



Australian Capital Territory

Planning and Development Amendment Act 2009

A2009-30

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Australian Capital Territory

Planning and Development Amendment Act 2009

A2009-30

An Act to amend the *Planning and Development Act 2007*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development Amendment Act 2009*.

2 Commencement

This Act commences on the 7th day after its notification day.

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

Part 2 Planning and Development Act 2007

3 Legislation amended—pt 2

This part amends the *Planning and Development Act 2007*.

4 Relationship between development proposals and development applications New section 113 (3)

insert

- (3) Subsection (2) is subject to section 123 (Impact track applicability).

5 Application of assessment tracks to development proposals Section 114 (2)

omit

6 New section 131A

in division 7.2.5, insert

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 (Effect of territory plan), section 65 (Effect of draft plan variations publicly notified) 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—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).

7 Applications to amend development approvals Section 197 (1)

substitute

- (1) This section applies if—
- (a) the planning and land authority has given development approval for a development proposal; and
 - (b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the development approval; and
 - (c) section 198C (When development approvals do not require amendment) does not apply to the changed development proposal.

**8 Deciding applications to amend development approvals
Section 198 (4)**

substitute

- (4) To remove any doubt, only the application for the amendment need be publicly notified if—
- (a) public notification of the proposed development is required under the assessment track that applies to the proposed development; and
 - (b) the requirement to publicly notify the application is not waived under section 198B.

9 New sections 198A to 198C

in division 7.3.11, insert

198A Exception to referral requirement under s 198 (1) (b)

- (1) This section applies if—
- (a) a development application was referred to an entity under division 7.3.3 (Referral of development applications); and
 - (b) an application for amendment of the development approval to which the development application related must be referred to the entity under section 198 (1) (b); and

Note 1 Under s 198 (1) (b), an application for amendment is deemed to be an application for development approval, which would ordinarily require the application to be referred to relevant entities under div 7.3.3.

Note 2 For the referral requirement, see s 145.

- (c) the planning and land authority is satisfied that the application for amendment does not affect any part of the development approval in relation to which the entity made a comment.

- (2) Despite section 198 (1) (b), the planning and land authority need not refer the application for amendment to the entity.

198B Waiver of notification requirement under s 198 (1) (b)

Despite section 198 (1) (b), the planning and land authority may waive the requirement to publicly notify an application for amendment of a development approval if satisfied that—

- (a) no-one other than the applicant will be adversely affected by the amendment; and
- (b) the environmental impact caused by the amendment will do no more than minimally increase the environmental impact of the development.

Note For the notification requirement, see s 146.

198C When development approvals do not require amendment

- (1) This section applies if—
- (a) the planning and land authority has given development approval for a development proposal; and
- (b) the development proposal changes (the *changed development proposal*) so that it is not covered by the development approval; and
- (c) a circumstance prescribed by regulation under subsection (3) applies.
- (2) The changed development proposal is taken to be in accordance with the development approval.
- (3) A regulation may prescribe circumstances for subsection (1) (c).

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 The development must also comply with the lease for the land on which it is carried out.

**10 Development other than use lawful when begun
Section 203 (1) (c)**

substitute

- (c) after the person undertakes, or begins, the development, the development stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).

**11 Use as development lawful when begun
Section 204 (1) (c)**

substitute

- (c) the use stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).

**12 Payment for leases
Section 246 (2) (c) and (d)**

substitute

- (c) a lease mentioned in section 246A (Payment for adjoining concessional leases); or
- (d) a further lease granted under section 254 (Grant of further leases); or
- (da) a lease mentioned in section 461A (Payment for leases to community organisations); or

13 Section 246 (3) (b) and (c)

substitute

- (b) the entity provides another component (a ***non-monetary component***) comprising—
 - (i) infrastructure, or other work, in relation to the lease or another lease; or
 - (ii) 1 or more of the following under a deed or agreement with the Territory or a Territory authority:
 - (A) goods;
 - (B) services;
 - (C) works; and
- (c) the total value of the monetary component and the non-monetary component is not less than the market value of the lease.

14 New section 246 (3A)

insert

- (3A) To remove any doubt, for a lease prescribed for subsection (2) (e), an entity pays the amount prescribed by regulation for the lease if—
 - (a) the entity pays less than the amount prescribed for the lease (the ***monetary component***); and
 - (b) the entity provides another component (a ***non-monetary component***) comprising—
 - (i) infrastructure, or other work, in relation to the lease or another lease; or
 - (ii) 1 or more of the following under a deed or agreement with the Territory or a Territory authority:
 - (A) goods;

- (B) services;
- (C) works; and
- (c) the total value of the monetary component and the non-monetary component is not less than the amount prescribed for the lease.

15 New section 246A

insert

246A Payment for adjoining concessional leases

- (1) This section applies if—
 - (a) a person applies for the grant of a lease (a *new lease*) (whether before or after 31 March 2008); and
 - (b) the new lease adjoins another lease (an *original lease*) granted to the person; and
 - (c) the original lease is a concessional lease.
- (2) The planning and land authority may grant the new lease on payment of an amount worked out in the way the amount payable for the original lease was worked out.
- (3) If the amount payable for the original lease was worked out under the repealed Act, the repealed Act applies to working out the amount payable for the new lease as if the repealed Act had not been repealed.
- (4) In this section:
repealed Act means the *Land (Planning and Environment) Act 1991*.

**16 Grant of further leases
Section 254 (1) (e)**

substitute

- (e) if the further lease is a rural lease—
- (i) if the further lease is a rental lease—the amount of rent determined under section 280 is payable under the further lease; or
 - (ii) in any other case—
 - (A) the amount determined under section 280 for the grant of the further lease is paid; or
 - (B) if the determination under section 280 for the grant of the further lease provides for the payment of the amount by instalments—any instalment required, under the determination, to be paid before the further lease is granted is paid; and

**17 Grant of further lease includes authorised use
New section 255 (4)**

insert

- (4) To remove any doubt, a further lease may include provisions that are different from 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).

18 Section 280*substitute***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) (Grant of further leases).
- (2) A determination for section 254 (1) (e) (ii) may provide that the amount payable for the grant of the lease is payable in stated instalments.
- (3) If the Minister has not made a determination under subsection (1), the amount that is taken to have been determined for a rural lease is the market value of the lease, payable as a lump sum.
- (4) A determination is a disallowable instrument.

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

**19 Application for extension of time to commence or complete building and development
Section 298A (3) to (5)***substitute*

- (3) The application must be accompanied by—
 - (a) the most recent assessment notice for rates for the land; and
 - (b) the amount, or the total of the amounts, (the *required fee*), for each year, or part year, of the period of extension of time sought is worked out as follows:

$$A \times \frac{D}{365} \times B$$

Example

Frank applies for an extension of time for 1 October 2009 to 31 December 2011 (2 years and 92 days). In Frank's case, the *Planning and Development Regulation 2008* prescribes A in the above formula to be 1 for the 1st year, 2 for the 2nd year and 3 for the 3rd year of the period of extension. The fee is worked out using the following formula: $[1 \times 365/365 \times B] + [2 \times 365/365 \times B] + [3 \times 92/365 \times B]$.

Note 1 The required fee may be waived under the *Financial Management Act 1996*, s 131.

Note 2 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).

- (4) However, if an extension (the *earlier extension*) of time has been approved, in working out the required fee for a further extension—
- (a) the formula for working out the required fee applies as if the period of extension included each earlier extension, other than—
 - (i) an earlier extension for which the required fee was waived under the *Financial Management Act 1996*, section 131; or
 - (ii) an earlier extension prescribed by regulation; and
 - (b) the required fee is reduced by—
 - (i) the amount of the required fee paid for each earlier extension; and
 - (ii) if part of the required fee was waived under the *Financial Management Act 1996*, section 131 for an earlier extension—the amount waived.

(5) In this section:

A is the figure, not more than 5, prescribed by regulation for the relevant year of the period of extension.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

B is the amount of rates payable in relation to the land under the *Rates Act 2004*, for the financial year in which the application is made.

D is the lesser of—

- (a) 365; and
- (b) the number of days for which the extension is sought in the relevant year.

period of extension means—

- (a) the period of extension applied for under subsection (2); or
- (b) if an application seeks extensions for 2 or more building and development provisions in a lease—the longest of the extensions sought.

**20 Extension of time to commence or complete building and development
Section 298B (5) and (6)**

omit

21 New section 312A

in part 9.12, insert

312A Conversion of Commonwealth leases

- (1) This section applies if—
 - (a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1), that specified land in the Territory is national land, is amended or repealed; and
 - (b) because of the amendment or repeal of the declaration, the land ceases to be national land; and
 - (c) a lease granted under a prescribed law or over all or part of the land is in force immediately before the amendment or repeal of the declaration.
- (2) The lease is taken to be granted under this Act on the amendment or repeal of the declaration.
- (3) In this section:

prescribed law means—

 - (a) any of the following laws in effect before the law was repealed:
 - (i) the *Leases Ordinance 1918*;
 - (ii) the *Leases (Special Purposes) Ordinance 1925*;
 - (iii) the *City Area Leases Ordinance 1936*; or
 - (b) a law mentioned in paragraph (a) as in effect under the *National Land Ordinance 1989* (Cwlth).

- (4) If a lease would have been taken to have been granted under this Act but for the amendment or repeal of a declaration happening before the commencement of this section, the lease is taken to have been granted under this Act on the later of—
- (a) the amendment or repeal of the declaration; or
 - (b) 31 March 2008.
- (5) Subsection (4) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (4) and (5) and this subsection expire on the day after this section commences.

22 **Expiry—ch 15**
Section 431 (2) (a), (b) and (c)

substitute

- (a) section 446 (Power to make lease and development conditions);
- (b) section 446A (Transitional—application for development approval if lease and development condition);
- (c) section 458 (Transitional—applications for certain grants before commencement day);
- (d) section 467 (Transitional—plans of management).

**23 Transitional—applications lodged before commencement day
Section 442 (1)**

substitute

- (1) This section applies if—
- (a) before the commencement day, a person applied for—
 - (i) an approval under the repealed Act, section 226 (Application to undertake development); or
 - (ii) an amendment of an approval under the repealed Act, section 247 (Minor amendments); and
 - (b) immediately before the commencement day, the planning and land authority had not finally decided the application.

24 New section 442 (4)

insert

- (4) In this section:
- finally decided***—an application for approval under the repealed Act, section 226 is ***finally decided*** if—
- (a) the period for making an application under the repealed Act, section 246 for reconsideration of the planning and land authority’s decision on the application for approval has ended and no application for reconsideration has been made; or
 - (b) if an application under the repealed Act, section 246 for reconsideration of the planning and land authority’s decision on the application for approval is made within the reconsideration period—
 - (i) the authority has made a decision on the application for reconsideration under the repealed Act, section 246A (1) (b); or

- (ii) the authority is taken to have confirmed the original decision under the repealed Act, section 246B.

reconsideration period means the period within which an application must be made under the repealed Act, section 246 (3).

25 New section 442C

insert

442C Transitional—development application lodged on or after commencement day for estate development plan given before commencement day

- (1) This section applies in relation to a development application if—
 - (a) the application is lodged on or after the commencement day but not later than 6 months after the commencement day; and
 - (b) the application relates to, or incorporates, a document that the planning and development authority is satisfied is an estate development plan; and
- Note* For considerations for when something is an estate development plan, see s (5).
- (c) the estate development plan was given to the planning and land authority before the commencement day for consideration on the basis that the plan might form the basis of a development application.
- (2) The development application may be made, and decided, in accordance with the repealed Act (including the territory plan and any other instruments under the repealed Act) as if that Act had not been repealed.
 - (3) If the development application is approved, the approval—
 - (a) is taken to be a development approval under this Act (including for section 96) unless otherwise provided by subsection (4); and

- (b) unless extended under this Act, continues in force until the time when it would have ended under the repealed Act; and
 - (c) is taken to relate to a proposal in the merit track for section 198 (2) (Deciding applications to amend development approvals).
- (4) Also, the repealed Act (including the territory plan and any other instruments under the repealed Act), and not this Act, applies in relation to any application for reconsideration, or for review, of the decision on a development application to which this section applies.
- (5) In deciding whether a document is an estate development plan, the planning and land authority must consider whether—
- (a) the document is identified, by itself or another document, as an estate development plan; and
 - (b) at the time it was given to the authority, the document appeared to be a document to which the government publication *Guidelines for Estate Development Plans—Greenfield Land Subdivision—September 2007*, published on the public website maintained by the authority, applied; and
 - (c) the document includes plans, or a proposal, for the subdivision of land and related infrastructure development.

Examples—related infrastructure

sewers, footpaths, street lighting

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).

- (6) For this section, an estate development plan (the *final plan*) in relation to a development application is taken to have been given to the planning and land authority for consideration if—
- (a) an estate development plan (the *initial plan*) was given to the authority; and

- (b) the final plan is identifiable as a revised version of the initial plan.

26 Section 444

substitute

444 Transitional—approvals under repealed Act

- (1) This section applies if—
- (a) immediately before the commencement day, a person had an approval under the repealed Act, part 6 (Approvals and orders); or
 - (b) the planning and land authority gives an approval under the repealed Act after the commencement day.

Note The repealed Act applies to applications for approvals not decided immediately before the commencement day (see s 442).

- (2) The approval—
- (a) is taken to be a development approval under this Act; and
 - (b) unless extended under this Act, continues in force until the time when it would have ended under the repealed Act; and
 - (c) for the Act, section 198 (2) (Deciding applications to amend development approvals) is taken to relate to a proposal in the merit track.
- (3) If the application to which the approval relates was not required to be publicly notified under the repealed Act, an application under this Act for the amendment of the approval need not be publicly notified under this Act.

Note If an application for reconsideration had not been finally decided by the planning and land authority under the repealed Act, the repealed Act (including rights of ACAT review under the repealed Act) continues to apply to the application (see s 442).

444A Commencement of development approvals under repealed Act

- (1) This section applies to each of the following development approvals unless the development approval commenced before the commencement day:
 - (a) a development approval mentioned in section 442 (Transitional—applications lodged before commencement day);
 - (b) a development approval mentioned in section 442B (Transitional—application for review lodged after commencement day for application lodged before commencement day);
 - (c) a development approval mentioned in section 442C (Transitional—development application lodged on or after commencement day for estate development plan given before commencement day);
 - (d) a development approval mentioned in section 443 (Transitional—applications for review not finally decided);
 - (e) a development approval mentioned in section 444 (Transitional—approvals under repealed Act).
- (2) Despite anything else in this part, the development approval commences, or is taken to have commenced, when the development approval would have commenced under the repealed Act if the repealed Act had not been repealed.

**27 Transitional—approvals in force with uncommenced extension
Section 445 (2) (a)**

substitute

- (a) is taken to be a development approval under this Act; and

28 Sections 446 and 446A

substitute

446 Power to make lease and development conditions

- (1) This section applies to land in relation to which—
- (a) an earlier application has been made and earlier approval given, whether the earlier approval is given before or after the commencement day; or
 - (b) development approval has been given under section 442C.

Note Under s 442C, if an estate development plan was considered before commencement of this Act, the repealed Act applies to the application for development approval.

- (2) On and after the commencement day, the planning and land authority may make a lease and development condition in relation to the land, or part of the land.
- (3) In this section:

defined land means land identified in the old territory plan for the repealed Act, subdivision 2.3.4.

earlier application means an application for development approval if the application—

- (a) was made under the repealed Act before the commencement day; and
- (b) relates to land that was defined land when the application was made; and
- (c) is for approval to subdivide land, whether or not it is also for approval of something else.

earlier approval means development approval under the repealed Act of an earlier application.

lease and development condition means a lease and development condition that could have been made under the repealed Act, but for its repeal.

old territory plan means the Territory Plan under the repealed Act.

- (4) This section is a provision to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) does not apply.
- (5) This section expires 5 years after the commencement day.

446A Transitional—application for development approval if lease and development condition

- (1) This section applies to a development application if the application is—
 - (a) not in the code track; and
 - (b) for development on land to which—
 - (i) a lease and development condition made under section 446 applies; or
 - (ii) a lease and development condition made under the repealed Act applied immediately before the commencement day.
- (2) The planning and land authority, or Minister, must consider the lease and development condition in making a decision under section 162 (Deciding development applications) in relation to the development application if—
 - (a) the territory plan provides that the condition may vary the plan; and
 - (b) the condition is relevant to assessing the application and granting the approval.
- (3) This section expires 5 years after the commencement day.

29 **Transitional—extended meaning of *development approval*—s 199**
Section 447

omit

30 **Section 458**

substitute

458 **Transitional—applications for certain grants before commencement day**

- (1) This section applies if—
 - (a) a person applied 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 was not granted before the commencement day.
- (2) The planning and land authority may grant the 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 granted under subsection (2) (a)—
 - (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 expires 5 years after the commencement day.

**31 Transitional—applications for certain grants decided after 6 months
Section 459**

omit

32 New section 459A

insert

459A Transitional—contracts before commencement day to grant leases

- (1) This section applies if—
- (a) by contract made before the commencement day, the land development agency or planning and land authority agreed with someone else (the *third party*) that a lease would be granted under the repealed Act; and
 - (b) the lease was not granted before the commencement day.

Examples—par (a)

- 1 The conditions of a land auction require a lease to be granted under the repealed Act.
- 2 Under a deed of agreement with a developer for the development of land the planning and land authority agrees that the holding leases for the development, and the individual leases for the developed land, will be granted in the form of a lease under the repealed Act.

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).

- (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 third party agrees in writing to a lease under this Act being granted—this Act.

- (3) A lease granted under subsection (2) (a)—
- (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.

33 **New section 461A**

insert

461A **Payment for leases to community organisations**

- (1) This section applies if—
- (a) after the commencement day a person applies for the grant of a lease; and
 - (b) if the application had been made under the repealed Act before its repeal—the planning and land authority could have granted the lease under the repealed Act, section 163 (Leases to community organisations).
- (2) The planning and land authority may grant the lease on payment of an amount worked out under the repealed Act, section 163 (2) as if the repealed Act had not been repealed.

Part 3 Planning and Development Regulation 2008

34 Legislation amended—pt 3

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

35 Modification of Act, ch 15—Act, s 429 Section 410

omit

36 Modification of Act Schedule 20

omit

37 Dictionary, definition of *period of extension*

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 August 2009.

2 Notification

Notified under the Legislation Act on 25 September 2009.

3 Republications of amended laws

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

I certify that the above is a true copy of the Planning and Development Amendment Bill 2009, which was passed by the Legislative Assembly on 15 September 2009.

Clerk of the Legislative Assembly

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