

Planning (Transitional Provisions) Regulation 2023

Subordinate law SL2023-29

made under the

Planning Act 2023, section 601 (Transitional regulations)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning (Transitional Provisions) Regulation 2023* (the regulation) as made by the Executive. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE REGULATION

Over the past four years, the Government has been reviewing the ACT planning system to improve and modernise the way the city's future is planned and to create a planning system which delivers for the people of the ACT.

The purpose is to deliver a planning system that is clear, easy to use and facilitates the realisation of long-term aspirations for the growth and development of Canberra while maintaining its valued character.

The regulation contains administrative and process provisions to support the operation of the *Planning Act 2023* (the Act) in the reformed planning system. This regulation amends chapter 20 of the Act to clarify transitional arrangements for:

- Minor plan amendments during the period of the interim Territory Plan
- Major plan amendments during the period of the interim Territory Plan
- lease processes commenced but not completed prior to the commencement of the Act.
- Applications for further leases made prior to commencement of the Act, or where a lease expired no more than 6 months prior to the commencement of the Act.

SCRUTINY OF BILLS COMMITTEE PRINCIPLES AND HUMAN RIGHTS

During the development of the regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (the HR Act).

The *Planning Act 2023* promotes section 17 (right to take part in public life) of the HR Act.

The Planning Act facilitates a person's ability to take part in public life and planning decisions, directions and policy, including through consultation and comment on draft Territory Plan amendments. For example, division 5.2.3 requires that the Territory Planning Authority must invite people to comment on proposed major draft amendments to the Territory Plan,

The Act promotes section 12 (right to privacy and reputation) of the HR Act.

The right to privacy protects individuals from unlawful or arbitrary interference with privacy and home and encompasses the idea that individuals should have a separate area of autonomous space free from excessive government intervention and unsolicited intrusion by other individuals.

The *Planning Act 2023* promotes an outcomes-focused approach to planning. It provides that development applications will be considered against the planning outcomes set out in the ACT's various plans and strategies. It seeks to reduce government intervention in prescribing how development should be undertaken on their properties. Instead, it provides space for developers, and therefore home-owners, to meet planning outcomes in ways that they believe best meet the particular conditions and circumstances in which development is to take place. The outcomes-focused approach does not mean that no restrictions exist in seeking to meet planning outcomes.

Clause Notes:

609 Interim territory plan

This clause allows the Minister, at the same time of providing the Territory Plan to the Legislative Assembly committee to also present an interim Territory Plan to the Assembly for approval.

The Assembly may approve the plan regardless of whether the committee has provided a report. The interim Territory Plan commences on the day fixed by the Minister by written notice.

610 Approval or confirmation of territory plan

This clause provides for the Legislative Assembly, by resolution, to either approve the amended Territory Plan or confirm the interim Territory Plan as

the Territory Plan and commences on the day fixed by the Minister by written notice.

621 Grants of leases commenced but not completed before commencement day

This clause provides that where a pre-grant process has commenced, but is not complete, for the grant of a lease by auction, tender, ballot or direct sale under the repealed Act, the pre-grant process is taken to have been completed under this Act.

The term 'pre-grant process' is defined to provide a consistent meaning in this section.

622 Applications for grant of further leases

This clause provides that where a person has applied for a further lease under the 2007 Act before the commencement day of this Act, the application will be assessed as if the application was made under the 2007 Act.

Where a lease expires within six months of the commencement of this Act and an application has not been lodged to extend the lease, the application will be assessed under this Act.