

Australian Capital Territory

## Land (Planning and Environment) Lease Transfer Consent Determination 2004

Disallowable Instrument DI 2004-188

made under the

***Land (Planning and Environment) Act 1991, Section 180 – Transfer of land subject to building and development provision***

### Explanatory Statement

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This disallowable instrument revokes DI2003-249 and commences on 1 November 2004.

Section 180 of the *Land (Planning and Environment) Act 1991* (the Act) deals with the transfer or assignment of interests in Territory Land before the completion of development that is required by the Crown lease of that land. Under Section 180(2) the Planning and Land Authority may consent to the transfer or assignment if it is satisfied that the proposed transferee intends to comply with the building and development provisions of the relevant lease and if any required security for compliance with the provisions has been given. In addition to those circumstances, the authority must be satisfied that one of the two following circumstances apply:

- That the lessee is unable for personal or financial reasons to comply with the building and development provision of the lease: or
- The lessee has a contract with the proposed transferee to build a home on the lease land.

Section 180(3) of the Act provides for the matters to be considered, in deciding whether to consent to a transfer or an assignment under Section 180 (2) or (2A), to be set out in a disallowable instrument.

This instrument determines a number of matters to be considered before deciding whether or not the Authority will consent to a transfer of lease under section 180(2). They are intended to assist in determining whether the proposed

transferee or assignee is willing and able to comply with the building and development provisions of the lease. A mere statement of the intention of the transferee or assignee would no longer be sufficient, on its own, to satisfy the Planning and Land Authority that consent should be given.

The new criteria also enable consideration of the history of lease transactions undertaken by the lessee, and the financial or personal circumstances, which may prevent the lessee from complying with the building and development provisions of the lease.

The following are identified as matters to be taken into consideration:

- (a) any expression of intention (including an expression of intention in a statutory declaration) by the proposed transferee or assignee relevant to their future compliance with the building and development provision of the lease;
- (b) the financial circumstances of the proposed transferee or assignee that are relevant to the capacity and ability of the proposed transferee or assignee to comply with the building and development provision of the lease;
- (c) any formal approval of a loan to allow, or help allow, the proposed transferee or assignee to comply with the building and development provision of the lease;
- (d) any contract entered into between the lessee and the proposed transferee or assignee for, or in relation to, the construction of a building in compliance with the building and development provision of the lease;
- (e) any previous transfer of a lease to the proposed transferee or assignee with consent under the Act, section 180(2);
- (f) any previous transfer of a lease by the proposed transferee or assignee with consent under the Act, section 180(2);
- (g) the history of compliance, by the proposed transferee or assignee, with the building and development covenants of any lease where they have been the lessee;
- (h) the date of the application for consent to transfer the lease and the times within which the building and development provision of the lease are to be satisfied;
- (i) any previous transfer by the lessee of the land with consent under the Act, subsection 180(2);

- (j) any previous transfer to the lessee of the land with consent under the Act, subsection 180(2);
- (k) the financial or personal circumstances of the lessee of the land that are relevant to the lessee's inability to comply with the building and development provision of the lease.