

## FREEHOLD LAND (SUBDIVISION AND USE)

## No. 27 of 1967

An Ordinance to Control the Subdivision and Use of  
Freehold Land pending the Introduction of a  
Permanent Scheme regulating the Subdivision  
and Use of Freehold Land in the Territory,  
and for other purposes.

1. This Ordinance may be cited as the *Freehold Land (Subdivision and Use) Ordinance 1967*.\*

Short title.

2.—(1.) In this Ordinance, unless the contrary intention appears—

Interpretation.

“building” includes a part of a building;

“Oaks Estate” means the area described in Part I. of the Schedule;

“subdivide”, in relation to land, means divide the land into blocks whether—

(a) upon the sale, conveyance, transfer or partition of the land or a part of the land;

(b) by an agreement, dealing or instrument (other than a will) that has the effect of rendering different parts of the land available, either immediately or at some future time, for separate occupation or disposition;

(c) by obtaining the issue of a certificate of title under the *Real Property Ordinance 1925-1963* in respect of part of the land; or

(d) upon the division of the land for the purpose of opening a public road or widening a public road,

or otherwise, but does not include any division of the land into blocks the boundaries of which are the boundaries of lots or portions in a plan of subdivision lawfully made after the commencement of the *Seat of Government (Administration) Act 1910*;

“the Canberra Building Regulations” means the Canberra Building Regulations in force under the *Building Ordinance 1964* or under that Ordinance as amended, as the case requires;

“the commencing day” means the date of commencement of this Ordinance;

“the proper authority” means a person who held or holds office as the proper authority under the *Building Ordinance 1964* or under that Ordinance as amended, as the case requires;

\* Made on 20 July 1967; notified in the *Commonwealth Gazette* and commenced on 27 July 1967; disallowed by the Senate on 2 November 1967.

“the Village of Hall” means the Village of Hall described in Part II. of the Schedule;

“the Village of Tharwa” means the Village of Tharwa described in Part III. of the Schedule.

(2.) In this Ordinance—

- (a) a reference to the Schedule shall be read as a reference to the Schedule to this Ordinance;
- (b) a reference to a Deposited Plan by number shall be read as a reference to the Deposited Plan so numbered, a copy of which is held in the office of the Registrar of Titles under the *Real Property Ordinance* 1925-1963;
- (c) a reference to the application for permission to erect a building shall be read as a reference to the application made to the proper authority under the *Canberra Building Regulations* for permission to erect the building; and
- (d) a reference to the use of a building for a prescribed purpose shall be read as a reference to the use of the building as—
  - (i) a hotel, picture theatre, shop, service station, factory or saw mill;
  - (ii) flats or home units or other residential accommodation of a kind commonly known as a flat or home unit;
  - (iii) a motel or guest house or a building, however described, for the provision of accommodation of a kind commonly provided by a motel or guest-house;
  - (iv) a restaurant or cafe or a building, however described, for the provision of services commonly provided by a restaurant or cafe; or
  - (v) a stall for the display or sale of goods.

**Application.**

3.—(1.) This section applies to—

- (a) land in Oaks Estate, the Village of Hall or the Village of Tharwa; and
- (b) freehold land in any other part of the Territory.

(2.) This Ordinance does not prevent the use, after the commencing day, of land to which this section applies for the purpose for which the land was being used immediately before that day or, if the land was not then being used for any purpose, for the purpose for which it was last used before that day.

(3.) This Ordinance does not prevent the use, on or after the commencing day, of a building erected on land to which this section applies, being a building the erection of which was completed before that day—

- (a) if the building was being used immediately before that day —for the purpose for which it was then being used;

- (b) if the building was not being used immediately before, but had been used before, that day—for the purpose for which it had last been used before that day; or
- (c) in any other case—for the purpose specified in the application for permission to erect the building.

(4.) This Ordinance does not prevent the use, on or after the commencing day, of a building erected on land to which this section applies, being a building the erection of which commenced before, but was not completed before, that day, for the purpose specified in the application for permission to erect the building.

4.—(1.) Subject to the next succeeding sub-section, a person shall not subdivide land in Oaks Estate, the Village of Hall or the Village of Tharwa or freehold land in any other part of the Territory except in accordance with an approval of the Minister for the subdividing of the land.

Subdivision  
of land.

Penalty: Two hundred dollars or imprisonment for six months.

(2.) Where a transaction, contract or agreement by virtue of which land referred to in the last preceding sub-section is sub-divided is not void under section 16 of this Ordinance, a party to the transaction, contract or agreement who, by the transaction, contract or agreement, sub-divides the land does not commit an offence against the last preceding sub-section.

(3.) Application for the approval of the Minister to the subdividing of land—

- (a) shall be made to the Minister in writing; and
- (b) shall be accompanied by two copies of a plan of subdivision of the land, being a plan that, if the land is under the *Real Property Ordinance* 1925-1963, complies with section 64 of that Ordinance or, in any other case, would comply with that section if the land were under that Ordinance.

(4.) The Minister may, in his discretion, grant or refuse to grant approval to the subdividing of the land in accordance with a plan of subdivision accompanying an application under the last preceding sub-section.

(5.) Where the Minister approves the subdividing of land, he shall write particulars of his approval on each of the copies of the plan of subdivision of the land and return one of the copies to the applicant.

5.—(1.) While this Ordinance continues in force, land in Oaks Estate, the Village of Hall or the Village of Tharwa or freehold land in any other part of the Territory—

Use of land.

- (a) is not available for use as a site for the erection of tents or the parking of caravans, being tents or caravans used or to be used for human habitation, unless persons occupying the tents or caravans on the land are not liable to pay to any person any rent or other fee for permission—
  - (i) to occupy the tents or caravans;

- (ii) to erect the tents or park the caravans on the land; or
- (iii) to use any services or facilities provided on the land or in a building erected on the land; and

(b) is not available for use as the site for a drive-in theatre.

(2.) Where a person who occupies a tent or caravan on land referred to in the last preceding sub-section is liable to pay to any other person a fee of a kind specified in that sub-section, the owner of the land, and any person who permits the occupation of the tent or caravan, each commits an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars or imprisonment for six months.

(3.) A person shall not cause or permit land referred to in sub-section (1.) of this section to be used as a site for a drive-in theatre.

Penalty: Two hundred dollars or imprisonment for six months.

Erection of  
buildings.

6.—(1.) This section applies to freehold land in a part of the Territory other than Oaks Estate, the Village of Hall or the Village of Tharwa.

(2.) While this Ordinance continues in force, the proper authority shall not grant a permit under the Canberra Building Regulations for the erection of a building for use as a dwelling-house, hall or community centre on land to which this section applies unless the Minister has approved its erection on the land.

(3.) While this Ordinance continues in force, the proper authority shall not grant a permit under the Canberra Building Regulations for the erection of a building on land to which this section applies if the building is for use for a prescribed purpose.

Alterations to  
buildings.

7.—(1.) In this section—

“alter”, in relation to a building, includes erect an addition to the building;

“building” means a building erected on freehold land in a part of the Territory other than Oaks Estate, the Village of Hall or the Village of Tharwa.

(2.) While this Ordinance continues in force, the proper authority shall not grant a permit under the Canberra Building Regulations—

(a) for the alteration of a building, being an alteration that is to be made for the purpose of fitting it for use as a hall or community centre, unless the Minister has approved the building being so altered; or

(b) for the alteration of a building, being an alteration that is to be made for the purpose of fitting it for use as a dwelling-house, unless the building has previously been used as a dwelling-house or the Minister has approved the building being so altered.

(3.) While this Ordinance continues in force, the proper authority shall not grant a permit under the Canberra Building Regulations for the alteration of a building if the alteration is for the purpose of fitting the building for use for a prescribed purpose.

8.—(1.) Subject to the next succeeding sub-section, a person shall not use, or cause or permit to be used, for a prescribed purpose, a building erected on freehold land in a part of the Territory other than Oaks Estate, the Village of Hall or the Village of Tharwa. Use of building.

Penalty—Two hundred dollars or imprisonment for six months.

(2.) The last preceding sub-section does not prevent the use of a building, being a building erected on land that is used for agricultural, horticultural or grazing purposes, for the housing, servicing or repairing of machines or vehicles if the machines or vehicles are used or for use in connexion with the use of the land for any of those purposes.

9.—(1.) This section applies to land in Oaks Estate, the Village of Hall or the Village of Tharwa.

Use of buildings  
in the Village  
of Hall, etc.

(2.) A person shall not, without the approval of the Minister, use, or cause or permit to be used, a building erected on land to which this section applies—

- (a) if the building is a dwelling-house—otherwise than as a single unit of residential accommodation;
- (b) if the building is a garage or other building erected on land on which a dwelling-house is erected—otherwise than in connexion with the use of that dwelling-house as residential accommodation; or
- (c) if the building, not being a building referred to in either of the last two preceding paragraphs, has not been used for any purpose before the commencing day or is erected on or after that day—otherwise than for the purpose specified in the application for permission to erect the building; or
- (d) in the case of any other building—
  - (i) if the building was used immediately before the commencing day or last used before that day, as the case requires, for the carrying on of a profession, trade or business, not being a manufacturing or wholesale business—otherwise than for the carrying on of a profession, trade, or business, not being a manufacturing or wholesale business; or
  - (ii) if the building was so used or last used for the carrying on of a manufacturing or wholesale business—otherwise than for the carrying on of a manufacturing or wholesale business.

Penalty: Two hundred dollars or imprisonment for six months.

10.—(1.) An application under sub-section (2.) of section 6 of this Ordinance for approval to erect a building, or under sub-section (2.) of section 7 of this Ordinance for approval to alter a building, shall be made to the Minister in writing and—

Application for  
Minister's  
approval.

- (a) in the case of an application for approval to erect a building—shall contain particulars of the proposed building and of the use to which it is to be put; or

- (b) in the case of an application for approval to alter a building—shall contain particulars of the proposed alteration and the use to which the building is being put and the use to which the building as proposed to be altered is to be put.

(2.) Unless the application referred to in the last preceding sub-section is made at the same time as application is made under the Canberra Building Regulations for a permit to erect or alter the building, the Minister may, by notice in writing to the applicant, require the applicant to furnish him with sketch plans and brief specifications of the building or alteration, in such form and containing such information as the Minister thinks fit, and may refrain from giving or refusing approval for the erection or alteration of the building until the requirement is complied with.

(3.) An application under sub-section (2.) of section 9 of this Ordinance for approval for the use of a building for a particular purpose shall be made to the Minister in writing and contain particulars of the building, of the use to which the building is being put and the use to which it is proposed to put the building.

(4.) The Minister may, in his discretion, grant or refuse to grant an application referred to in this section.

(5.) Where the Minister grants an application referred to in this section, he shall issue to the applicant an approval, in writing, specifying the purpose for which the building may be used.

#### Inspectors.

11.—(1.) The Minister may appoint a person to be an inspector for the purposes of this Ordinance.

(2.) The Minister shall issue to a person appointed to be an inspector for the purposes of this Ordinance a certificate under his hand stating that the person is such an Inspector.

(3.) An inspector who enters upon land or into a building for the purposes of this Ordinance is not authorized to remain on the land or in the building if, upon request by the owner or occupier of the land or building for production of the certificate so issued to him, the inspector does not produce the certificate.

#### Inspection of land and buildings.

12.—(1.) Where an Inspector has reason to believe that a person is using land or a building erected on land in contravention of this Ordinance, the Inspector may, at any reasonable time of the day, enter upon the land or into the building for the purpose of inspecting the land or building and ascertaining whether the land or building is being so used.

(2.) An Inspector who has reason to believe that, after the commencing day, a building is being or has been erected on land to which this sub-section applies or that a building erected on land to which this sub-section applies is being or has been altered may, at any reasonable time of the day—

- (a) enter upon the land for the purpose of inspecting the land and ascertaining whether a building is being or has been erected on the land; or

- (b) enter upon the land and into a building for the purpose of ascertaining whether the building is being or has been altered,

and, if a building is being or has been erected or altered, for the purpose also of ascertaining whether the erection of the building or the alteration of the building is or was in accordance with the Canberra Building Regulations, the plans and specifications approved under those Regulations for the erection or alteration and the conditions (if any) subject to which those plans and specifications were approved.

(3.) The last preceding sub-section applies to land in Oaks Estate, the Village of Hall or the Village of Tharwa and freehold land in any other part of the Territory.

**13. A person shall not—**

Offences.

- (a) refuse to allow an inspector to enter upon land or into a building, or to inspect land or a building, that he is authorized by this Ordinance to enter upon or into or to inspect;
- (b) assault, resist or obstruct an inspector in the exercise of his powers under this Ordinance; or
- (c) in an application under this Ordinance make a statement or furnish information that is false or misleading in a material particular.

Penalty: Two hundred dollars or imprisonment for six months.

**14. A person who uses land or a building or causes or permits land or a building to be used contrary to the provisions of this Ordinance shall be taken to have committed an offence against this Ordinance on each day on which he so uses the land or building or causes or permits the land or building to be so used.**

Continuing offences.

**15.—(1.) Where a corporation commits an offence against this Ordinance, a person, being a director, manager, secretary or other person who is an officer of the corporation, who is knowingly a party to the offence also commits an offence against this Ordinance punishable, upon conviction, by a fine not exceeding Two hundred dollars or by imprisonment for a term not exceeding six months.**

Offences by corporations.

(2.) In the last preceding sub-section, "officer", in relation to a corporation, has the same meaning as in the *Companies Ordinance* 1962-1966.

**16.—(1.) A transaction entered into after the commencing day by virtue of which land referred to in sub-section (1.) of section 4 of this Ordinance is subdivided is, subject to this section, void and of no effect unless the Minister has approved the subdividing of the land.**

Effect of contravention on transactions.

(2.) Where a person—

- (a) enters into a contract or agreement purporting to do, whether presently or at some future time, or upon the happening of a contingency, anything that would, if done, subdivide land referred to in sub-section (1.) of section 4 of this Ordinance; or
- (b) enters into a transaction, or makes a contract or agreement, whether orally or in writing, for the purpose of, or which has the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding or preventing the operation of sub-section (1.) of this section in any respect,

the contract, agreement or transaction is void and of no effect.

(3.) Where a transaction has been entered into subject to the approval of the Minister being obtained to the subdividing of the land—

- (a) the transaction shall not be taken to be void and of no effect if the approval of the Minister is, upon application made within three months after the date of the transaction, given to the transaction within six months after that date; and
- (b) the transaction does not have any effect unless the approval of the Minister is given to the subdividing of the land or until that approval is so given.

(4.) In the last preceding sub-section, a reference to a transaction shall be read as a reference to a transaction referred to in sub-section (1.) of this section or a contract, agreement or transaction referred to in sub-section (2.) of this section.

(5.) Nothing in the preceding sub-sections of this section affects the validity of—

- (a) the acquisition of land under a writ or warrant of execution issued out of a court;
- (b) the execution of a deed of assignment under Part XI. of the *Bankruptcy Act* 1924-1965, or of a deed of arrangement under Part XII. of that Act; or
- (c) a transaction by way of transfer or assignment of a mortgage to a guarantor who, in pursuance of the terms of his guarantee, has repaid the whole or part of the moneys due under the mortgage.

Registration of  
instruments.

**17.—(1.)** The Registrar of Titles for the purposes of the *Real Property Ordinance* 1925-1963 may, upon submission to him for registration of an instrument relating to a transaction in connexion with land, being land referred to in sub-section (1.) of section 4 of this Ordinance, require such evidence as he deems necessary that the transaction is not void and of no effect by virtue of the last preceding section, and may refuse to register the instrument until that evidence is submitted to him.



(2.) Notwithstanding the last preceding section, where an instrument relating to a transaction that is void and of no effect by virtue of the last preceding section is registered under the *Real Property Ordinance* 1925-1963, a person who becomes registered as proprietor of an estate or interest in land under that Ordinance by virtue of the registration of the instrument has, subject to the provisions of that Ordinance, a good and valid title to the estate or interest in the land.

18.—(1.) Where moneys have been paid under or in connexion with a transaction that is void and of no effect by virtue of section 16 of this Ordinance, an amount equal to the moneys so paid is recoverable in a court of competent jurisdiction from the person to whom or on whose account the moneys were paid, or from the estate of that person, as a debt due to the person by whom or on whose account the moneys were paid.

Recovery of  
payments under  
void  
transactions.

(2.) Moneys shall not be taken to have been paid under or in connexion with a transaction for the purposes of the last preceding sub-section by reason only of the fact that the transaction was entered into subject to the approval of the Minister being obtained to the subdividing of land and the moneys were paid before the Minister refused to approve the subdividing of the land.

19.—(1.) This Ordinance shall continue in operation until and including the thirtieth day of June, One thousand nine hundred and sixty-eight.\*

Duration of  
Ordinance.

(2.) When this Ordinance ceases to be in operation, section 8 of the *Acts Interpretation Act* 1901-1966 in its application to the Territory applies to and in relation to this Ordinance as if it had been repealed by another Ordinance on the first day of July, One thousand nine hundred and sixty-eight.

## THE SCHEDULE

Section 2.

### DESCRIPTION OF OAKS ESTATE, VILLAGE OF HALL AND VILLAGE OF THARWA

#### PART I.—OAKS ESTATE

First: All that piece of land situated in the Australian Capital Territory and comprised in Deposited Plan 2207.

Secondly: All that piece of land known as "Hazelbrook" containing an area of 12 acres 1 rood more or less: Commencing at the northeastern corner of Lot 13 of Section L of Deposited Plan 2207 and bounded thence by the northwestern boundary of that Lot 13 bearing 246 degrees 1 minute 707 links; thence by the northeastern boundary of that Lot 13, its prolongation and northeastern boundaries of Lot 34, Lot 35 and Lot 19 of Section K of Deposited Plan 2207 bearing in all 327 degrees 31 minutes 1434.2 links; thence by a south-eastern bank of Molonglo River upstream and a southwestern bank of Queanbeyan River upstream to the point of commencement.

Thirdly: All that piece of land known as "The Oaks" containing an area of 2 acres 2 roods 22 perches more or less: Commencing at the northeastern corner of Lot 10 of Section B of Deposited Plan 2207 and bounded thence by a southeastern bank of Molonglo River upstream to its intersection with the western side of Hill Street; thence by that side of that street bearing 179 degrees 34 minutes 30 seconds 936.25 links; thence by northwestern boundaries of Lots 14 and 13 and part of the northwestern boundary of Lot 12 of Section B of Deposited Plan 2207 bearing in all 265 degrees 54 minutes 343.66 links; thence by the northeastern boundary of Lot 10 of Section B of Deposited Plan 2207 bearing 356 degrees 3 minutes 30 seconds 550 links to the point of commencement.

\* See footnote on p. 129.

THE SCHEDULE—*continued*

## PART II.—VILLAGE OF HALL

All that piece of land situated in the Australian Capital Territory and comprised in the Public Plan of the Village of Hall a copy of which is held in the office of the Registrar of Titles under the *Real Property Ordinance* 1925-1963.

## PART III.—VILLAGE OF THARWA

All that piece of land situated in the Australian Capital Territory being the Village of Tharwa: Commencing at the northernmost corner of Block 38, Paddys River District, as shown on Deposited Plan 151 and bounded thence by a line the southeastern side of South Street and its prolongation bearing in all 238 degrees 1711.5 links to the easternmost corner of Block 42, Paddys River District, as shown on Deposited Plan 61; thence by the southwestern side of Johnson Street bearing 328 degrees 3822.4 links; thence by part of the southwestern side of North Street bearing 280 degrees 53 minutes 178.7 links to the easternmost corner of land formerly Portion 170, Parish of Tharwa, County of Cowley, in the State of New South Wales; thence by a line bearing 12 degrees 17 minutes 154.7 links to the southernmost corner of land formerly Portion 178, Parish of Tharwa, County of Cowley, in that State; thence by the northwestern side of Union Street and its prolongation bearing 10 degrees 53 minutes to the southwestern bank of Murrumbidgee River; thence by that bank of that river upstream to the point of commencement.

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