



Australian Capital Territory

Planning and Development Amendment Regulation 2008 (No 4)

Subordinate Law SL2008-41

The Australian Capital Territory Executive makes the following regulation under the *Planning and Development Act 2007*.

Dated 11 September 2008.

ANDREW BARR
Minister

JOHN HARGREAVES
Minister



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1 Name of regulation

This regulation is the *Planning and Development Amendment Regulation 2008 (No 4)*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This regulation amends the *Planning and Development Regulation 2008*.

4 New division 5.7.1 heading

insert

**Division 5.7.1 Transfer of land subject to building
and development provision**

5 Sections 202 and 203

substitute

Division 5.7.2 Applications for extension of time to commence or complete required works

202 Meaning of *period of extension*—div 5.7.2

- (1) For this division, *period of extension*, in relation to a lease with a building and development provision, means—
- (a) the period of extension sought in an application for an extension of time in relation to the lease; or
 - (b) if 1 or more extensions of time have previously been approved in relation to the lease—the total of the period of extension sought in the application and the period of the previous extension or extensions (other than an extension of time mentioned in section 205, section 206 or section 207) for the lease.

Example

An extension for 1 year is approved and a later application for an extension for 2 years is made. The period of extension for the 2nd application is 3 years.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If an application seeks extensions for 2 or more building and development provisions in a lease, only the longest of the extensions sought or granted under the application is to be counted in working out the period of extension under subsection (1).

203 Application for extension of time—general rule—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease (other than an application to which section 204, section 205, section 206 or section 207 applies).
- (2) The prescribed figure for the application is the figure mentioned in table 203, column 3 in relation to the period of extension mentioned in column 2.

Table 203 General rule

column 1 item	column 2 period of extension	column 3 figure
1	Up to 1 year	1
2	More than 1 year and up to 2 years	2
3	More than 2 years and up to 3 years	3
4	More than 3 years and up to 4 years	4

Note The Act, s 298A (5) defines *A* to be 5 if a lower figure is not prescribed.

204 Application for extension of time—hardship reason—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a single dwelling house lease or a lease granted to a community organisation for community use (other than an application to which section 205 or section 206 applies) if the planning and land authority is satisfied that—
 - (a) a hardship reason applies in relation to the lessee; and
 - (b) the extension sought is necessary because of the hardship reason.

Note *Single dwelling house lease* means a lease granted under the Act, s 240 (1) (e) (see Act, s 234).

- (2) The prescribed figure for the application is the figure mentioned in table 204, column 3 in relation to the period of extension mentioned in column 2.

Table 204 Hardship reasons

column 1 item	column 2 period of extension	column 3 figure
1	Up to 2 years	0
2	More than 2 years and up to 3 years	2
3	More than 3 years and up to 4 years	3
4	More than 4 years	4

- (3) However, this section does not apply to an application for an extension of time in relation to a single dwelling house lease if the lessee—
- (a) is the lessee of another lease; and
 - (b) has applied for, or been granted, an extension of time to commence or complete development in relation to that lease.
- (4) In this section:

hardship reason, in relation to a lessee, means—

- (a) if the lessee is an individual—a reason mentioned in the Act, section 298 (2) (b) (i), (ii) or (iii); and
- (b) in any other case—a reason mentioned in the Act, section 298 (2) (b) (ii) or (iii).

205 Application for extension of time—external reason—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease if the planning and land authority is satisfied that—
 - (a) an external reason applies in relation to the lessee; and
 - (b) the extension sought is necessary because of the external reason.
- (2) The prescribed figure for the application is 0.
- (3) In this section:

external reason—each of the following is an *external reason* in relation to a lessee:

 - (a) the lessee is unable to commence or complete the works required under the building and development provision for the lease because—
 - (i) road or traffic infrastructure to be provided by the Territory is not complete; or
 - (ii) a sewerage, electricity, water or gas service to be provided by the Territory is not installed or connected;
 - (b) the lessee is unable to commence or complete the works required under the building and development provision for the lease because of a delay in obtaining a statutory approval required for the works, other than a delay caused in whole or part by—
 - (i) the lessee; or
 - (ii) a decision to refuse, or impose a condition on, a statutory approval required for the works.

206 Application for extension of time—lease transferred or assigned in special circumstances—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease if—
 - (a) the lease was transferred or assigned in circumstances mentioned in subsection (3); and
 - (b) the extension sought is for a period that—
 - (i) starts on or after the day of the transfer or assignment; and
 - (ii) is not longer than the period allowed under the building and development provision when the lease was granted.
- (2) The prescribed figure for the application is 0.
- (3) For subsection (1) (a), the circumstances are that—
 - (a) the lessee has died; or
 - (b) the transfer or assignment is made under any of the following orders:
 - (i) an order of the Family Court;
 - (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);
 - (iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or
 - (c) the transfer or assignment happened by operation of, or under, bankruptcy or insolvency; or

- (d) the transfer or assignment happened in the exercise by an authorised deposit taking institution or finance company of a power of sale under the *Land Titles Act 1925*, section 94 that arose from a default in payment by the lessee.

207 Application for extension of time—certain leases granted before 31 March 2008—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease (other than a single dwelling lease or a lease granted to a community organisation for community use) if—
 - (a) the lease was granted before 31 March 2008; and
 - (b) the planning and land authority is satisfied that the time for commencing or completing the works required under the building and development provision was not sufficient when the lease was granted; and
 - (c) the period of extension sought is—
 - (i) for an application to commence the required works—not more than 1 year after the end of the period allowed under the building and development provision when the lease was granted; or
 - (ii) for an application to complete the required works—not more than 2 years after the end of the period allowed under the building and development provision when the lease was granted.
- (2) The prescribed figure for the application is 0.

6 New section 210 (1) (c)

after the notes, insert

- (c) a lease terminated for breach of a building and development provision.

Note **Building and development provision**—see the Act, s 234.

7 New section 211 (1) (c)

insert

- (c) a lease terminated for breach of a building and development provision.

8 New section 240 (e)

before the examples, insert

- (e) a lease granted under the *City Area Leases Act 1936* before 1 January 1971 if the lease was not subject to a restriction on dealing with the lease—
 - (i) under the lease when granted; or
 - (ii) under that Act immediately before its repeal.

Note **Deal**—see the Act, s 234.

9 Section 240, examples

relocate to section 240 (c)

10 Schedule 1, section 1.51 (1) and note

substitute

- (1) In this section:

excluded criteria means any other criteria in division 1.3.2 (Exempt developments—non-habitable buildings and structures), other than section 1.41, that apply to the development.

Note The general exemption criteria include s 1.18 (Criterion 8—compliance with other applicable exemption criteria) which provides that a development must comply with any other criteria in pt 1.3 that apply to the development.

fence—

- (a) includes a gate that forms part of, or functions as, a fence; but
- (b) does not include a fence for an open space boundary.

wall includes a gate that forms part of, or functions as, a wall.

11 Schedule 1, section 1.51 (2) (a) (ii)

substitute

- (ii) in any other case—

- (A) for a panel of a fence or wall—2.3m above natural ground level; or
- (B) for the support post or column of a fence or wall—2.5m above natural ground level; and

12 Schedule 1, section 1.51 (2) (d), except notes

substitute

- (d) the designated development complies with the general exemption criteria, other than the excluded criteria, that are applicable to the development.

13 Schedule 20, modification 20.1 heading

substitute

[20.1] New sections 429AA to 429G

14 Schedule 20, modification 20.1, new sections 429AA and 429AB

before section 429A, insert

429AA Modification—s 114 (Application of assessment tracks to development proposals)

Section 114 applies as if subsection (2) were omitted and the following subsections substituted:

- ‘(2) If a development proposal is in an assessment track, the proposal must be assessed in that assessment track.
- (2A) This section is subject to section 123 (Impact track applicability).’

429AB Modification—div 7.2.5 (Development proposals not in development table and not exempted)

Division 7.2.5 applies as if the following section were inserted:

‘131A Development proposal for lease variation in designated area

- (1) This section applies to a development proposal that is a variation of a lease in a designated area.
- (2) Section 50 and the territory plan do not apply in relation to the development proposal.
- (3) The development proposal must be dealt with under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the merit track.

- (4) However, if the impact track applies to the development proposal under section 123 (b), (c), (d) or (e), the proposal must be dealt with under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the impact track.
- (5) In this section:

territory plan-related provision means a provision of this Act that applies a development table, code, rules or criteria, objectives for a zone, statement of strategic directions, or anything else in the territory plan.

Examples of territory plan-related provisions

1 s 119 (2) (b)

2 s 139 (2) (e) and (f)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).’

15 Schedule 20, modification 20.1, new sections 429EA to 429ED

insert

429EA Modification—s 246 (Payment for leases)

Section 246 (2) applies as if paragraphs (c) and (d) were omitted and the following paragraph substituted:

‘(d) a further lease granted under section 254; or’

429EB Modification—s 254 (Grant of further leases)

Section 254 (1) (e) applies as if it read as follows:

‘(e) if the lease is a rural lease—

- (i) if the lease is a rental lease—the amount of rent determined under section 280 is payable under the lease;
or

- (ii) in any other case—
 - (A) the amount determined under section 280 for the grant is paid; or
 - (B) if the determination under section 280 provides for the payment of the amount by instalments—any instalment required to be paid under the determination before the lease has been granted has been paid; and

429EC Modification—s 255 (Grant of further lease includes authorised use)

Section 255 applies as if the following subsection were inserted:

- ‘(3A) To remove any doubt, a further lease may include provisions that are different to the lease that it is replacing.

Example

A further lease includes a restriction on the number of dwellings that may be built on the lease. The lease the further lease is replacing did not include a similar provision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).’

429ED Modification—s 280 (Determination of amount payable for further leases—rural land)

Section 280 applies as if it read as follows:

‘280 Determination of amount payable for further leases—rural land

- (1) The Minister may make a determination for section 254 (1) (e) (i) or (ii).

- (2) A determination for section 254 (1) (e) (ii) may provide for the amount payable for the grant of the lease is payable by stated instalments.
- (3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.’

16 Schedule 20, modification 20.1, section 429F

omit

Section 298A (5), definition of *D* applies as if it and the note read as follows:

substitute

- (1) Section 298A applies as if subsection (4) were omitted.
- (2) Section 298A (5), definition of *D* applies as if it and the note read as follows:

17 Schedule 20, modification 20.1, new section 429G

insert

429G Modification—s 298B (Extension of time to commence or complete building and development)

Section 298B applies as if subsections (5) and (6) were omitted.

18 New modification 20.6A

insert

[20.6A] Sections 458 and 459

substitute

458 Transitional—applications for certain grants before commencement day

- (1) This section applies if—
 - (a) a person applies for the grant of a lease under the repealed Act, section 161 (Granting of leases), section 163 (Leases to community organisations) or section 164 (Special leases); and
 - (b) the lease is not granted before commencement day.
- (2) The planning and land authority may grant a lease under—
 - (a) the repealed Act as if the repealed Act had not been repealed; or
 - (b) if the person agrees in writing to a lease under this Act being granted—this Act.
- (3) A lease to which subsection (2) (a) applies—
 - (a) may be registered under the *Land Titles Act 1925* as if the repealed Act had not been repealed; and
 - (b) is taken to have been granted under this Act.
- (4) This section is taken to have commenced on 31 March 2008.

19 Dictionary, new definition of *period of extension*

insert

period of extension, in relation to a lease with a building and development provision, for division 5.7.2 (Applications for extension of time to commence or complete required works)—see section 202.

Endnotes

1 Notification

Notified under the Legislation Act on 15 September 2008.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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