an electricity generating station including gas, wind, hydroelectric, geothermal, bio-material, solar power or co-generation that is capable of supplying more than 10MW of electrical power if the station generates electricity from gas or gas and another energy source, or more than 20MW of electrical power if the station generates electricity from wind, solar, hydro, biomass or geothermal energy sources; or an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the body of water.

Item 3) A development proposal that involves construction of a water storage dam that will be at least 15m high when measured from the lowest point of the general foundations to the crest of the dam; or will be at least 10m high when measured from the lowest point of the general foundations to the crest of the dam if the crest is not less than 500m in length or the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1000000m³ or the recommended design flood discharge dealt with by the dam is at least 2000m³ per second.

Item 4) A development proposal for construction of a water storage dam in the river corridor zone under the territory plan; or on a continuously flowing river in a non-urban zone under the territory plan.

Item 5) A development proposal for construction of an airport or airfield (other than a helicopter landing facility used exclusively for emergency services purposes, including medical evacuation, firefighting, retrieval or rescue).

Item 6) A development proposal for construction of a wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; or will be able to treat each day more than 2 500 people equivalent capacity or 750kL; or will have capacity to store more than 1kt of sewage, sludge or effluent; or will incinerate sewage or sewage

products; or will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year.

Item 7) A development proposal for expansion of an existing wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that will increase the plant's ability to treat each day by more than 2 500 people equivalent capacity or 750kL; or will increase the plant's capacity to store sewage, sludge or effluent by more than 1kt; or will increase the plant's capacity to treat wastewater (excluding stormwater) by more than 100ML each year.

Item 8) A development proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time.

Item 9) A development proposal for construction of a permanent venue for the conduct of motor racing events.

Item 10) A development proposal for beginning a use of land for a commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if the intended capacity of the facility is more than 5kt each year, or 20kt in total; or the facility will be in an area with a high water table, highly permeable soils, sodic soils or saline soils; or less than 2km from the boundary of a residential block or residential unit in a residential or commercial zone.

Item 11) A development proposal for expansion of an existing commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if the increased capacity of the facility is more than 5kt each year, or 20kt in total.

Item 12) A development proposal for the construction of a waste management facility that is an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and municipal waste; or for the sterilisation of clinical waste; or for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste.

Item 13) A development proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station is intended to handle more than 30kt of waste each year; or will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; but is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit.

Item 14) A development proposal for expansion of an existing waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including city waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station is intended to handle more than 30kt of additional waste each year; but is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit.

Item 15) A development proposal that involves storage of the placard quantity of a Schedule 11 hazardous chemical on land, or in a building or structure on land, that is not mentioned in the Planning and Development (Placard Quantity Premises) List 2018 (NI2018-532) (repealed).

Item 16) A development proposal that is likely to have a significant adverse environmental impact on 1 or more of the following: a critically endangered species; an endangered species; a vulnerable species; a conservation dependent species; a regionally threatened species; a regionally conservation dependent species; a provisionally listed threatened species; a listed migratory species; a threatened ecological community; a protected native species; a Ramsar wetland; or any other protected matter.

Item 17) A development proposal involving the clearing of more than 0.5ha of native vegetation in a native vegetation area, other than on land that is designated as a future urban area under the territory plan; or the clearing of more than 5.0ha of native vegetation in a native vegetation area, on land that is designated as a future urban area under the territory plan.

Item 18) A development proposal for development in a reserve, unless the proposal is for minor public works to be carried out by or for the Territory in accordance with a minor public works code approved by the conservator of flora and fauna under section 318A of the *Nature Conservation Act 2014*.

Item 19) A development proposal that is likely to have a significant adverse environmental impact on a domestic water supply catchment or an environmental value for a waterway determined under the *Water Resources Act 2007*.

Item 20) A development proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for an urban lake, pond or retardation basin or a wastewater reuse scheme in an existing urban area or on land that has been designated as a future urban area; and that is designed in accordance with the water sensitive urban design general code under the territory plan.

Item 21) A development proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the *Heritage Act 2004*, unless the proposal is the demolition of a building that is

affected residential premises, and the heritage council has approved a statement of heritage effect in relation to the proposal.

Item 22) A development proposal that involves, other than on land in an existing urban area or land that is designated under the territory plan as a future urban area, with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity or university.

Item 23) A development proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*.

Item 24) A development proposal for which the annual expected greenhouse gas emissions from operating the development is more than the amount prescribed under section 30 of the Act.

Item 25) A development proposal that involves a key threatening process under the *Nature Conservation Act 2014*.

Schedule 2 Buyback program valuation procedure

Schedule 2 sets out the buyback program valuation procedure to work out the amount payable to a lessee who surrenders a lease to the Territory under the Loose-fill Asbestos Insulation Eradication Scheme Buyback Program (the buyback program). Under the buyback program the Territory has offered to buy all homes in the ACT affected by loose-fill asbestos insulation.

Part 2.1 Interpretation

Clause 2.1 Definitions—sch 2

This clause defines terms used in schedule 2.

Part 2.2 Buyback program valuation procedure

Clause 2.2 Valuation of affected lease

This clause provides that two valuations of an affected lease under the buyback program valuation procedure must be undertaken and what it must take into account. the valuers will ignore the presence of loose-fill asbestos and minor maintenance or presentation issues but will take into account all other defects and other forms of contamination.

Clause 2.3 Accredited valuers to carry out valuation

This clause provides that two valuers appointed by the Australian Property Institute will independently assess the value of the house and land.

Clause 2.4 Valuation to be given to lessee and Asbestos Response Taskforce

This clause provides that an accredited valuer who carries out a valuation of the reasonable value of an affected lease must give a copy of the valuation to the lessee of the affected lease and the Asbestos Response Taskforce.

Clause 2.5 Presidential determination—request by Asbestos Response Taskforce

This clause provides that where the difference between the two valuations given to the Asbestos Response Taskforce is 10% or more, but less than 10.5%, of the lower valuation, the Asbestos Response Taskforce may ask for a presidential determination of the reasonable value of the affected lease.

Clause 2.6 LAIE buyback program valuation

This clause provides the formula for the LAIE buyback program valuation for an affected lease.

Clause 2.7 Presidential determination—request by lessee

This clause provides that the lessee may ask for a presidential determination of the reasonable value of the affected lease where the lessee rejects a buyback program valuation.

Clause 2.8 Presidential determination

This clause provides the process where the Asbestos Response Taskforce or the lessee asks for a presidential determination of the reasonable value of an affected lease.

Clause 2.9 Amount payable for surrender of affected lease

This clause sets out the amount payable to a Lessee of an affected lease surrendered under the buyback program.

Dictionary

The Dictionary sets out the definitions for this Regulation.