



Australian Capital Territory

# **Gungahlin Drive Extension Authorisation Act 2004**

**A2004-27**

**Republication No 5**

**Effective: 2 February 2009 – 26 May 2009**

Republication date: 2 February 2009

Last amendment made by A2008-37

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Gungahlin Drive Extension Authorisation Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 2 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 2 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Gungahlin Drive Extension Authorisation Act 2004

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R5  
02/02/09

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Australian Capital Territory

# Gungahlin Drive Extension Authorisation Act 2004

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An Act to facilitate the construction of the Gungahlin Drive extension, and for other purposes

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## Preamble

- 1 Canberra is a growing, thriving city.
- 2 It is an important part of planning for the ACT that the needs of all Canberrans are weighed in any decision.
- 3 The Gungahlin Drive extension (the *GDE*), including alternatives to it, has been considered at length by the community and its representatives. Preliminary assessments covering environmental issues have been undertaken as well as an extensive process of public consultation.
- 4 The GDE is designed to provide appropriate access for all Canberrans to and from Gungahlin, and is a crucial link in Canberra's transport network.
- 5 After careful consideration, and weighing the advantages and disadvantages to different community groups, the Legislative Assembly considers that—
  - Canberrans should be able to enter and leave Gungahlin with ease
  - the GDE is the best way to facilitate this
  - work for the GDE should be allowed to proceed
  - further litigation about the GDE is expensive and divisive and does not reflect the wishes of the Canberra community as a whole.
- 6 For these reasons, the Legislative Assembly wishes to facilitate the construction of the GDE, and the carrying out of all works related to the construction of the GDE.

The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

**1 Name of Act**

This Act is the *Gungahlin Drive Extension Authorisation Act 2004*.

**3 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

**5 Meaning of *GDE***

(1) In this Act:

*GDE* means—

- (a) the Gunghalin Drive extension, proposed to run from the Barton Highway to the Glenloch Interchange, substantially as shown in the plans mentioned in the following reports:
  - (i) Gungahlin Drive Extension Document Readiness Report, February 2004 Package A, Project No US 01176C-01, plan numbers 32416A-PP-061, 062, 063, 064, 065 and 066;

- (ii) Gungahlin Drive Extension Document Readiness Report, February 2004 Package B, Project No US 01176C-02, plan numbers 32416B-PP-061 and 062; or

*Note 1* The plans are available for public inspection at Roads ACT, level 7, Macarthur House, 12 Wattle Street, Lyneham ACT 2602.

*Note 2* The plans are also available for public inspection at [www.gde.act.gov.au/download/alignment\\_details.htm](http://www.gde.act.gov.au/download/alignment_details.htm).

- (b) if the Minister approves an amendment of a plan mentioned in paragraph (a)—the Gungahlin Drive extension as described in paragraph (a), as amended.
- (2) The Minister may, in writing, approve an amendment of a plan mentioned in subsection (1), definition of **GDE**, paragraph (a).
  - (3) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **6 Declaration of works for GDE**

- (1) The Minister may, in writing, declare that stated works are—
  - (a) part of the construction of the GDE; or
  - (b) related to the construction of the GDE.

- (2) A declaration is a disallowable instrument.

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

- (3) If the Minister makes a declaration under subsection (1) (a) in relation to works, the works are taken to be part of the construction of the GDE for this Act.
- (4) If the Minister makes a declaration under subsection (1) (b) in relation to works, the works are taken to be related to the construction of the GDE for this Act.



**6A Declaration that land not reserved land etc**

- (1) This section applies to land if—
  - (a) the Minister considers that the land is land where—
    - (i) the GDE, or part of the GDE, is being, is to be or may be constructed; or
    - (ii) works that, under section 6, are part of the construction of the GDE or related to the construction of the GDE are being, are to be or may be carried out; and
  - (b) the land is or may be, apart from this section, reserved land.
- (2) The Minister may, in writing, declare that the land is—
  - (a) not reserved land; or
  - (b) not reserved land for a stated period.
- (3) If the Minister makes a declaration under subsection (2) (a) in relation to land that is reserved land, the land ceases to be reserved land.
- (4) If the Minister makes a declaration under subsection (2) (b) in relation to land that is reserved land, the land is taken not to be reserved land for the period stated in the declaration.
- (5) If the Minister makes a declaration under subsection (2) in relation to land—
  - (a) the Minister may, in writing—
    - (i) state the purposes for which the land may be used, or may be used for a stated period, under the Territory plan; and

- (ii) make any variation of the Territory plan that the Minister considers necessary or desirable to be made to give effect to, or as a consequence of, the making of an instrument under subsection (2) or subparagraph (i); and

*Note* A single instrument may exercise several powers (see Legislation Act, s 49).

- (b) Territory laws apply to the land with the modifications (if any) prescribed under the regulations.
- (6) To remove any doubt—
- (a) the Minister may make, or refuse to make, an instrument under this section in the Minister's absolute discretion; and
  - (b) if the Minister makes a declaration under subsection (2) (a) in relation to land that is a reserved area under the *Nature Conservation Act 1980*, the land ceases to be a reserved area under that Act; and
  - (c) if the Minister makes a declaration under subsection (2) (b) in relation to land that is a reserved area under the *Nature Conservation Act 1980*, the land is taken not to be a reserved area under that Act for the period stated in the declaration; and
  - (d) an instrument under this section may be made despite any other Territory law.

**Examples for par (d)**

1 A declaration under s (2) may be made despite the *Planning and Development Act 2007*, s 50.

2 A variation under s (5) (a) (ii) may be made despite the *Planning and Development Act 2007*, ch 5.

*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).

- (7) An instrument under this section is a disallowable instrument.

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

- (8) Land to which an instrument under this section applies may be identified, described or otherwise prescribed in any way the Minister considers sufficient.

**Example**

Provision may be made by reference to a particular map or plan.

- (9) The Legislation Act, section 47 (5) does not apply to an instrument under this section.

- (10) In this section:

***reserved land***—

(a) means an area of public land reserved under the Territory plan for the purpose of a nature reserve or for another purpose prescribed under the regulations; and

(b) includes part of an area mentioned in paragraph (a).

## **7 Amendments of Land (Planning and Environment) Regulations**

The amendments of the *Land (Planning and Environment) Regulations 1992* made by the *Land (Planning and Environment) Amendment Regulations 2004 (No 1)* SL2004-12 have effect, and are taken to have had effect from the day after their notification day, as if they had been enacted by an Act.

## **8 Environmental assessments for GDE**

- (1) In this section:

***environmental impact statement***—see the *Planning and Development Act 2007*, dictionary.

**GDE** includes works that are part of, or related to, the construction of the GDE (see s 6).

- (2) Nothing in the *Planning and Development Act 2007* is to be taken to require—
  - (a) an environmental impact statement to be prepared or completed for the GDE; or
  - (b) any other action in relation to the GDE to be taken under the *Planning and Development Act 2007*, part 5.6 or chapter 8.
- (3) Subsection (2) applies whether or not an assessment (however described) of the environmental impact of the GDE already undertaken complies with the *Planning and Development Act 2007*.
- (4) This section has effect despite any other Territory law, whether passed before or after the commencement of this Act.

## **9 Future authorisations relating to the GDE**

- (1) In this section:

**authorisation** means—

- (a) an approval, licence, permit or consent (however described) required or allowed to be given under a relevant law; or
- (b) anything else prescribed under the regulations that is required or allowed to be given under a relevant law.

**in relation to** the GDE includes—

- (a) in relation to works that are part of the construction of the GDE under section 6; and
- (b) in relation to works that are related to the construction of the GDE under section 6.

**relevant decision-maker**, for an authorisation required or allowed to be given under a relevant law, means the person authorised under the relevant law to give the authorisation.

**relevant law** means each of the following:

- (a) the *Environment Protection Act 1997*;
  - (b) the *Nature Conservation Act 1980*;
  - (c) the *Planning and Development Act 2007*;
  - (d) a Territory law prescribed under the regulations.
- (2) The Minister may, in the Minister's absolute discretion and in writing, give any authorisation in relation to the GDE.
- (3) The authorisation may be given on conditions decided by the Minister, in the Minister's absolute discretion.

**Example**

The Minister may impose stated environmental controls on the authorisation.

*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).

- (4) To remove any doubt and without limiting subsection (2) or (3), in making a decision under this section in relation to an authorisation required or allowed to be given under a relevant law, the Minister may have regard to (but is not required to have regard to, consider or otherwise comply with) any requirement, precondition or other provision relating to the making of a decision of that kind under a relevant law.

**Example**

In deciding an application under the *Planning and Development Act 2007*, s 162 for a development approval in relation to the GDE, the Minister is not required to consider any comment by a referral entity to which the application has been referred under the *Planning and Development Act 2007*, div 7.3.3 (Referral of development applications). However, the Minister may consider some or all of those comments if the Minister chooses to do so.

- (5) The Minister may give an authorisation (the **later authorisation**) under this section in relation to a matter whether or not the relevant

decision-maker has already given an authorisation under the relevant law in relation to the matter.

- (6) However, if the relevant decision-maker has already given an authorisation (the *original authorisation*) under the relevant law in relation to the matter, the original authorisation is, by force of this subsection, taken to have been revoked by the giving of the later authorisation.
- (7) If the Minister gives an authorisation under this section, the relevant law and all other Territory laws apply in relation to the authorisation as if—
  - (a) the Minister were the relevant decision-maker for the authorisation; and
  - (b) the authorisation were given under this Act and the relevant law; and
  - (c) all necessary changes, and any changes prescribed under the regulations, were made.
- (8) This section has effect despite any other Territory law, whether passed before or after the commencement of this Act, but subject to section 10.
- (9) An authorisation under subsection (2) is a disallowable instrument.

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

## **10 Standing to bring proceeding in relation to authorisations**

- (1) In this section:  
*authorisation* means a section 9 authorisation.
- (2) The giving of an authorisation does not create a right, other than a right given under the authorisation to—
  - (a) the person (the *recipient*) to whom the authorisation is given;  
or

- (b) anyone acting under the authorisation with the recipient's authority.
- (3) Accordingly, a decision to give (or not give) an authorisation is final and conclusive.
- (4) The imposition of a condition on an authorisation does not create a right in anyone other than the Territory.
- (5) Accordingly, a decision to impose (or not to impose) a condition on an authorisation is final and conclusive.
- (6) To remove any doubt and without limiting subsections (3) and (5), the following provisions do not apply to decisions mentioned in those subsections:
  - (a) the *Environment Protection Act 1997*, part 14 (Notification and review of decisions);
  - (b) the *Nature Conservation Act 1980*, part 12 (Notification and review of decisions);
  - (c) the *Planning and Development Act 2007*, chapter 13 (Review of decisions);
  - (d) a Territory law relating to the review of decisions that is prescribed under the regulations.
- (7) This section has effect despite any other Territory law, whether passed before or after the commencement of this Act.
- (8) To remove any doubt, a right under subsection (2) means any right or interest, whether public or private.

## **11 Time limit for bringing proceedings about authorisations**

- (1) A person must not bring a court proceeding in relation to a section 9 authorisation unless the proceeding is brought within 21 days after the day the authorisation is notified under the Legislation Act.

- (2) This section has effect despite any other Territory law, whether passed before or after the commencement of this Act.

## **12 Required authorisations not given**

- (1) This section applies if an authorisation required in relation to the GDE, or to works that are part of, or related to the construction of the GDE, has not been applied for or otherwise sought.

*Note* For works that are part of, or related to, the construction of the GDE, see s 6.

- (2) A person must not bring a court proceeding alleging, in substance or effect, that the authorisation has not been given unless the person has given the Minister written notice of the allegation at least 14 days before the day the person brings the proceeding.
- (3) This section has effect despite any other Territory law, whether passed before or after the commencement of this Act.
- (4) In this section:

*authorisation*—see section 9 (1).

## **13 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **14 Expiry of Act**

- (1) This Act expires—
- (a) 5 years after the day it commences; or
  - (b) if another date is prescribed under the regulations—on the date prescribed.
- (2) This Act is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.



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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACAT
- change
- in relation to
- must (see s 146)
- under.

*court* includes the ACAT.

*GDE*—see section 5.

*give* includes grant and issue (however described).

*section 9 authorisation* means an authorisation under section 9 (2).

*works* includes the following:

- (a) the construction, alteration, extension or demolition of buildings or structures;
- (b) landscaping;
- (c) tree-felling;
- (d) excavations;
- (e) the installation, or relocation, of utilities;
- (f) earthworks;
- (g) any other activity prescribed under the regulations.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Gungahlin Drive Extension Authorisation Act 2004 A2004-27**

notified LR 26 May 2004

s 1, s 2 commenced 26 May 2004 (LA s 75 (1))

remainder commenced 27 May 2004 (s 2)

*Note* Act exp 27 May 2009 (s 14 (1) (a)) or on another date prescribed by regulation (s 14 (1) (b)) (LA s 88 declaration applies)

as amended by

#### **Gungahlin Drive Extension Authorisation Amendment Act 2004 A2004-37**

notified LR 1 July 2004

s 1, s 2 commenced 1 July 2004 (LA s 75 (1))

remainder commenced 2 July 2004 (s 2)

#### **Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.26**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.26 commenced 2 June 2005 (s 2 (1))

#### **Planning and Development (Consequential Amendments) Act 2007 A2007-25 sch 1 pt 1.15**

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.15 commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

#### **ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.51**

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.51 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

## Endnotes

### 5 Earlier republications

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**Declaration that land not reserved land etc**

s 6A ins A2004-37 s 4  
am A2005-20 amdt 3.163; A2007-25 amdt 1.66

**Environmental assessments for GDE**

s 8 sub A2007-25 amdt 1.67

**Future authorisations relating to the GDE**

s 9 am A2004-37 s 5; A2007-25 amdt 1.68, amdt 1.69

**Standing to bring proceeding in relation to authorisations**

s 10 am A2004-37 s 6; A2007-25 amdt 1.70; A2008-37 amdt 1.225

**Administrative Decisions (Judicial Review) Act 1989, sch 1, new clause 7**

s 15 om LA s 89 (3)

**Land (Planning and Environment) Act 1991, section 229B (6) (c)**

s 16 om LA s 89 (3)

**Land (Planning and Environment) Act 1991, section 231 (1)**

s 17 om LA s 89 (3)

**Dictionary**

dict am A2008-37 amdt 1.226  
def *court* sub A2008-37 amdt 1.227

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 27 May 2004	27 May 2004– 1 July 2004	not amended	new Act
R2 2 July 2004	2 July 2004– 1 June 2005	A2004-37	amendments by A2004-37

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R3 2 June 2005	2 June 2005– 30 Mar 2008	A2005-20	amendments by A2005-20
R4 31 Mar 2008	31 Mar 2008– 1 Feb 2009	A2007-25	amendments by A2007-25

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