

FREEHOLD LAND (SUBDIVISION AND USE) (NO. 2)

No. 33 of 1967

An Ordinance to amend the *Freehold Land (Subdivision and Use) Ordinance 1967*.

Short title
and
citation.

1.—(1.) This Ordinance may be cited as the *Freehold Land (Subdivision and Use) Ordinance (No. 2) 1967*.*

(2.) The *Freehold Land (Subdivision and Use) Ordinance 1967*† is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Freehold Land (Subdivision and Use) Ordinances 1967*.

Interpretation.

2. Section 2 of the Principal Ordinance is amended—

(a) by inserting in sub-section (1.), before the definition of “building”, the following definition:—

“ ‘alternate member’ means an alternate member of the Tribunal;”;

(b) by inserting in sub-section (1.), after the definition of “building”, the following definition:—

“ ‘member’ means a member of the Tribunal;”;

(c) by inserting in sub-section (1.), after the definition of “subdivide”, the following definition:—

“ ‘the Authority’ means the Land (Subdivision and Use) Authority holding office under this Ordinance;”;

(d) by inserting in sub-section (1.), after the definition of “the Canberra Building Regulations”, the following definition:—

“ ‘the Chairman’ means the Chairman of the Tribunal;”;

(e) by inserting in sub-section (1.), after the definition of “the commencing day”, the following definition:—

“ ‘the Deputy Chairman’ means the Deputy Chairman of the Tribunal;”;

(f) by inserting in sub-section (1.), after the definition of “the proper authority”, the following definition:—

“ ‘the Tribunal’ means the Land (Subdivision and Use) Review Tribunal established by this Ordinance;”.

* Made and notified in the *Commonwealth Gazette* on 2 November 1967. The *Freehold Land (Subdivision and Use) Ordinance 1967*, which is expressed to be amended by this Ordinance, was disallowed by the Senate on the same day.

† Ordinance No. 27, 1967.

3. After section 3 of the Principal Ordinance the following section is inserted:—

“3A.—(1.) For the purposes of this Ordinance, there shall be a Land (Subdivision and Use) Authority for the Territory, who shall be appointed by the Minister. The Authority.

“ (2.) The Authority shall not refuse to grant an application made to him under this Ordinance unless he is satisfied that—

- (a) in the case of an application for approval to subdivide land—the subdivision of the land in accordance with the plan of subdivision accompanying the application;
- (b) in the case of an application for approval to erect a building for use for a particular purpose—the use of the building, when erected, for that purpose or the erection of any building on the land on which it is proposed to erect that building;
- (c) in the case of an application for approval to alter a building—the use of the building for the purpose for which it is proposed to use the building when it is so altered; or
- (d) in the case of an application for approval to use a building for a particular purpose—the use of the building for that purpose,

would be prejudicial to—

- (e) the planning, development or construction of the City of Canberra as the National Capital of the Commonwealth; or
- (f) the development of the Territory as the territory within which the seat of Government of the Commonwealth is situated.

“ (3.) Where the Authority refuses to grant an application made to him under this Ordinance, he shall forthwith furnish to the applicant notice of the refusal in writing together with a statement setting out his reasons for refusing to grant the application.”

4. After section 10 of the Principal Ordinance the following sections are inserted:—

“ 10A.—(1.) For the purpose of this Ordinance, there shall be a board of review, to be known as the Land (Subdivision and Use) Review Tribunal. The Tribunal.

“ (2.) The Tribunal shall consist of three members and three alternate members, who shall be appointed by the Minister.

“ (3.) The Minister shall appoint one of the members of the Tribunal to be the Chairman of the Tribunal and another of the members of the Tribunal to be the Deputy Chairman of the Tribunal.

“ (4.) A person is not eligible to be appointed a member or alternate member unless he has the qualifications of a surveyor, architect, engineer or town planner.

“ (5.) A member or alternate member holds office, subject to this Ordinance, until and including the thirtieth day of June, One thousand nine hundred and sixty-eight.

Constitution
of the
Tribunal.

“ 10B.—(1.) Subject to this section, the Tribunal shall, for the purpose of hearing and determining an application, be constituted by—

- (a) the Chairman and the Deputy Chairman and one other member or alternate member; or
- (b) the Chairman or the Deputy Chairman and two other members or alternate members.

“ (2.) Except as provided in the next two succeeding sub-sections, an alternate member shall not act as a member of the Tribunal upon the hearing and determining of an application.

“ (3.) Where a member is unable to act as a member of the Tribunal upon the hearing and determining of an application by reason of his illness or for any other unavoidable cause, an alternate member may act as a member of the Tribunal in the place of the first-mentioned member.

“ (4.) Where there is a vacancy in the office of a member of the Tribunal, an alternate member may act as a member of the Tribunal upon the hearing and determining of an application.

“ (5.) Where it is necessary for an alternate member to act as a member of the Tribunal upon the hearing and determining of an application, the Chairman or, if the Chairman is unable to do so, the Deputy Chairman shall arrange for one of the alternate members of the Tribunal to act as a member of the Tribunal upon the hearing and determining of the application.

“ (6.) A person is disqualified from acting as a member upon the hearing and determining of an application if the person is either directly or indirectly financially interested in the matter to which the application relates.

“ (7.) In this section, ‘application’ means an application lodged with the Secretary to the Department of the Interior in accordance with section 10E of this Ordinance.

Remuneration.

“ 10c. The members and alternate members shall be paid such fees (if any) and allowances (if any) as the Minister determines.

Termination of
office of
members and
deputy
members.

“ 10D. The Minister may, by instrument in writing under his hand, remove from office a person who is a member or alternate member—

- (a) if the person becomes bankrupt or insolvent or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (b) if the person is convicted of an indictable offence;
- (c) if the person resigns his office by writing under his hand addressed to the Minister; or
- (d) if the person becomes incapable of performing the duties of his office.

“ 10E.—(1.) Where the Authority refuses to grant an application made to him under this Ordinance, the applicant may, within fourteen days after notice of the refusal is furnished to him, or within such further period as the Minister, in a particular case, allows, lodge with the Secretary to the Department of the Interior an application in writing for the Tribunal to review the decision of the Authority with respect to the application.

Review by
Tribunal.

“ (2.) Where an application relating to a decision of the Authority is lodged with the Secretary to the Department of the Interior in accordance with the last preceding sub-section, the Tribunal shall review the decision and, for the purpose of the review, has power to summon witnesses, require the production of books and documents and take evidence on oath.

“ (3.) Where the Tribunal reviews the decision of the Authority on an application made to the Authority under this Ordinance, the Tribunal shall direct the Authority to grant the application unless the Tribunal is satisfied that—

- (a) in the case of an application for approval to subdivide land—the subdivision of the land in accordance with the plan of subdivision accompanying the application;
- (b) in the case of an application for approval to erect a building for use for a particular purpose—the use of the building, when erected, for that purpose or the erection of any building on the land on which it is proposed to erect that building;
- (c) in the case of an application for approval to alter a building—the use of the building for the purpose for which it is proposed to use the building when it is so altered; or
- (d) in the case of an application for approval to use a building for a particular purpose—the use of the building for that purpose,

would be prejudicial to—

- (e) the planning, development or construction of the City of Canberra as the National Capital of the Commonwealth; or
- (f) the development of the Territory as the territory within which the seat of Government of the Commonwealth is situated.

“ (4.) Where the Tribunal directs the Authority to grant an application, the authority shall forthwith give effect to the direction of the Tribunal.

“ (5.) The decision of the majority of the persons constituting the Tribunal for the purpose of hearing and determining an application shall be deemed to be the decision of the Tribunal.

Decision of
Tribunal
to be in
writing.

“ 10F. The decision of the Tribunal upon a review shall be in writing.

Case stated.

“ 10G.—(1.) Where, in any proceeding before the Tribunal—

- (a) a question of law arises which the Tribunal desires to have determined by the Supreme Court before the proceeding is further dealt with by it; or
- (b) a question of law arises which a party to the proceeding desires to have so determined and the Tribunal consents to its being so determined,

the Tribunal—

- (c) shall state the facts in the form of a special case for the opinion of the Supreme Court; and
- (d) shall transmit to the Supreme Court the special case and the documents in the proceeding, or such of them as are required for the purposes of the determination,

and the Supreme Court shall hear and determine the question.

“ (2.) The Supreme Court may draw from the facts and the documents any inference that could have been drawn from them by the Tribunal.

“ (3.) Where the Supreme Court has heard and determined a question, the Tribunal shall give effect to the determination of the Supreme Court in determining the proceeding in which question arose.

Allowances to
witnesses.

“ 10H.—(1.) A person who attends for the purpose of giving evidence before the Tribunal is entitled to receive such fees (if any) as the Chairman or, if the Chairman is absent from a meeting of the Tribunal, the Deputy Chairman thinks fit to allow in accordance with the scale of fees and allowances prescribed from time to time, for the purposes of section twenty-seven of the *Public Works Committee Act 1913-1966*, by the Public Works Committee Regulations.

“ (2.) Fees and allowances payable to a person in accordance with the last preceding sub-section are payable—

- (a) if the person attended before the Tribunal, whether on summons or not, by reason of a request by a person other than the Chairman, the Deputy Chairman or an officer of the Department of the Interior—by the person at whose request the first-mentioned person attended; or
- (b) in any other case—by the Commonwealth.”.

The Schedule.

5. The Principal Ordinance is amended as set out in the Schedule to this Ordinance.

Transitional
provision.

6. Where a transaction referred to in sub-section (3.) of section 16 of the Principal Ordinance had been entered into subject to the approval of the Minister before the date of commencement of this Ordinance and the Minister had not, before that date, approved or refused to approve the transaction, the transaction has effect on and after that date as if this Ordinance had been in force when the transaction was entered into and the transaction had been entered into subject to the

approval of the Land (Subdivision and Use) Authority for the Territory instead of subject to the approval of the Minister.

THE SCHEDULE

Section 5.

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ORDINANCE

Provisions amended	Omit—	Insert—
Section 4 (1.) ..	Minister	Authority
Section 4 (3.) ..	Minister to Minister in	Authority to Authority in
Section 4 (4.) ..	The Minister may, in his discretion,	Subject to this Ordinance, the Authority may
Section 4 (5.) ..	Minister	Authority
Section 6 (2.) ..	Minister	Authority
Section 7 (2.) (a) ..	Minister	Authority
Section 7 (2.) (b) ..	Minister	Authority
Section 9 (2.) ..	Minister	Authority
Section 10 (1.) ..	Minister	Authority
Section 10 (2.) ..	Minister may Minister thinks	Authority may Authority thinks
Section 10 (3.) ..	Minister	Authority
Section 10 (4.) ..	The Minister may, in his discretion,	Subject to this Ordinance, the Authority may
Section 10 (5.) ..	Minister	Authority
Section 16 (1.) ..	Minister	Authority
Section 16 (3.) ..	Minister being	Authority being
Section 16 (3.) (a) ..	Minister	Authority
Section 16 (3.) (b) ..	Minister	Authority
Section 18 (2.) ..	of the Minister Minister refused	of the Authority Authority refused