

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Caroline Le Couteur)

Planning Legislation Amendment Bill 2020

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Planning and Development Act 2007	
4	Inspection etc of public register and associated documents Section 29 (1)	3
5	Public consultation—notification New section 63 (1) (ca)	3

J2020-295

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

	Page	
6	Section 64	4
7	Effect of draft plan variations publicly notified Section 65 (1)	4
8	Section 65 (2)	5
9	Public notice of documents given to Minister Section 70 (1)	5
10	Section 71	5
11	Effect of draft plan variations given to Minister Section 72 (1)	6
12	Committee fails to report promptly on draft plan variations Section 75 (1) (c) (i) and (ii)	6
13	Merit track—considerations when deciding development approval New section 120 (ga)	7
14	Impact track—considerations when deciding development approval New section 129 (ga)	7
15	New sections 141A and 141B	8
16	Section 142	9
17	Direction that development applications be referred to Minister New section 158 (1A)	10
18	No decision on application unless consideration in public interest Section 261 (4)	10
19	Regulation-making power New section 426 (6)	11
20	Reviewable decisions, eligible entities and interested entities Schedule 1, item 4, column 2, new note	11
21	Schedule 1, item 6, column 2, new note	11
22	Schedule 1, item 15, column 2	11
23	Development proposals requiring EIS—areas and processes Schedule 4, part 4.3, new item 9	12
24	Dictionary, new definition of <i>greenhouse gas emissions</i>	12
Part 3 Planning and Development Regulation 2008		
25	Prescribed development proposal for community consultation—Act, s 138AE Section 20A (2) (b)	13
26	Section 20B	13

Contents

		Page
27	Public notification period—Act, s 157, def <i>public notification period</i> , par (a) New section 28 (2)	14
Part 4	Residential Tenancies Act 1997	
28	Energy efficiency rating—advertising Section 11A (1) (b)	15
29	Section 11A (7), definition of <i>existing energy efficiency rating</i>	15

2020

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Caroline Le Couteur)

Planning Legislation Amendment Bill 2020

A Bill for

An Act to amend legislation about planning, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning Legislation Amendment Act 2020*.

4 **2 Commencement**

5 (1) This Act (other than section 4 and part 4) commences on the day after
6 its notification day.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 (2) Section 4 commences 2 years after this Act's notification day.

10 (3) Part 4 commences 6 months after this Act's notification day.

11 **3 Legislation amended**

12 This Act amends the following legislation:

- 13 • *Planning and Development Act 2007*
14 • *Planning and Development Regulation 2008*
15 • *Residential Tenancies Act 1997*.

1 **Part 2** **Planning and Development**
2 **Act 2007**

3 **4 Inspection etc of public register and associated**
4 **documents**
5 **Section 29 (1)**

6 *substitute*

- 7 (1) The planning and land authority must ensure that—
- 8 (a) during business hours, the public register and associated
9 documents are available for public inspection; and
- 10 (b) the following are available on the authority website:
- 11 (i) the public register information mentioned in
12 section 28 (1) (a), (b) and (c)—indefinitely;
- 13 (ii) the associated documents for a development application
14 mentioned in section 30 (1) (a), (b), (c), (d), (f), (g)
15 and (r) (i)—for the period of 5 years from the day the
16 development application is publicly notified under
17 division 7.3.4;
- 18 (iii) the associated documents for a development application
19 mentioned in section 30 (1) (o), (q) and (r) (ii)—for the
20 period of 5 years from the day the notice of decision on the
21 development application is given under division 7.3.8.

22 **5 Public consultation—notification**
23 **New section 63 (1) (ca)**

24 *insert*

- 25 (ca) stating where further information about the draft plan variation
26 can be found; and

6 Section 64

substitute

64 Draft plan variation—interim effect declaration

- (1) The planning and land authority may—
- (a) make a declaration that a draft plan variation or part of a draft plan variation has interim effect for section 65 (an *interim effect declaration*); and
 - (b) state a maximum period, not longer than 1 year, during which the draft plan variation, or part, is to have interim effect.
- (2) An interim effect 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 planning and land authority makes a declaration under subsection (1), the consultation notice for the draft plan variation under section 63 must include a statement about—
- (a) the interim effect declaration; and
 - (b) the effect of section 65; and
 - (c) if the declaration states a maximum period—the maximum period.

**7 Effect of draft plan variations publicly notified
Section 65 (1)**

omit

consultation notice

substitute

declaration under section 64

8 Section 65 (2)

omit

consultation notice

substitute

declaration

**9 Public notice of documents given to Minister
Section 70 (1)**

substitute

(1) The planning and land authority must prepare a notice (a *public availability notice*) stating—

- (a) that the documents mentioned in section 69 (2) (including the draft plan variation) are available for public inspection; and
- (b) where further information about the draft plan variation can be found.

10 Section 71

substitute

71 Public availability notice—interim effect declaration

(1) The planning and land authority may make a declaration that a draft plan variation or part of a draft plan variation has interim effect for section 72 (an *interim effect declaration*).

(2) An interim effect declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- 1 (3) If the planning and land authority makes an interim effect declaration,
2 the public availability notice for the draft plan variation under
3 section 70 must include a statement about the—
4 (a) interim effect declaration; and
5 (b) effect of section 72.

6 **11 Effect of draft plan variations given to Minister**
7 **Section 72 (1)**

- 8 *omit*
9 public availability notice
10 *substitute*
11 declaration under section 71

12 **12 Committee fails to report promptly on draft plan**
13 **variations**
14 **Section 75 (1) (c) (i) and (ii)**

- 15 *substitute*
16 (i) if the Minister's referral is made within the period of
17 4 months before a general election of members of the
18 Legislative Assembly—
19 (A) if the Minister stated a period under section 73 (4)—
20 that period of time commencing on the first sitting
21 day of the Assembly after the general election; or
22 (B) in any other case—6 months after the first sitting day
23 of the Assembly after the general election; or
24 (ii) in any other case—
25 (A) if a period was stated by the Minister under
26 section 73 (4)—that period; or

(B) in any other case—6 months after the day the variation is referred to the committee.

13 Merit track—considerations when deciding development approval
New section 120 (ga)

insert

(ga) the probable impact of the proposed development on the ability of the ACT to meet—

(i) the greenhouse gas emissions ACT target mentioned in the *Climate Change and Greenhouse Gas Reduction Act 2010*, section 6; and

(ii) the interim target and any additional interim targets mentioned in the *Climate Change and Greenhouse Gas Reduction Act 2010*, section 7;

14 Impact track—considerations when deciding development approval
New section 129 (ga)

insert

(ga) the probable impact of the proposed development on the ability of the ACT to meet—

(i) the greenhouse gas emissions ACT target mentioned in the *Climate Change and Greenhouse Gas Reduction Act 2010*, section 6; and

(ii) the interim target and any additional interim targets mentioned in the *Climate Change and Greenhouse Gas Reduction Act 2010*, section 7;

15 New sections 141A and 141B

insert

141A Further information changes application—further referral by authority

- (1) This section applies if—
- (a) the planning and land authority receives further information in relation to a development application under section 141; and
 - (b) the information substantively changes the application; and
 - (c) before the change—
 - (i) the application was referred to an entity under—
 - (A) section 127A (Impact track—referral of matter protected by the Commonwealth to Commonwealth); or
 - (B) section 147A (Development applications involving protected matter to be referred to conservator); or
 - (C) section 148 (Some development applications to be referred); or
 - (ii) the design review panel provided design advice about the development proposal under section 138AM.
- (2) The planning and land authority may—
- (a) if subsection (1) (c) (i) applies—refer the changed application again to the entity; or
 - (b) if subsection (1) (c) (ii) applies—give the design review panel an opportunity to provide further design advice about the development proposal.

1 **141B Further information changes application—public**
2 **notification requirements**

- 3 (1) This section applies if—
- 4 (a) the planning and land authority receives further information in
5 relation to a development application under section 141; and
 - 6 (b) the information substantively changes the application; and
 - 7 (c) the application has been publicly notified.
- 8 (2) The planning and land authority must publicly notify the changed
9 application under division 7.3.4 (Public notification of development
10 applications and representations) unless the authority is satisfied
11 that—
- 12 (a) no-one other than the applicant will be adversely affected by the
13 change; and
 - 14 (b) the environmental impact caused by the approval of the change
15 will do no more than minimally increase the environmental
16 impact of the development.

17 **16 Section 142**

18 *substitute*

19 **142 Not providing or providing false or misleading**
20 **information—development applications**

- 21 (1) This section applies if the applicant for a development application—
- 22 (a) includes false or misleading information in the application; or
 - 23 (b) is asked for further information in relation to the application by
24 the planning and land authority under section 141 and the
25 applicant—
 - 26 (i) provides false or misleading information in response to the
27 request; or

1 (ii) does not provide some or all of the information in
2 accordance with the request.

3 (2) The planning and land authority may refuse the application under
4 section 162.

5 *Note* It is also an offence to make a false or misleading statement, give false or
6 misleading information or produce a false or misleading document (see
7 [Criminal Code](#), pt 3.4).

8 **17 Direction that development applications be referred to**
9 **Minister**
10 **New section 158 (1A)**

11 *insert*

12 (1A) A direction is a disallowable instrument.

13 *Note* A disallowable instrument must be notified, and presented to the
14 Legislative Assembly, under the [Legislation Act](#).

15 **18 No decision on application unless consideration in public**
16 **interest**
17 **Section 261 (4)**

18 *substitute*

19 (4) A decision that it is in the public interest to consider the development
20 application is a disallowable instrument.

21 *Note* A disallowable instrument must be notified, and presented to the
22 Legislative Assembly, under the [Legislation Act](#).

23 (5) A decision that it is not in the public interest to consider the
24 development application is a notifiable instrument.

25 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **19 Regulation-making power**
2 **New section 426 (6)**

3 *insert*

- 4 (6) A regulation made for schedule 1, item 4 or item 6 to exempt a
5 decision to approve a development application from third-party
6 ACAT review is not effective to exempt a decision if the decision
7 permits the removal of a tree that is a registered tree under the *Tree*
8 *Protection Act 2005*.

9 **20 Reviewable decisions, eligible entities and interested**
10 **entities**
11 **Schedule 1, item 4, column 2, new note**

12 *insert*

13 *Note 2* A decision to approve an application that permits the removal of a tree
14 that is a registered tree under the *Tree Protection Act 2005* may not be
15 exempted by regulation from third-party ACAT review (see s 426 (6)).

16 **21 Schedule 1, item 6, column 2, new note**

17 *insert*

18 *Note* A decision to approve an application that permits the removal of a tree
19 that is a registered tree under the *Tree Protection Act 2005* may not be
20 exempted by regulation from third-party ACAT review (see s 426 (6)).

21 **22 Schedule 1, item 15, column 2**

22 *substitute*

decision under s 211H to grant, or refuse to grant,
an EIS exemption

1 **23** **Development proposals requiring EIS—areas and**
2 **processes**
3 **Schedule 4, part 4.3, new item 9**

4 *insert*

9	proposal that is likely to result in greenhouse gas emissions of more than 1 kt per annum
---	---

5 **24** **Dictionary, new definition of *greenhouse gas emissions***

6 *insert*

7 *greenhouse gas emissions*—see the *Climate Change and*
8 *Greenhouse Gas Reduction Act 2010*, dictionary.

1 **Part 3** **Planning and Development**
2 **Regulation 2008**

3 **25 Prescribed development proposal for community**
4 **consultation—Act, s 138AE**
5 **Section 20A (2) (b)**

6 *after*

7 schedule 1B

8 *insert*

9 other than a development proposal that is less than 100m from a
10 dwelling

11 **26 Section 20B**

12 *substitute*

13 **20B Consultation with design review panel—Act, s 138AL**

14 The following development proposals are prescribed:

15 (a) a proposal for a building with 5 or more storeys;

16 (b) a proposal—

17 (i) to increase the floorspace of a shop by more than 2 000m²;
18 and

19 (ii) that is fully or partly located within 1 or more of the
20 following:

21 (A) a residential zone;

22 (B) a commercial zone;

23 (C) a community facility zone;

1 (D) a parks and recreation zone.

2 *Note* **Zone** means a zone identified in the [territory plan](#) (see [Act](#),
3 dict).

4 **27 Public notification period—Act, s 157, def *public***
5 ***notification period*, par (a)**
6 **New section 28 (2)**

7 *insert*

8 (2) In this section:

9 ***working day*** means a day that is not—

10 (a) a Saturday or Sunday; or

11 (b) a public holiday in the ACT; or

12 (c) in the period beginning on 20 December in a year and ending on
13 10 January the following year.

1 **Part 4** **Residential Tenancies Act 1997**

2 **28 Energy efficiency rating—advertising**
3 **Section 11A (1) (b)**

4 *substitute*

5 (b) the advertisement does not contain—

- 6 (i) if there is an energy efficiency rating statement for the
7 habitable part of the premises prepared not more than
8 18 months before the day the advertisement is published—
9 a statement of the energy efficiency rating; or
10 (ii) in any other case—a statement that there is no energy
11 efficiency rating for the premises.

12 **29 Section 11A (7), definition of *existing energy efficiency***
13 ***rating***

14 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 7 May 2020.

2 Notification

Notified under the [Legislation Act](#) on 2020.

3 Republications of amended laws

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

© Australian Capital Territory 2020