

**2004**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**GUNGAHLIN DRIVE EXTENSION AUTHORISATION BILL 2004**

**Explanatory Statement**

**Circulated by authority of**

**Bill Wood MLA  
Minister for Urban Services**

# **Gungahlin Drive Extension Authorisation Bill 2004**

## **Explanatory Statement**

### **Outline**

The Gungahlin Drive Extension Authorisation Bill 2004 (the Bill) is intended to facilitate the construction of the Gungahlin Drive Extension (GDE). The GDE will greatly improve road access to the high growth area of Gungahlin for its residents and all Canberrans by providing a road link from Gungahlin of a standard similar to that provided to other residential areas of the Territory.

The community has comprehensively considered the GDE over an extended period of time, and this Bill is intended to ensure its construction as soon as possible. The Bill is a clear statement from the Legislative Assembly of the importance of the GDE to the Territory's transport network and citizens.

The Bill provides the Territory and its agents with the necessary powers to enable completion of the construction of the GDE, including by authorising a Minister to make the required approvals (in whatever form) under relevant laws. Rights to appeal such approvals are limited by the Bill so as to ensure that construction of the GDE is not delayed by further expensive and divisive litigation which does not reflect the wishes of the Canberra community as a whole.

Although the Bill authorises the Minister to give approvals required by relevant laws for activities directly related to the construction of the GDE, it does not remove any requirement to comply with laws relating to such matters as construction standards and health and safety.

## **Preamble**

The Preamble sets out the background to and objectives of the Bill. It states the Legislative Assembly's intention to construct the GDE to provide appropriate access for all Canberrans to and from Gungahlin. It notes that the GDE and possible alternatives have been the subject of extensive consultation with and consideration by the ACT community; that it has been subject to environmental and other assessments; and that further litigation in relation to it is not in the public interest.

## **CLAUSE NOTES**

### **Clauses 1 to 4 – Formal clauses**

**Clauses 1 to 4** are formal clauses which:

- state the name of the Act being created;
- provide for commencement of the Act;
- provide that the dictionary at the end of the Act forms part of the Act; and
- make clear that notes appearing in the Act are explanatory and do not form a part of the Act.

### **Clause 5 – Meaning of GDE**

**Clause 5** is an interpretation provision which explains what is meant by the GDE.

**Clause 5(1)** defines the GDE as the route from the Barton Highway to the Glenloch Interchange substantially as shown in the plans published in the named reports as altered by any amendment approved by the Minister.

**Clause 5(2)** empowers the Minister to approve an amendment to the planned location of the GDE in the plans referred to in Clause 5(1).

**Clause 5(3)** provides, for the purpose of transparency, that an amendment by the Minister to the planned location of the GDE is a notifiable instrument.

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

**Clause 6** enables works to be declared as part of or related to the construction of the GDE.

**Clause 6(1)** empowers the Minister to declare in writing that works are part of the construction of the GDE or related to the construction of the GDE.

**Clause 6(2)** provides that a declaration mentioned in clause 6(1) is a disallowable instrument. This means that the declaration process is transparent and a declaration may be disallowed by the Legislative Assembly.

**Clause 6(3)** provides that any declaration by the Minister under clause 6(1) that works are part of the construction of the GDE means that those works are taken to be part of the construction of the GDE for the purposes of this bill as enacted.

**Clause 6(4)** provides that a declaration by the Minister under clause 6(1) that works are related to the construction of the GDE means that those works are taken to be related to the construction of the GDE for the purposes of this bill as enacted.

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

**Clause 7** puts beyond doubt that the *Land (Planning and Environment) Amendment Regulations 2004 (No 1)* SL2004-12, have and have had effect

from the day after their notification day as if they had been made in an Act. They still have effect only according to their terms and only apply to future actions.

### **Clause 8 – Environmental assessments for GDE**

**Clause 8** confirms that no further or additional inquiries or assessments are required to be undertaken in relation to the environmental impact of the GDE by the *Land (Planning and Environment) Act 1991* ('the Land Act').

**Clause 8(1)** provides an interpretation of the term 'GDE' for the purpose of the clause which is consistent with the definition of the term provides in clause 6; that is, the term includes works that are part of or related to the construction of the GDE.

**Clause 8(2)** provides that nothing in the Land Act requires any further or additional preliminary or other assessment or inquiry to be undertaken in relation to the environmental impact of the GDE.

**Clause 8(3)** provides that clause 8(1) applies notwithstanding that any such assessment or inquiry already undertaken in relation to the GDE did not comply with the Land Act.

**Clause 8(4)** provides that clause 8 has effect notwithstanding any other Territory law no matter when it was passed. This sub-clause makes clear that clause 8 is intended to override any existing law to the contrary. This sub-clause does not purport to detract from the capacity of the Legislative Assembly to pass a future law which is intended to override clause 8; it simply evinces an intention, in the event of an inconsistency between this clause and any future enactment, that clause 8 should be considered to have primacy.

**Clause 8(5)** is an interpretation clause which defines the meaning of terms used within it, namely 'Land Act' and 'preliminary assessment'.

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

**Clause 9** empowers the Minister to make any necessary authorisations required by relevant Acts in relation to the construction of the GDE.

**Clause 9(1)** explains the meaning of specific terms used in this clause. The term ‘relevant law’ means each of the:

- *Environment Protection Act 1997*;
- *Heritage Act 2004*;
- *Nature Conservation Act 1980*;
- *Land (Planning and Environment) Act 1991*; and
- a Territory law prescribed under the regulations.

The term ‘relevant decision-maker’ means a person authorised under a relevant law to provide an ‘authorisation’ such as an approval, licence, permit or consent (however described) required or allowed to be given by the relevant law or prescribed under the regulations. The term ‘in relation to the GDE’ shall be taken to mean any works that are part of, or are related to, the construction of the GDE under Clause 6.

**Clause 9(2)** provides that the Minister has absolute discretion to make an authorisation, in writing, required or allowed to be given by a relevant law in relation to the GDE.

**Clause 9(3)** provides that any such authorisation may be made subject to conditions in the Minister’s absolute discretion. (For instance, the Minister could make the authorisation subject to environmental controls.)

**Clause 9(4)** puts beyond doubt, without limiting the effect of sub-clauses (2) and (3), that in deciding whether to make an authorisation under clause 9, the Minister may have regard to, but is not bound by, the requirements or criteria for decision-making under the relevant law. That is, the Minister may make any authorisation required or allowed to be given by a relevant law but is not bound by the provisions in the relevant law which govern how decisions must

be made by the relevant decision-maker under that law. However, the Minister may, in his discretion, choose to have regard to or comply with any such provisions in making his decision.

**Clause 9(5)** provides that the Minister may make a written authorisation under clause 9 whether or not an authorisation has previously been made by the relevant decision-maker under that law.

**Clause 9(6)** provides that a written authorisation made by the Minister under clause 9 revokes any previous authorisation in relation to the authorised matter made by a relevant decision-maker under a relevant law.

**Clause 9(7)** provides that if, pursuant to clause 9, the Minister gives an authorisation required or allowed to be given by a relevant law, then the relevant law and all other Territory laws apply in relation to that authorisation as if:

- a) the Minister was the relevant decision-maker for the authorisation; and
- b) the authorisation was given under the bill as enacted and the relevant law; and
- c) all necessary changes (for example, those consequent on a) and b) above), including any prescribed under the regulations, had been made.

This means that an authorisation made by the Minister has the same effect as if it been made by the relevant decision-maker under the relevant law.

**Clause 9(8)** provides that clause 9 has effect notwithstanding any other Territory law, whether made before or after the commencement of this Bill as enacted, but subject to the operation of clause 10 dealing with appeal rights. This sub-clause makes clear that clause 9 is, subject to clause 10 which deals with appeal rights, intended to override any existing law to the contrary. This sub-clause does not purport to detract from the capacity of the Legislative Assembly to pass a future law which is intended to override clause 9; it simply evinces an intention, in the event of an inconsistency between this clause and any future enactment, that clause 9 should be considered to have primacy.

**Clause 9(9)** provides, for the purpose of transparency, that an authorisation made under clause 9(2) is a notifiable instrument.

**Clause 10 – Standing to bring proceedings in relation to authorisations**

**Clause 10** limits the right to challenge an authorisation made under clause 9.

**Clause 10(1)** defines the term ‘authorisation’ as it is used in the clause to mean an authorisation given by the Minister under clause 9.

**Clause 10(2)** provides that the giving of an authorisation does not create any right apart from a right given under the authorisation to the person to whom the authorisation is given or anyone acting, with that person’s authority, under the authorisation. This means that an authorisation does not create in any third party an enforceable right.

**Clause 10(3)** provides that a decision to give or refuse an authorisation is final and conclusive.

**Clause 10(4)** provides that a condition imposed on an authorisation does not create a right in anyone except the Territory. This sub-clause recognises that the Territory has a right to expect that a condition imposed on an authorisation will be met by the recipient of the authorisation, and that the Territory must therefore be able to enforce that right.

**Clause 10(5)** provides that a decision to impose or not impose a condition on an authorisation is final and conclusive.

**Clause 10(6)** provides that, to remove any doubt but without limiting the effect of sub-clauses 10(3) and 10(5), the specified appellate provisions of the named laws and any prescribed laws do not apply to authorisations given under clause 9.



**Clause 10(7)** provides that clause 10 has effect notwithstanding any other Territory law no matter when it is or was passed. This sub-clause makes clear that clause 10 is intended to override any existing law to the contrary. This sub-clause does not purport to detract from the capacity of the Legislative Assembly to pass a future law which is intended to override clause 10; it simply evinces an intention, in the event of an inconsistency between this clause and any future enactment, that clause 10 should be considered to have primacy.

### **Clause 11 – Time-limit for bringing proceedings about authorisations**

**Clause 11** limits the time within which court (including tribunal) proceedings may be brought in relation to clause 9 authorisations.

**Clause 11(1)** provides that proceedings in relation to an authorisation made under clause 9 cannot be brought more than 21 days after the date on which the authorisation is notified.

**Clause 11(2)** provides that clause 11 has effect notwithstanding any other Territory law no matter when it is or was passed. This sub-clause makes clear that clause 11 is intended to override any existing law to the contrary. This sub-clause does not purport to detract from the capacity of the Legislative Assembly to pass a future law which is intended to override clause 11; it simply evinces an intention, in the event of an inconsistency between this clause and any future enactment, that clause 11 should be considered to have primacy.

### **Clause 12 – Authorisations alleged not to have been given**

**Clause 12** requires a person to give notice to the Minister before bringing any proceeding in a court or tribunal alleging that a required authorisation has not been given.

**Clause 12(1)** provides that clause 12 applies where an authorisation required in relation to the GDE has not been sought.

**Clause 12(2)** prevents a person from initiating a court or tribunal proceeding alleging that a required authorisation has not been given unless the person first gives notice of the allegation to the Minister at least 14 days before the person brings the proceeding.

**Clause 12(3)** provides that clause 12 has effect despite any other law no matter when it is or was passed. This sub-clause makes clear that clause 12 is intended to override any existing law to the contrary. This sub-clause does not purport to detract from the capacity of the Legislative Assembly to pass a future law which is intended to override clause 12; it simply evinces an intention, in the event of an inconsistency between this clause and any future enactment, that clause 12 should be considered to have primacy.

**Clause 12(4)** provides that the reference to an authorisation in clause 12 is a reference to an authorisation referred to in clause 9(1); that is, an authorisation which is required by a relevant law for the construction of the GDE.

### **Clause 13 – Regulation making power**

**Clause 13** provides that regulations may be made for the bill as enacted.

### **Clause 14 – Expiry of Act**

**Clause 14** provides for the expiry of the bill as enacted.

**Clause 14(1)** provides that the Bill as enacted will expire 5 years after its commencement day or on any other date prescribed under the regulations.

**Clause 14(2)** provides that section 88 of the *Legislation Act 2001* applies to the bill as enacted. This means that any declaratory or validating effects of the bill as enacted will not end on its expiry.

**Clause 15 – Administrative Decisions (Judicial Review) Act 1989, Sch1, new clause 7**

**Clause 15** amends Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1989* to provide that there will be no right to judicial review under that Act in relation to decisions made under the bill as enacted.

**Clause 16 – Land (Planning and Environment) Act 1991, section 229B(6)(c)**

**Clause 16** amends section 229B(6)(c) of the *Land (Planning and Environment) Act 1991* to clarify the approval process where the Minister's 'call-in' powers are used to decide a Development Application. The amendment makes it clear that, when a development has been 'called in' and considered by the Minister, the Minister must approve or refuse the development application under section 230 of the Act. This means that the conditions set out in section 230 are applicable to all development approvals, no matter by which relevant authority they are decided. Thus, when a development application is approved by the Minister, the approval can be made subject to conditions pursuant to section 245 of that Act.

**Clause 17 – Land (Planning and Environment) Act 1991, section 231 (1)**

**Clause 17** amends section 231 of the *Land (Planning and Environment Act) 1991* to make clear that the 'relevant authority' is required to consider certain matters before making a decision on a development application.

'Relevant authority' in relation to an application is defined as:

- a) if the Minister has, under section 229B (Minister may decide some applications), decided to consider an application - the Minister; or
- b) the planning and land authority.

The current provision refers to consideration of matters only by the planning and land authority, and does not take account of the fact that the Minister may consider an application where his or her 'call-in' powers are exercised.

### **Dictionary**

The dictionary defines certain terms used in the bill as enacted. Included in these terms is 'court' which is defined to include the AAT and 'works' which is defined broadly to include the several named activities and any other activities prescribed under the regulations.