

Australian Capital Territory

Planning (General) Regulation 2023

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made under the

Planning Act 2023

Republication No 6

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About this republication

The republished law

This is a republication of the *Planning (General) Regulation 2023*, made under the *Planning Act 2023* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 May 2026. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 22 May 2026.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

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Part 1 Preliminary

1 Name of regulation

This regulation is the *Planning (General) Regulation 2023*.

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation and includes references (***signpost definitions***) to other terms defined elsewhere.

For example, the signpost definition '***affected residential premises register***—see the *Dangerous Substances Act 2004*, section 47P (1).' is defined in that subsection and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

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5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg ***conduct***, ***intention***, ***recklessness*** and ***strict liability***).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Meaning of *dwelling*

(1) In this regulation:

dwelling—

(a) means a class 1 building, or a self-contained part of a class 2 building, that—

(i) includes the following that are accessible from within the building, or the self-contained part of the building:

(A) at least 1 but not more than 2 kitchens;

(B) at least 1 bath or shower;

(C) at least 1 toilet pan; and

(ii) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and

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(b) includes any ancillary parts of the building and any class 10a buildings associated with the building.

(2) In this section:

kitchen does not include outdoor cooking facilities or a barbeque in an enclosed garden room.

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Part 2 Strategic and spatial planning

7 Entities that may prepare planning and response reports—Act, s 39 (2)

The following entities are prescribed:

(a) the city renewal authority;

(b) the suburban land agency;

(c) the administrative unit responsible for transport and city services.

8 Additional requirements for planning and response reports—Act, s 39 (4)

(1) A planning and response report must—

(a) be prepared at 1 or more of the following spatial scales:

(i) district;

(ii) division;

(iii) precinct;

(iv) corridor;

(v) site; and

(b) for a report at the district, division or corridor spatial scale—include a structure planning document; and

Examples—structure planning document

ecological and environmental assessment, infrastructure and services assessment, transport and movement assessment, community needs and safety assessment

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(c) for a report at the precinct or site spatial scale—include a concept planning document.

Examples—concept planning document

place and character plan, master planning and design framework, environmental and site study, staging and feasibility plan

(2) Only the territory planning authority may prepare a planning and response report at the district or division spatial scale.

9 Matters that may be included in subdivision design application—Act, s 43 (2)

The following matters are prescribed:

(a) design and construction requirements for the following:

(i) climate change adaptation and mitigation measures;

(ii) infrastructure works and landscaping;

(iii) reticulated services;

(iv) roads;

(v) water-sensitive urban design;

(vi) works on proposed public land;

(b) a requirement that stated areas be used for stated purposes;

(c) a tree management plan;

(d) a provision that is proposed to apply to the ongoing development of a block in the subdivision, if the provision is consistent with the territory plan (including any existing provision applying to the block that is stated in the territory plan as being mandatory);

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(e) landscape design and ongoing management requirements for the protection of connected native wildlife habitat.

Example—par (b)

a subdivision design application may identify an area to be zoned for community lease use and state that it must be used for a primary school

Examples—par (d)

1 an increased setback requirement

2 a reduced building envelope

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Part 3 Territory plan

10 People to be given consultation notice and extension notice—Act, s 63 (2) and (5) (b)

(1) A draft major plan amendment that changes a zone from 1 zone category to another zone category, apart from a draft amendment that changes the zone to any of the following, is prescribed:

(a) PRZ1—urban open space zone;

(b) NUZ3—hill ridges and buffer zone;

(c) NUZ4—river corridor zone;

(d) NUZ5—mountains and bushland zone.

Example

a draft major plan amendment to change a zone from commercial (CZ) category to residential (RZ) category

(2) The following people are prescribed:

(a) a lessee of an adjoining section;

(b) each lessee of each block (other than the block to which the draft major plan amendment applies) in the section to which the draft major plan amendment applies;

(c) if land adjoining the area to which the draft major plan amendment applies is a rural block—a lessee of the adjoining rural block.

(3) In this section:

adjoining—see the Act, section 174.

section, in relation to land—see the *Districts Act 2002*, dictionary.

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Part 4 Significant development

Division 4.1 Design review panel

11 Development proposals requiring design review panel consultation—Act, s 100 (1)

The following development proposals are prescribed:

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

(b) a proposal to increase the floorspace of a shop by more than 2 000m^2 if the proposed shop is fully or partly located within 1 or more of the following:

(i) a residential zone;

(ii) a commercial zone;

(iii) a community facility zone;

(iv) a parks and recreation zone.

Division 4.2 Environmental impact assessment

12 Development proposals requiring EIS—Act, s 105 (1) (a)

A development proposal mentioned in an item in schedule 1, part 1.2, column 2 is prescribed.

Note An EIS is not required for a development proposal if an environmental significance opinion has been given for the proposal (see Act, s 105 (2)).

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13 Entities to consult in preparing scoping document—Act, s 109 (3)

(1) In preparing a scoping document for a development proposal, the territory planning authority—

(a) must consult with the referral entities prescribed under section 33 or section 34 for the development application for the proposal; and

(b) may consult with the public and any other entity.

Examples—other entities

1 a territory-owned corporation
2 the director-general of an administrative unit not mentioned in s 34
3 a NSW local council
4 a government department or body established under a Commonwealth or NSW Act
5 a non-government organisation
6 an expert in a relevant environmental matter

(2) However, the territory planning authority must not consult with an entity if it is the proponent of the development proposal.

14 Time for consulting entities in preparing scoping document—Act, s 109 (3)

(1) Within 5 working days after the day the territory planning authority receives an application for a scoping document under the Act, section 109, the authority must, as far as practicable, give each entity consulted under section 13—

(a) the scoping documentation for the development proposal; and

(b) a written notice inviting the entity to make written comments on the scoping documentation within 15 working days after the day the entity receives the notice.

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(2) An entity given the scoping documentation is taken to have made no comments on the development proposal if the entity fails to give the territory planning authority comments on the scoping documentation within—

(a) the 15-working day period under subsection (1) (b); or

(b) if the period is extended under section 15—the extended period.

(3) In this section:

scoping documentation, in relation to an application under the Act, section 109, means—

(a) the application; and

(b) any other documents the territory planning authority considers relevant to the application.

15 Extension of time to comment on scoping documentation—Act, s 109 (3)

(1) An entity given scoping documentation may, before the end of the 15-working day period mentioned in a notice under section 14 (2), apply to the chief planner for an extension of the period.

(2) The application must—

(a) be in writing; and

(b) state the reasons for making the application; and

(c) state the additional period the entity considers necessary for making comments.

(3) In this section:

scoping documentation—see section 14 (3).

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16 Minimum content of scoping document—Act, s 110 (1)

(1) A scoping document for a development proposal must contain the following:

(a) the name, address, telephone number and email address of the person who prepared the document;

(b) a list of entities that provided comments in accordance with a notice under section 14;

(c) if the territory planning authority requires the proponent of the proposal to consult with any entities in preparing the EIS—a list of those entities;

(d) each potentially significant environmental impact that must be addressed in the EIS;

(e) if the scoping document relates to a public health-related EIS—the issues that must be addressed in the EIS in relation to the public health impact of the proposal;

(f) any current relevant information held by the Territory, of which the territory planning authority is aware, that would be of use in preparing the EIS;

(g) the form and format requirements for the EIS.

Examples—format requirements for EIS

1 the structure of the EIS

2 how factual information is to be referenced in the EIS

(2) For subsection (1) (c), the scoping document may include requirements that affected groups with particular communication needs have adequate opportunity to comment on the EIS.

(3) A scoping document for an EIS must also include the following requirements if the requirement applies:

(a) requirements in relation to the methods of assessment to be used in the EIS;

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(b) for each potentially significant environmental impact identified in the scoping document—

(i) a requirement that the proponent of the development proposal to which the scoping document relates considers ongoing management, monitoring or reporting regimes; or

(ii) a requirement that the EIS contain a statement indicating—

(A) whether an offset is likely to be required for the impact; and

(B) if an offset is likely to be required—whether an offset management plan is likely to be required for the offset; and

(C) a list of impacts that are not significant environmental impacts that can be addressed through an altered design or in some other way.

Note For par (b) (ii) (B), if an offset is required, the Minister may impose an offset condition on the development approval (see Act, s 187 (2) (h)). An offset condition may require the proponent to prepare an offset management plan for the offset (see Act, s 245).

17 Criteria for consultants—Act, s 110 (3), def *consultant*

The criteria are that the territory planning authority is satisfied the person holds relevant professional qualifications in relation to preparing an EIS and has—

(a) experience in preparing an EIS; or

(b) the capacity to prepare an EIS.

18 Draft EIS requirements—Act, s 523 (2) (b)

(1) A draft EIS for a development proposal must include the following:

(a) a non-technical summary of the draft EIS, including a summary of its recommendations;

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(b) a glossary of technical terms and any abbreviations and acronyms used in the draft EIS;

(c) a description of the proposal, including—

(i) a statement of the proposal's objectives; and

(ii) the time for implementation of the proposal, including for any stage; and

(iii) details of any action that has been or is being taken by the proponent or any other entity in relation to the land to which the proposal relates; and

(iv) details of any design alternatives considered in developing the proposal;

Examples—design alternatives

1 alternative siting within the land to which the proposal relates

2 alternative methods of construction, materials and sources of materials

3 alternative uses of the land to which the proposal relates

(d) the following details about the land to which the proposal relates:

(i) the location of the land;

(ii) if the land is leased—

(A) the lessee's name; and

(B) the volume and folio of the lease; and

(C) the block and section number and division of the land or, if the land is under a land sublease, the sublease plan number;

(iii) if the land is unleased land or public land—the custodian of the land;

(iv) the purposes for which the land may be used;

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(e) a description of the EIS process, including—

(i) any statutory approval obtained or required for the proposal; and

(ii) the information used to predict each potentially significant environmental impact identified in the scoping document for the EIS; and

(iii) the criteria used to assess the significance of each environmental impact and the performance of any alternative to the proposal considered under paragraph (c) (iv);

(f) a statement about the proposal's compatibility with the principles of ecologically sustainable development;

(g) for each potentially significant environmental impact identified in the scoping document for the development proposal—

(i) the relevant environmental values; and

(ii) the findings and results of any environmental investigation in relation to the land to which the proposal relates; and

(iii) a description of the effects of the environmental impact (including cumulative and indirect effects) on physical and ecological systems and human communities; and

(iv) an analysis of the significance of the potential environmental impact of the development; and

(v) a statement of the proposed approach to environmental management of the land to which the proposal relates, including any proposed impact prevention, mitigation or offsetting measures to deal with the environmental impact of the proposal;

(h) a description of the consultation undertaken for the EIS;

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(i) the draft EIS's recommendations.

Note An EIS must also address each matter raised in the scoping document for the development proposal (see Act, s 112 (1) (a) and s 118 (4) (a)).

(2) For subsection (1) (g), each potentially significant environmental impact identified in the scoping document for the EIS must be addressed in its own part of the EIS.

(3) For subsection (1) (g) (v), the proposed approach to environmental management of the land may be set out in a management plan for the land.

(4) A draft EIS for a development proposal to be assessed by the Territory in accordance with a bilateral agreement under the EPBC Act must address the matters mentioned in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cwlth), schedule 4.

(5) A draft EIS must be prepared in accordance with any requirement set out in the scoping document for the draft EIS.

19 Revised EIS requirements—Act, s 523 (2) (b)

(1) The requirements under section 18 apply to a revised EIS as if it were a draft EIS.

(2) A revised EIS must also include a summary of the representations made during the public consultation period.

20 When environmental significance opinions may be given—Act, s 138

(1) An environmental significance opinion mentioned in an item in schedule 1, part 1.2, column 3 may be given for a development proposal mentioned in the item, column 2.

(2) The proponent of the development proposal may apply to the entity mentioned in the item in schedule 1, part 1.2, column 3 for the environmental significance opinion.

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Division 4.3 EIS inquiry panels

21 Definitions—div 4.3

In this division:

member means a member of an inquiry panel.

presiding member, of an inquiry panel, means the member nominated under the Act, section 133 (2) as the presiding member of the panel.

22 Disclosure of interests by panel members—Act, s 523 (2) (d)

(1) This section applies if—

(a) a member of an inquiry panel has a direct or indirect financial or personal interest in an issue being considered, or to be considered, by the panel; and

(b) the interest could conflict with the proper exercise of the member's functions in relation to the panel's consideration of the issue.

(2) As soon as practicable after the relevant facts come to the member's knowledge, the member must—

(a) disclose the nature of the interest to a meeting of the inquiry panel; and

(b) tell the parties to the inquiry about the interest; and

(c) not take part, or continue to take part, in the inquiry, or exercise any function in relation to the inquiry, unless each party consents to the person taking part, or continuing to take part, in the inquiry.

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(3) If the presiding member becomes aware that a member of an inquiry panel has an interest mentioned in subsection (1) in relation to the inquiry, the presiding member must direct the person not to take part, or continue to take part, in the inquiry unless each party to the inquiry gives its consent in accordance with subsection (2) (c).

(4) Within 14 days after the day an interest is disclosed to the presiding member under this section, the presiding member must give the Minister a statement of the disclosure.

23 Presiding member's functions—Act, s 523 (2) (d))

The presiding member of an inquiry panel has the following functions:

(a) managing the affairs of the panel, including ensuring the prompt conduct of the inquiry and issuing directions in relation to the conduct of the inquiry;

(b) ensuring, as far as practicable, that there is a good working relationship between the panel and all relevant parties;

(c) ensuring the Minister is kept informed about the operations of the panel.

24 Formation of inquiry panel—Act, s 523 (2) (d)

(1) An inquiry panel must not exercise its functions unless—

(a) all members of the panel are present; or

(b) the panel is changed in accordance with this section.

(2) If, before the inquiry panel has completed its inquiry, 1 of the members stops being a member of the panel or is unable to continue to be a member of the panel, the Minister must, in writing—

(a) end the inquiry by the panel and appoint a new panel to conduct the inquiry afresh; or

(b) appoint a new member to the panel.

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(3) If the inquiry panel is changed, the panel may, for the purposes of the inquiry, take into account any record of the inquiry before the previous panel, including a record of any evidence taken.

25 Inquiry to be public—Act, s 523 (2) (d)

(1) An inquiry panel must conduct its inquiry in public.

(2) However, an inquiry panel may—

(a) direct that the inquiry or any part of it be conducted in private, and give directions about who may be present during any private hearing; or

(b) give directions prohibiting or restricting the publication of information given to the inquiry, or of matters contained in documents lodged with the inquiry.

(3) In making a direction under subsection (2), an inquiry panel must consider—

(a) the principle that it is desirable that the inquiry should be conducted in public, and that information given to the inquiry, and documents lodged with the inquiry, should be available to interested people and to the public; and

(b) in the circumstances, whether confidentiality is required.

(4) A person must not contravene a direction under subsection (2).

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

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26 General procedure for inquiry panel—Act, s 523 (2) (d)

(1) An inquiry panel—

(a) must conduct the inquiry as informally as practicable; and

(b) is not bound by the rules of evidence, and may inform itself—

(i) in any way it considers appropriate; and

(ii) without notice to any person who has made a submission to the inquiry; and

(c) may consider submissions by an interested person without hearing the person who made the submission if the person is not present or represented when the inquiry is considering the submission; and

(d) may refuse to hear anyone who has failed to comply with a direction given by the presiding member of the panel; and

(e) subject to this division, may otherwise decide its own procedures.

(2) The presiding member of an inquiry panel may, in writing, request a person to produce to the panel documents relating to an inquiry by the panel that it reasonably needs to exercise its functions.

(3) Unless otherwise required by an inquiry panel, an interested person may make a submission to the panel orally or in writing or partly orally and partly in writing.

(4) An interested person may appear and be heard by an inquiry panel in person or may be represented by another person.

(5) Meetings of an inquiry panel are to be held when and where the presiding member decides in consultation with the other members of the panel.

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(6) In this section:

interested person, for an inquiry in relation to an EIS, means each of the following:

(a) the proponent of the development proposal to which the EIS relates;

(b) an owner or prospective owner of land located near the land to which the EIS relates;

(c) anyone who made a representation about the EIS under the Act, section 115;

(d) anyone else who has, in the inquiry panel's opinion, a proper interest in the inquiry.

27 Arrangements for the use of staff and facilities—Act, s 523 (2) (d)

(1) An inquiry panel may make arrangements with the territory planning authority for the use of the following:

(a) the services of public servants in the authority;

(b) facilities of the authority.

(2) While a public servant is exercising functions for an inquiry panel, the public servant must exercise the functions in accordance with the directions of the presiding member of the panel.

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Part 5 Prohibited development

28 Prescribed encroachment onto, over or under adjoining land—Act, s 158 (1) (b)

A distance of 20m is prescribed.

29 Sites that are not waste facilities—Act, s 161 (2), def *waste facility*, par (b) (ii)

(1) A site, other than an incineration facility, that is used to handle not more than 15kt of waste each year (a ***small waste site***) is prescribed.

(2) Subsection (1) is not intended to allow the territory planning authority to accept a development application from an existing small waste site that would, if approved, allow an increase in the amount of waste handled each year on the site to more than 15kt.

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Part 6 Development applications

30 People to sign development applications—Act, s 166 (2) (a)

(1) The following people are prescribed:

(a) for an application made by someone other than the lessee of the land to which the application relates (the ***relevant land***)—

(i) if the relevant land is subject to a lease—the lessee of the land; or

(ii) if the relevant land is public land or unleased land—

(A) for a development that is a driveway verge crossing for a single or dual occupancy development—the custodian of the land or the territory planning authority; and

(B) in any other case—the custodian of the land; or

(iii) in any other case—the territory planning authority;

(b) for an application that relates to land under a land sublease—

(i) if the applicant is not the sublessee—the sublessee; and

(ii) if the applicant is not the lessee—the lessee;

(c) for an application that relates to a building the subject of a building management statement—2 members of the building management committee authorised to sign the application on behalf of the committee.

(2) In this section:

building management committee—see the *Land Titles Act 1925*, section 123F (1) (a).

building management statement—see the *Land Titles Act 1925*, section 123C (1).

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31 Requirements for design responses

(1) This section applies if—

(a) a design guide applies in relation to a development application for a development proposal; and

(b) the application is required to be accompanied by the proponent's response to the design guide (the ***design response***).

(2) The design response must—

(a) demonstrate, using written and graphic content, how the proposed development considers the design elements of the design guide; and

(b) be endorsed by a built environment professional with experience and expertise relevant to the type and scale of development proposed.

32 Annual amount of expected greenhouse gas emissions—Act, sch 1, pt 1.2, item 12

An amount of 250t is prescribed.

33 Referral entities for development generally—Act, s 170 (1) (a)

(1) The following entities are prescribed as referral entities for a development application (other than an application for a development proposal requiring an EIS):

(a) if the application relates to land in an urban renewal precinct—the city renewal authority;

(b) if the application relates to unleased land or public land—the custodian of the land;

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(c) the heritage council, if—

(i) the application relates to a place registered or provisionally registered under the *Heritage Act 2004*; or

(ii) the application relates to a place or object nominated under the *Heritage Act 2004*; or

(iii) the territory planning authority is aware that the proposed development may impact an Aboriginal object or place.

(2) In this section:

Aboriginal object—see the *Heritage Act 2004*, section 9 (1).

Aboriginal place—see the *Heritage Act 2004*, section 9 (1).

urban renewal precinct—means an area of land in the ACT declared to be an urban renewal precinct under the *City Renewal Authority and Suburban Land Agency Act 2017*, section 35.

34 Referral entities for proposals requiring EIS—Act, s 170 (1) (a)

The following entities are prescribed as referral entities for a development application for a development proposal requiring an EIS:

(a) if the application relates to land in an urban renewal precinct—the city renewal authority;

(b) Icon Water Limited ACN 069 381 960;

(c) Icon Distribution Investments Limited ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663 working in partnership as Evoenergy ABN 76 670 568 688;

(d) the conservator of flora and fauna;

(e) the emergency services commissioner;

(f) the environment protection authority;

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(g) the heritage council;

(h) the director-general of the administrative units responsible for health policy and city services;

(i) if the application relates to unleased land or public land—the custodian of the land;

(j) if the territory planning authority, or the Minister, may impose an offset condition on the development approval for the application that would affect—

(i) leased land—the lessee of the land; or

(ii) leased land or public land—the custodian of the land.

35 Response time for entity advice—Act, s 172 (2)

The number of days prescribed is—

(a) for a referral under the Act, section 170 (When authority must refer development application)—

(i) if the development application is for a significant development—20 working days after the day the territory planning authority refers the application; and

(ii) for any other development application—15 working days after the day the territory planning authority refers the application or a shorter period agreed in writing by the authority; and

(b) for a referral under the Act, section 171 (Further entity referral—more information or amended application)—10 working days after the day the territory planning authority refers the application.

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36 Public notification period—Act, s 175 (2) (a)

The prescribed period is—

(a) for a development application for a significant development—

(i) publicly notified under the Act, section 179 (5)—10 working days; and

(ii) in any other case—20 working days; and

(b) for any other development application—15 working days.

37 Public notification exemption—Act, s 175 (3) (a)

A development application for a development proposal for a subdivision in a future urban area is prescribed.

38 Public notification exemptions—Act, s 175 (3) (b)

A development application for any of the following development proposals is prescribed:

(a) public works in a future urban area, if the works are—

(i) the building, alteration or demolition of a building or other structure; or

(ii) the carrying out of earthworks or other construction work that would affect the landscape of the area;

(b) the building, alteration or demolition of a single dwelling, if the development would not result in more than 1 dwelling being on a block;

(c) the demolition of a building or other structure in connection with the building or alteration of a single dwelling, if the development would not result in more than 1 dwelling being on a block;

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(d) the building, alteration or demolition of a class 10 building or structure;

Note A class 10 building or structure is a non-habitable building or structure (see building code).

(e) the putting up, attaching or displaying of a sign (whether permanent or temporary) on land, or to a building or other structure on land.

Note A sign may be exempt from requiring development approval under the *Planning (Exempt Development) Regulation 2023*.

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Part 7 Direct sale of leases

Division 7.1 Interpretation—pt 7

39 Definitions—pt 7

(1) In this part:

allocated land, in relation to the housing commissioner, means land that has been placed under the commissioner's control under the *Housing Assistance Act 2007*, section 32.

business-case criteria, in relation to the direct sale of a lease to a person—see section 40.

business-case documentation, in relation to a proposed development by a person—see section 40.

direct sale, in relation to a lease, means the grant of the lease under the Act, section 263 (1) (d).

educational establishment—see the territory plan, dictionary.

supportive accommodation means any of the following:

(a) a retirement complex;

(b) residential care accommodation within the meaning of the territory plan;

(c) a retirement village within the meaning of the territory plan;

(d) supportive housing within the meaning of the territory plan.

territory entity does not include the housing commissioner.

UNSW campus—see section 41 (1).

UNSW precinct deed—see section 41 (1).

(2) In this section:

retirement complex—see section 75 (2).

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40 Meaning of *business-case criteria* and *business-case documentation*—pt 7

In this part:

business-case criteria—the following are the ***business-case criteria*** in relation to the direct sale of a lease to a person:

(a) the person has the financial capacity, and relevant experience, qualifications, expertise and other resources, to develop and manage the land;

(b) the community has a genuine need for the proposed use of the land;

(c) the person has a genuine need for the land.

business-case documentation, in relation to a proposed development by a person, means the following:

(a) a plan that outlines the nature and scale of the development that includes the following:

(i) how the land will be developed and used, including any staging requirements for the proposed development;

(ii) details of the proposed buildings and car parking facilities for the land;

(iii) details of the proposed public access to the land;

(b) a business plan for the land that includes the following:

(i) the proposed strategies for the successful development and use of the land;

(ii) an estimate of the development costs for the land;

(iii) details of the goods or services to be provided from the land;

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(c) a list of all land in the ACT in which the person has an interest or that the person occupies;

(d) if the person is a corporation—proof of its incorporation and a copy of its constitution or rules.

41 Meaning of *UNSW campus* and *UNSW precinct deed*—pt 7

(1) In this part:

UNSW campus means land in the district of Reid or Parkes identified in the UNSW precinct deed.

UNSW precinct deed means the precinct deed between the Territory and the University of NSW dated 3 March 2020.

(2) Land in the UNSW campus is prescribed for the Act, section 274 (2) (g).

Division 7.2 Direct sales approved by Executive

42 Direct sales requiring approval by Executive—Act, s 266 (1) (a)

The following leases are prescribed:

(a) a lease granted to any of the following:

(i) a territory entity;

(ii) a Commonwealth entity;

(iii) a non-government educational establishment;

(b) a lease to the housing commissioner if the land is not allocated land;

(c) a lease of public land to the lessee of an adjoining lease;

(d) a lease of land in the UNSW campus to the University of NSW;

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(e) a lease to a community organisation;

(f) a lease for supportive accommodation;

(g) a rural lease.

43 Direct sale criteria for territory and Commonwealth entities—Act, s 266 (1) (a) (i)

The criteria for the direct sale of a lease to a territory entity or Commonwealth entity are—

(a) the land is the most suitable land for the entity's proposed use of the land, taking into account the entity's functions; and

(b) an amount has been appropriated, or is otherwise available, to develop and manage the land; and

(c) the entity's proposed use of the land is consistent with the entity's operations.

44 Direct sale criteria for non-government educational establishments—Act, s 266 (1) (a) (i)

(1) The criteria for the direct sale of a lease to a person for an educational establishment are—

(a) the person is—

(i) if the land is to be used for a new non-government school—the holder of an in-principle approval for registration of a school at the location of the land; or

(ii) if the land is to be used for a new campus of a registered non-government school—the proprietor of the non-government school; or

(iii) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3; or

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(iv) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth); and

(b) the person meets the business-case criteria in relation to the proposed development and—

(i) the use of the land for an educational establishment will promote ACT or Commonwealth government policies in relation to educational services; or

(ii) the educational establishment will meet an education need in the ACT that is not being met by existing education providers by providing—

(A) opportunities for education or training in an area of shortage of appropriately qualified or skilled people in the ACT; or

(B) education to people who, because of a group to which they belong, may experience disadvantage in the provision of educational services unless their particular needs are met.

Examples—par (b) (ii) (B)

1 Aboriginal and Torres Strait Islander people
2 people with a physical or medical disability
3 people who are socially or financially disadvantaged
4 people who cannot communicate, or who have difficulty communicating, in English

(2) For subsection (1) (b), the person must provide the business-case documentation for the proposed development.

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(3) For subsection (1) (b) (i), the person must provide details of how the development and use of the land will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including written evidence of the following:

(a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;

(b) if the person is eligible for funding by an ACT or Commonwealth government agency—the person's eligibility.

(4) This section does not apply to the direct sale to the University of NSW of land in the UNSW campus.

(5) In this section:

in-principle approval, for registration of a non-government school—see the *Education Act 2004*, dictionary.

non-government school—see the *Education Act 2004*, dictionary.

proprietor, of a non-government school—see the *Education Act 2004*, dictionary.

registered non-government school—see the *Education Act 2004*, dictionary.

45 Direct sale criterion for unallocated land for housing commissioner—Act, s 266 (1) (a) (i)

The criterion for the direct sale of a lease of land that is not allocated land to the housing commissioner is that the commissioner requires the land for housing within the meaning of the *Housing Assistance Act 2007*.

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46 Direct sale criteria for leases of adjoining unleased land that is public land—Act, s 266 (1) (a) (i)

(1) The criteria for the direct sale of a lease of public land (the ***proposed lease***) to the lessee of a lease (the ***existing lease***) that adjoins the proposed lease are that—

(a) the grant of the proposed lease will—

(i) rectify an existing encroachment on the proposed lease by a building or other structure on the existing lease for the purpose of consolidating the proposed and existing leases for subdivision under the *Unit Titles Act 2001*; or

(ii) facilitate the achievement of a good planning outcome; and

(b) the proposed use of the land is compatible with Territory or Commonwealth government policies applicable to the proposed use; and

(c) because of the size, location or configuration of the proposed lease, it is not reasonable or viable to grant the proposed lease as a separate independent lease; and

(d) the grant of the proposed lease—

(i) will not detract from the amenity of the surrounding area; and

(ii) will promote better land management; and

(iii) will not unreasonably restrict public access to other land.

(2) In this section:

encroachment includes a projection at, above or below ground level.

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47 Direct sale criteria for UNSW campus land for University of NSW—Act, s 266 (1) (a) (i)

The criteria for the direct sale of a lease of land in the UNSW campus to the University of NSW are—

(a) the University has given the territory planning authority the following:

(i) a master plan approved by the Executive;

(ii) a development proposal for the land in accordance with the UNSW precinct deed;

(iii) a works approval approved by the National Capital Authority which is consistent with subparagraphs (i) and (ii); and

(b) the territory planning authority is satisfied that the University has the financial capacity, and relevant experience, qualifications, expertise and other resources, to develop and manage the land.

48 Direct sale criteria for community organisations—Act, s 266 (1) (a) (i)

(1) The criteria for the direct sale of a market value lease to a community organisation are—

(a) the community organisation meets the business-case criteria in relation to the proposed development; and

(b) the proposed use of the land is—

(i) consistent with the community organisation's constitution or rules; and

(ii) compatible with ACT or Commonwealth government policies applicable to the proposed use.

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(2) For subsection (1) (a), the community organisation must provide the business-case documentation for the proposed development.

(3) For subsection (1) (b) (ii), the community organisation must provide details of how the development and use of the land will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including written evidence of the following:

(a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;

(b) if the community organisation is eligible for funding by an ACT or Commonwealth government agency—the community organisation's eligibility.

49 Direct sale criteria for supportive accommodation—Act, s 266 (1) (a) (i)

(1) The criteria for the direct sale of a market value lease for supportive accommodation are—

(a) the proposed lessee is a community organisation; and

(b) if the proposed lessee requires an approval (however described) under a territory or Commonwealth law to provide the supportive accommodation to which the proposed use of the land relates—the proposed lessee holds the approval; and

(c) the proposed lessee meets the business-case criteria in relation to the proposed development; and

(d) the proposed use of the land—

(i) is consistent with the proposed lessee's constitution or rules; and

(ii) will promote any ACT or Commonwealth government policies in relation to supportive accommodation; or

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(iii) will meet a need for additional supportive accommodation in the ACT.

(2) For subsection (1) (c), the proposed lessee must provide the business-case documentation for the proposed development.

(3) For subsection (1) (d) (ii), the proposed lessee must provide details of how the development and use of the land will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including written evidence of the following:

(a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;

(b) if the person is eligible for funding by an ACT or Commonwealth government agency—the person's eligibility.

50 Direct sale criteria for rural leases—Act, s 266 (1) (a) (i)

(1) The criteria for the direct sale of a rural lease to a person are—

(a) for at least 5 years before applying for the direct sale, the person has—

(i) lawfully occupied the land; or

(ii) been the occupier (whether as lessee, sublessee or licence-holder) of adjoining land; and

(b) the land's custodian agrees to the grant.

(2) For subsection (1) (b), the person must provide written evidence that the land's custodian agrees to the grant.

Note The person must have also signed a land management agreement in relation to the land (see Act, s 350).

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Division 7.3 Direct sales approved by Minister

51 Direct sales requiring approval by Minister—Act, s 266 (1) (b)

The following leases are prescribed:

(a) a lease granted to the Territory, other than a lease to which section 54 (1) (g) applies;

(b) a lease of unleased land, other than public land, to the lessee of an adjoining lease.

52 Direct sale criteria for Territory—Act, s 266 (1) (b) (i)

The criteria for the direct sale of a lease to the Territory are—

(a) the land is suitable for the proposed use; and

(b) an amount has been appropriated to develop and manage the land.

53 Direct sale criteria for leases of adjoining unleased land other than public land—Act, s 266 (1) (b) (i)

(1) The criteria for the direct sale of a lease of unleased land other than public land (the ***proposed lease***) to the lessee of a lease (the ***existing lease***) that adjoins the proposed lease are that—

(a) the grant of the proposed lease will—

(i) rectify an existing encroachment on the proposed lease by a building or other structure on the existing lease for the purpose of consolidating the proposed and existing leases for subdivision under the *Unit Titles Act 2001*; or

(ii) facilitate the achievement of a good planning outcome; and

(b) the proposed use of the land is compatible with Territory or Commonwealth government policies applicable to the proposed use; and

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(c) because of the size, location or configuration of the proposed lease, it is not reasonable or viable to grant the proposed lease as a separate independent lease; and

(d) the grant of the proposed lease—

(i) will not detract from the amenity of the surrounding area; and

(ii) will promote better land management; and

(iii) will not unreasonably restrict public access to other land.

(2) In this section:

encroachment includes a projection at, above or below ground level.

Division 7.4 Certain direct sales not requiring approval

54 Certain direct sales not requiring approval—Act, s 266 (1) (e)

(1) The following leases are prescribed:

(a) a lease offered at auction but not sold;

(b) a lease (the ***new lease***) if—

(i) a lease of the land was offered by tender but not sold; and

(ii) the new lease includes conditions materially similar to the conditions of the lease offered by tender, other than any conditions relevant only to the tender process;

(c) a lease offered at ballot but not sold;

(d) a lease sold at ballot but the contract of sale is rescinded or otherwise ended before the lease is granted under the contract;

(e) a lease of allocated land to the housing commissioner;

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(f) a lease to a registered community housing provider;

(g) a lease of land to the Territory if the land is used or occupied by the Territory.

(2) In this section:

auction, in relation to a lease, means an auction of the lease under the Act, section 263 (1) (a).

ballot, in relation to a lease, means a ballot of the lease under the Act, section 263 (1) (c).

registered community housing provider—see the *Community Housing Providers National Law (ACT)*, section 4 (1).

Note The *Community Housing Providers National Law (ACT) Act 2013*, s 7 applies the Community Housing Providers National Law (ACT) set out in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), schedule as if it were an ACT law called the *Community Housing Providers National Law (ACT)*.

tender, in relation to a lease, means a tender for the lease under the Act, section 263 (1) (b).

55 Direct sales of affected leases—Act, s 266 (1) (e)

(1) The following leases are prescribed:

(a) a lease of land to an eligible former owner of the land;

(b) a lease in relation to a surrendered residential block;

(c) a lease that was an eligible impacted lease at the time the lease was sold to the Territory.

(2) In this section:

eligible former owner means—

(a) a person who—

(i) was the lessee of an affected lease or eligible impacted lease; and

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(ii) for a lessee of an affected lease—

(A) surrendered the affected lease to the Territory under the LAIE buyback program; and

(B) in the deed to surrender the affected lease elected to receive a first right of refusal to purchase a new lease of the land; and

(iii) for a lessee of an eligible impacted lease—

(A) sold the lease to the Territory under the eligible impacted property buyback program; and

(C) in the contract for the sale of the eligible impacted lease elected to receive a first right of refusal to purchase a new lease of the land; or

(b) if the person mentioned in paragraph (a) dies—a person who would have obtained an interest in the affected lease or eligible impacted lease if the lease had not been surrendered or sold; or

(c) if the person mentioned in paragraph (a) is a party to a divorce or the ending of a civil partnership or civil union—a person who would have obtained an interest in the affected lease or eligible impacted lease under a court order if the lease had not been surrendered or sold.

eligible impacted lease means a lease of land on which there are improvements including an eligible impacted property.

eligible impacted property—see the *Civil Law (Sale of Residential Property) Act 2003*, section 9A (1).

eligible impacted property buyback program—see the *Civil Law (Sale of Residential Property) Act 2003*, section 9A (1).

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surrendered residential block means a block—

(a) for which a lease has been surrendered under the LAIE buyback program; and

(b) that is included as a surrendered block on the affected residential premises register.

56 Required provisions in direct sale leases for UNSW campus land—Act, s 269 (2)

A lease granted under the Act, section 263 (1) (d) of land in the UNSW campus to the University of NSW may only include—

(a) an authorised use as an education and research facility that is consistent with the UNSW precinct deed; and

(b) development conditions that are consistent with the UNSW precinct deed.

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Part 8 Grants of leases generally

57 Period for failure to accept and execute lease—Act, s 273 (1)

The period is 20 working days after the day the territory planning authority notifies the person entitled to the grant of the lease that the lease is available for execution.

58 Exemptions from restrictions on dealings with certain leases—Act, s 280 (3)

(1) The following leases are exempt:

(a) a lease to a registered community housing provider;

(b) a lease granted under the Act, section 263 (1) by auction, tender or ballot if—

(i) the class of people eligible or ineligible for the grant was restricted under the Act, section 265; and

(ii) the lease is sold for market value; and

(iii) the Act, section 279 (1) (a) or (d) does not apply to the lease;

(c) a lease (the ***exempt lease***) of public land granted under the Act, section 263 (1) (d) to the lessee of a lease that adjoins the exempt lease;

(d) a lease (the ***exempt lease***) of unleased land, other than public land, granted under the Act, section 263 (1) (d) to the lessee of a lease that adjoins the exempt lease;

(e) a lease granted under the Act, section 263 if—

(i) the lease is sold for market value; and

(ii) the Act, section 279 (1) (a) or (d) does not apply to the lease.

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(2) In this section:

registered community housing provider—see the *Community Housing Providers National Law (ACT)*, section 4 (1).

Note The *Community Housing Providers National Law (ACT) Act 2013*, s 7 applies the Community Housing Providers National Law (ACT) set out in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), schedule as if it were an ACT law called the *Community Housing Providers National Law (ACT)*.

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Part 9 Subletting of leases

59 Criteria for giving approval of sublease of land—Act, s 284 (3) (a)

The following criteria are prescribed:

(a) the sublease must be for a use authorised by the lease;

(b) for a land sublease—

(i) the sublease must not be for a term longer than 99 years; and

(ii) if the sublease authorises residential use of the land under the sublease—the sublease must state the number, or a maximum number, of dwellings permitted on the land under the sublease; and

(iii) if the sublease authorises non-residential use of the land under the sublease—the sublease must state the maximum total gross floor area of buildings and structures permitted for non-residential use on the land under the sublease.

60 Prescribed matters in land sublease—Act, s 284 (7)

(1) A land sublease must—

(a) if the sublease is a declared land sublease—state that it is a declared land sublease; and

(b) include a purpose clause consistent with the lease under which the sublease is granted; and

(c) state the commencement date and term of the sublease; and

(d) include a plan of the land—

(i) prepared in accordance with any relevant practice direction under the *Surveyors Act 2007*, section 55; and

(ii) signed by the surveyor-general; and

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(e) include a provision dealing with termination of the sublease, including breach of the sublease, that is fair and equitable between the parties taking into account the parties' circumstances and the nature and circumstances of the termination; and

(f) include a provision dealing with the resolution of disputes between the parties in relation to the sublease, that is fair and equitable between the parties taking into account the parties' circumstances and the nature and circumstances of the dispute; and

(g) include or be accompanied by—

(i) a written statement from relevant utility providers that the utility services are available to the land under the land sublease; and

(ii) plans in accordance with any relevant Australian Standard showing that the utility services are available to the land under the land sublease; and

(h) include or be accompanied by plans in accordance with any relevant Australian Standard showing that satisfactory road access for city services is available to the land under the land sublease.

Examples—city services

1 waste removal and recycling services

2 fire and other emergency services

(2) For this section, a ***utility service is available to the land under a land sublease*** if the service can be connected at the boundary of the land sublease to enable the service to be provided on the land under the land sublease.

(3) In this section:

electricity services means the services described in the *Utilities Act 2000*, section 6.

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gas services means the services described in the *Utilities Act 2000*, section 9.

sewerage services means the services described in the *Utilities Act 2000*, section 13.

telecommunications network—see the *Telecommunications Act 1997* (Cwlth), section 7.

telecommunications services—see the *Telecommunications (Interception and Access) Act 1979* (Cwlth), section 5 (1).

utility services means electricity services, gas services, sewerage services, telecommunication services and water services.

water services means the services described in the *Utilities Act 2000*, section 11.

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Part 10 Grants of further leases

61 Criteria for grant of further leases for unit title schemes—Act, s 289 (1) (f)

(1) The following criteria are prescribed for a further lease of a unit or the common property in a units plan:

(a) the application for the further lease is made by the owners corporation for the units plan;

(b) the application is supported by an ordinary resolution of the owners corporation;

(c) a certificate under the *Unit Titles (Management) Act 2011*, schedule 3, section 3.19 about the resolution is attached to the application;

(d) the territory planning authority is granting further leases for all the units and the common property in the units plan;

(e) the further leases are all granted for the same term.

(2) In this section:

ordinary resolution—see the *Unit Titles (Management) Act 2011*, dictionary.

owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

unit—see the *Unit Titles Act 2001*, section 9.

units plan—see the *Unit Titles Act 2001*, dictionary.

62 Criteria for grant of further leases for community title schemes—Act, s 289 (1) (f)

(1) The following criteria are prescribed for a further lease of a lot in a community title scheme:

(a) the application is made by the body corporate for the scheme;

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(b) the application is supported by an ordinary resolution of the body corporate;

(c) attached to the application is a certificate under the seal of the body corporate stating that at a general meeting of the body corporate held on a stated day a resolution was passed for paragraph (b) in the terms set out in the certificate;

(d) the territory planning authority is granting further leases for all the lots in the scheme;

(e) the further leases are all granted for the same term.

(2) In this section:

body corporate—see the *Community Title Act 2001*, dictionary.

community title scheme—see the *Community Title Act 2001*, dictionary.

lot—see the *Community Title Act 2001*, dictionary.

ordinary resolution—see the *Community Title Act 2001*, dictionary.

63 Criteria for grant of further community leases—Act, s 289 (1) (f)

The following criteria are prescribed for a further lease of a community lease:

(a) if the lessee is required to give the territory planning authority a report under the Act, section 296 (Community use reports)—the report has been given;

(b) if the territory planning authority has required the lessee to commission an audit mentioned in the Act, section 297 (Audit of use of community lease land) in the 6 months before the lease expires—the audit has been carried out and the authority is satisfied the community organisation continues to use the lease for the use stated in the lease.

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Part 11 Grants of community leases

64 Definitions—pt 11

In this part:

proposed lease—see section 66 (2) (a).

threshold criteria, in relation to a tender for a community lease—see section 68.

64A Prescribed community lease uses—Act, s 291 (1), def *community lease use*, par (k)

(1) The following community uses are prescribed:

(a) health facility;

(b) hospital.

(2) A term used in subsection (1) has the same meaning as it has in the territory plan.

65 Community lease provisions—Act, s 292, def *community lease provisions*, par (g)

(1) A provision stating the additional uses for the land described in the lease is prescribed.

(2) In this section:

additional use—see section 67 (1) (c).

66 Tender process—expressions of interest—Act, s 295 (1) (d)

(1) Before granting a community lease by tender, the territory planning authority must, by public notice, invite community organisations to submit expressions of interest in the grant of the lease.

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(2) The territory planning authority must ensure that—

(a) a copy of the community lease proposed to be granted (the ***proposed lease***) is available on the authority website; and

(b) the public notice includes a statement to that effect.

(3) A community organisation's expression of interest must include a statement addressing the threshold criteria in relation to the tender for the lease.

(4) If the territory planning authority receives an expression of interest from a community organisation, the authority must—

(a) assess whether the organisation meets the threshold criteria in relation to the tender for the lease; and

(b) if 2 or more organisations meet the criteria—rank the organisations by suitability to be granted the lease in accordance with the criteria.

(5) The territory planning authority may—

(a) decide how many ranked community organisations to invite to tender for the grant of the lease; and

(b) invite the organisations, starting with the first ranked organisation, to tender for the grant of the lease.

67 Tender process—content of tenders—Act, s 295 (1) (d)

(1) If the territory planning authority invites a community organisation to tender for the grant of a community lease, the community organisation's tender must include—

(a) the information included in the organisation's expression of interest under section 66; and

(b) a statement addressing the additional criteria mentioned in subsection (2); and

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(c) if more than 1 potential use is identified for the land in a statement under the Act, section 294 (Statement of future community land for stated districts)—a proposal to use the land described in the proposed lease for another potential use (an ***additional use***), in addition to the use stated in the proposed lease; and

(d) a statement addressing the threshold criteria in relation to the additional use; and

(e) any additional information requested by the authority.

(2) The following additional criteria are prescribed:

(a) the community organisation demonstrates that it needs the land described in the proposed lease and the need is consistent with its constitution or rules, taking into account the following:

(i) whether the community organisation or a related body corporate holds another lease;

(ii) if the organisation or related body corporate holds another lease—whether the land described in the other lease is used to its capacity or is otherwise unsuitable for the use that the proposed lease could or does authorise;

(iii) whether the organisation or related body corporate has, in the 10 years before the date of the tender, dealt with a lease;

(b) the community organisation's proposed development and use of the land described in the proposed lease would not result in a significant underuse of the land;

Example

a community organisation is not likely to satisfy the criterion in par (b) if the plans for developing facilities and infrastructure on the land described in the lease show that a significant part of the land will not be used

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(c) if the lease includes a building and development provision—the community organisation's proposed development of the land described in the proposed lease will promote the shared use of facilities on the land by other community organisations and the broader community;

(d) the community organisation, and any proposed sublessee, will use the land described in the proposed lease in a way that is consistent with the additional use of the land proposed by the organisation;

(e) any other criteria the territory planning authority considers appropriate to assess the suitability of tenders for the proposed lease.

(3) In this section:

related body corporate, of a community organisation, means a related body corporate under the Corporations Act.

68 Grant by tender—threshold criteria—Act, s 295 (1) (e)

The following criteria (***threshold criteria***) are prescribed:

(a) the person to whom the proposed lease is to be granted is a community organisation;

(b) the community organisation has the financial capacity and ability to—

(i) if the proposed lease includes a building and development provision—develop the land described in the lease for the use stated in the lease; and

(ii) use the land for the use stated in the lease;

(c) the community organisation's constitution or rules are consistent with the matters mentioned in paragraph (b) (i) and (ii);

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(d) the community organisation has experience and expertise in doing the things mentioned in paragraph (b) (i) and (ii);

(e) if the community organisation proposes to sublease the lease—the sublessee has the ability to comply with the criteria mentioned in paragraphs (a) to (d).

69 Tender process—assessment of tenders—Act, s 295 (1) (d)

If the territory planning authority receives a tender for a community lease from a community organisation, the territory planning authority must assess the suitability of the tender using—

(a) the threshold criteria; and

(b) the additional criteria in section 67 (2).

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Part 12 Lease variations

Division 12.1 Variation of rental leases

70 Lease classes for variation to pay out rent—Act, s 320 (1) (b)

The following classes of lease are prescribed:

(a) rental leases granted for the full market rental value of the lease;

(b) concessional leases, other than a concessional lease—

(i) that is a recently commenced lease within the meaning of section 73; or

(ii) that is a recently commenced lease within the meaning of the *Planning and Development Regulation 2008* (repealed), section 180; or

(iii) granted to a community organisation under the *Land (Planning and Environment) Act 1991* (repealed), section 163 (Leases to community organisations).

71 Decision on rent payout lease variation application—Act, s 321 (1)

The period of 20 working days is prescribed.

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Division 12.2 Chargeable variations of nominal rent leases

72 Meaning of *added value*—div 12.2

(1) In this division:

added value, for the variation of a nominal rent lease, means the amount worked out as follows:

$$V_1 - V_2$$

(2) In this section:

V_1—see the Act, section 332 (2).

V_2—see the Act, section 332 (2).

73 Meaning of *recently commenced lease*—div 12.2

(1) In this division:

recently commenced lease, in relation to the variation of a lease, means—

(a) a lease that commenced not more than 5 years before the application for the variation is made; or

(b) a further lease granted under the Act, section 289 following the surrender of a lease that commenced not more than 5 years before the application for the variation is made; or

(c) a lease regranted following the surrender of a lease if—

(i) the regranted lease includes all or part of the land described in the surrendered lease and is not in a future urban area; and

(ii) the surrendered lease commenced not more than 5 years before the application for the variation is made; or

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(d) a market value lease granted following the surrender of a concessional lease if—

(i) the market value lease is granted to the same lessee as the surrendered lease; and

(ii) the surrendered lease commenced not more than 5 years before the application for the variation is made; or

(e) a lease granted following the surrender of 2 or more leases of the same size if any of the leases commenced not more than 5 years before the application for the variation is made; or

(f) a lease granted following the surrender of 2 or more leases of at least 2 different sizes if the largest lease commenced not more than 5 years before the application for the variation is made.

(2) In this section:

largest lease, of the surrendered leases, means the lease, or any of the leases, with the largest area.

regrant, of a surrendered lease, means the grant of a new lease, subject to different provisions, to the same lessee as the surrendered lease.

74 Exempt variations—Act, s 327, def *chargeable variation*, par (c)

(1) The following are prescribed:

(a) a variation of a holding lease;

(b) a variation to authorise the use of the land under the lease for a secondary residence;

(c) a variation of a perpetual Crown lease held by the University of Canberra;

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(d) a variation, if the only effect of the variation is to—

(i) authorise the use of the land under the lease for a childcare centre; or

(ii) do both of the following:

(A) authorise the use of the land under the lease for a childcare centre;

(B) limit the maximum number of children provided care in the childcare centre permitted under the lease; or

(iii) increase the maximum number of children provided care in the childcare centre permitted under the lease; or

(iv) increase the maximum gross floor area of any building or other structure permitted for use as a childcare centre on the land under the lease.

(2) In this section:

childcare centre—see the *Children and Young People Act 2008*, section 733 (1).

holding lease—see the *Districts Act 2002*, section 7 (7).

75 Standard chargeable variations—Act, s 327, def *standard chargeable variation*

(1) The following chargeable variations are prescribed:

(a) if a development application relates to the chargeable variation of only 1 residential lease—a variation to increase the number of dwellings permitted on the land under the lease;

(b) if a development application relates to the chargeable variation of only 1 residential lease—a variation to limit the number of dwellings permitted on the land under the lease;

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(c) if a development application relates to the chargeable variation of only 1 non-residential lease—a chargeable variation of the lease that—

(i) increases or limits the number of dwellings permitted on the land under the lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or other structure permitted for non-residential use on the land under the lease;

(d) the consolidation of 2 or more nominal rent leases;

(e) the subdivision of 1 or more nominal rent leases;

(f) if 2 or more nominal rent leases are consolidated—a variation that—

(i) increases the number of dwellings permitted on the land under the consolidated lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or other structure permitted for non-residential use on the land under the consolidated lease;

(g) if 1 or more nominal rent leases are subdivided—a variation that—

(i) increases the number of dwellings permitted on the land under the subdivided lease; or

(ii) increases, or has the effect of increasing, the maximum gross floor area of any building or other structure permitted for non-residential use on the land under the subdivided lease;

(h) if the development application relates to a retirement complex—a variation to increase the maximum number of—

(i) self-care units in the complex permitted under the lease; or

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(ii) care beds in the complex permitted under the lease;

(i) if a nominal rent lease authorises an incorporated association to use the land in the lease for a stated purpose—a variation to remove the reference in the lease to the association in relation to the stated purpose;

(j) a variation to limit the number of non-residential units (however described) permitted on the land under a non-residential lease.

Example—par (a)

a variation of a nominal rent lease to increase the maximum number of residential units permitted on the land under the lease from 20 units to 40 units

Example—par (b)

A lease permits land to be used for residential purposes but does not state any limit on the number of permitted residences on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001*. That Act, s 20 (4) does not allow the lease to be subdivided unless the lease provides for the number of dwellings on the land. The lessee must vary the lease to limit the number of dwellings permitted on the land before subdividing the land.

Example—par (i)

A lease authorises an incorporated association to use land for office accommodation. The lessee applies for development approval to vary the lease to remove the reference to the association so that the lease may be used for office accommodation by anyone.

Example—par (j)

A non-residential lease authorises commercial use of the land under the lease but does not limit the number of permitted buildings, units or other structures on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001* and to develop a warehouse on the land into commercial and retail units. That Act, s 20 (4) does not allow the lease to be subdivided unless the lease states the number of units (however described) permitted on the land. The lessee must vary the lease to limit the number of units permitted on the land before subdividing the land.

(2) In this section:

care bed, in a retirement complex, means a bed used by a person 55 years old or older who requires residential care services under the *Aged Care Act 1997* (Cwlth).

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consolidated lease means a lease granted during a consolidation involving the surrender of 1 or more nominal rent leases.

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

non-residential lease means a lease other than a residential lease under the Act, section 257.

retirement complex means premises used for—

(a) permanent residential accommodation for people 55 years old or older, in self-care units; and

(b) one or more of the following:

(i) a hostel;

(ii) a nursing home.

Note Self-care units that are part of a retirement complex may also be within the meaning of 'retirement village' in the territory plan.

self-care unit, in a retirement complex, means a unit for use by a person 55 years old or older who is not provided, as a condition of occupancy of the unit, residential care or similar services (excluding access to facilities or services provided within the complex).

Examples—facilities or services provided within the complex

gymnasium, medical centre, swimming pool, therapy room, kiosk facility

subdivided lease means a lease granted during a subdivision involving the surrender of 1 or more nominal rent leases.

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76 Combination of standard and non-standard chargeable variations—Act, s 330 (c)

The lease variation charge is the total of—

(a) for each standard chargeable variation for which a charge is determined under the Act, section 331—the determined charge for the variation; and

(b) for each non-standard chargeable variation—the charge worked out under the Act, section 332 for the variation.

77 Appointment of independent valuer—Act, s 336 (4) (b) (ii)

The president of the ACT division of the Australian Property Institute Limited ACN 608 309 128 is prescribed.

78 Requirements for independent valuer—Act, s 336 (4) (c)

A valuer preparing an independent valuation must be a current member of the Australian Property Institute Limited ACN 608 309 128.

79 Increase of lease variation charge for concessional leases—Act, s 339 (1)

(1) The variation of a concessional lease is prescribed if—

(a) the variation is for a use other than a community lease use; or

(b) the lease was not granted to the housing commissioner for a term beginning before 17 December 1987; or

(c) if the lease as varied is a consolidated or subdivided concessional lease—

(i) the lease is a recently commenced lease; and

(ii) the amount payable under section 80 in relation to the variation is less than the amount payable under this section for the variation.

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(2) The lease variation charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

(3) In this section:

consolidated or subdivided concessional lease—see the Act, section 258 (4).

Note See the Act, s 339 (2) for when this section commences.

80 Increase of lease variation charge for recently commenced leases—Act, s 339 (1)

(1) The variation of a recently commenced lease is prescribed if—

(a) the variation is not only to correct an error in the surrendered lease; or

(b) the lease is a concessional lease and the amount payable under section 79 in relation to the variation is less than the amount payable under this section for the variation.

(2) The lease variation charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

Note See the Act, s 339 (2) for when this section commences.

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Part 13 Discharge amounts for rural leases

81 Definitions—pt 13

In this part:

earlier index number, in relation to a lease, means—

(a) the index number published before the lease commenced; or

(b) if the Australian statistician changes the reference base for the consumer price index after the lease commenced but before the calculation under this part of the later index number for the lease—the index number that would have been applicable if the new reference base had been in effect when the lease commenced.

excluded amount, in relation to a lease, means the value of any lessee-owned improvements to the land described in the lease.

index number—

(a) means the *All Groups Consumer Price Index* number published by the Australian statistician from time to time; but

(b) does not include a substituted index number published by the Australian statistician if the substituted index number for a period has been recalculated for a reason other than a change in the reference base for the *All Groups Consumer Price Index*.

special Pialligo lease means a lease of the district of Majura, section 2, block 6, 12, 13, 14, 15, 19, 20 or 52.

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82 Discharge amount for rural leases other than special Pialligo leases—Act, s 349, def *discharge amount*

(1) The discharge amount in relation to a dealing with a rural lease, other than a defined rural lease, is the amount worked out as follows:

$$\frac{\text{last amount} - \text{indexed first amount}}{2} + \text{owed amount}$$

(2) The discharge amount in relation to a dealing with a defined rural lease is the owed amount plus $10 for each year, or part of a year, of the remainder of the holding period for the lease.

(3) This section does not apply to a dealing with a special Pialligo lease.

(4) In this section:

defined rural lease means a rural lease—

(a) for a term shorter than 21 years; and

(b) that commenced at least 2 years before the discharge amount is paid.

first amount means—

(a) for a nominal rent lease—the consideration for the lease when it was granted less the excluded amount; or

(b) for a lease granted for a term shorter than 21 years—the value of the lease when it was granted less the excluded amount; or

(c) for any other lease—the consideration for the lease when it was granted plus any amount to be paid under the lease less the excluded amount.

indexed first amount means the amount worked out as follows:

$$\text{first amount} \times \frac{\text{later index number}}{\text{earlier index number}}$$

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last amount, in relation to a dealing with a lease, means—

(a) the market value of the lease less the excluded amount if—

(i) there is no consideration for the dealing; or

(ii) the dealing relates only to part of the land described in the lease; or

(iii) the consideration for the dealing is less than the market value of the lease; or

(b) in any other case—the consideration for the dealing less the excluded amount.

later index number, in relation to a lease, means the last index number published before the last amount is worked out for the lease.

owed amount, in relation to a dealing with a lease, means—

(a) for a lease for a term shorter than 21 years—any rent plus interest payable under the lease on the day of the dealing with the lease; or

(b) for a lease for a term of 21 years or longer—any amount remaining to be paid under the lease, even if the amount is not yet owing.

83 Discharge amount for special Pialligo leases—Act, s 349, def *discharge amount*

(1) The discharge amount for a special Pialligo lease that commenced less than 1 year before the discharge amount is paid is the amount worked out as follows:

amount paid + owed amount

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(2) The discharge amount for a special Pialligo lease that commenced at least 1 year before the discharge amount is paid is the amount worked out as follows:

$$\text{amount paid} - \left(\text{cpi adjusted amount} \times \frac{\text{whole years}}{10}\right) + \text{owed amount}$$

(3) In this section:

amount paid means—

(a) for a nominal rent lease—the consideration for the lease when it was granted less the excluded amount; or

(b) for any other lease—the consideration for the lease when it was granted plus any amount to be paid under the lease less the excluded amount.

cpi adjusted amount means the amount worked out as follows:

$$\text{amount paid} \times \frac{\text{later index number}}{\text{earlier index number}}$$

later index number, in relation to a lease, means the last index number published before the discharge amount for the lease is paid.

owed amount, in relation to a lease, means any amount remaining to be paid under the lease, even if the amount is not yet owing.

whole years, in relation to a lease, means the number of whole years since the lease commenced.

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Part 14 Surrendering and terminating leases

Division 14.1 Payment of amount on surrender or termination of leases—certain leases

84 Application—div 14.1

(1) This division applies to the following leases:

(a) a residential lease granted for not more than 3 residential dwellings;

(b) a lease granted to a community organisation;

(c) a lease terminated for breach of a building and development provision.

(2) However, this division does not apply to a lease surrendered under—

(a) the LAIE buyback program; or

(b) the eligible impacted property buyback program.

(3) In this section:

eligible impacted property buyback program—see the *Civil Law (Sale of Residential Property) Act 2003*, section 9A (1).

85 Amount of refund on surrender or termination of certain leases—Act, s 364 (2)

The prescribed amount is the lesser of the following amounts:

(a) the amount paid for the grant or transfer of the lease to the lessee less any amount payable to, or incurred by, the Territory under section 86;

(b) the market value of the unimproved value of the land described in the lease less any amount payable to, or incurred by, the Territory under section 86.

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86 Requirements for refund on surrender or termination of leases—Act, s 364 (3)

The territory planning authority may pay an amount mentioned in section 85 if—

(a) the application for payment is made by the lessee—

(i) before the period for the lease's building and development provision has ended; or

(ii) because the lease has been terminated; and

(b) the territory planning authority is satisfied that it is not appropriate to approve a transfer of the lease under the Act, section 371 or section 372; and

(c) all outstanding amounts payable to the Territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid; and

(d) all amounts incurred by the Territory in relation to the surrender or termination of the lease have been paid.

Division 14.2 Payment of amount on surrender of leases—LAIE buyback program

87 Definitions

(1) In this regulation:

affected lease means a lease of land on which there are improvements including affected residential premises.

affected residential premises means—

(a) residential premises that contain, or have contained, loose-fill asbestos insulation; or

(b) premises listed on the affected residential premises register.

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loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47I.

loose-fill asbestos insulation eradication buyback program (or ***LAIE buyback program***) means the program involving the surrender to the Territory of affected leases.

LAIE buyback program valuation procedure means the procedure set out in schedule 3.

(2) In this section:

residential premises means premises, or a part of premises, that are a class 1 or class 2 building.

88 Payment amount—contract entered before 19 February 2014—Act, s 364 (2)

(1) This section applies if—

(a) a lessee entered into a contract for sale to purchase land described in an affected lease before 19 February 2014; and

(b) the contract is completed before 29 October 2014; and

(c) the lessee surrenders the affected lease under the LAIE buyback program.

(2) The prescribed amount is the greater of the following amounts:

(a) the amount payable to the lessee for the surrender under the LAIE buyback program valuation procedure;

(b) the amount payable to the lessee under the Act, section 358 (Authority must pay for certain improvements).

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89 Payment amount—contract entered after 18 February 2014 and completed before 29 October 2014—Act, s 364 (2)

(1) This section applies if—

(a) a lessee entered into a contract for sale of land described in an affected lease after 18 February 2014; and

(b) the contract for sale was completed before 29 October 2014; and

(c) the lessee surrenders the affected lease under the LAIE buyback program.

(2) The prescribed amount is the greater of the following amounts:

(a) the amount of the purchase price set out in the contract for sale;

(b) the amount payable to the lessee under the Act, section 358 (Authority must pay for certain improvements).

(3) However, subsection (4) applies if—

(a) a lessee makes a submission to the territory planning authority before surrendering the affected lease, stating that the lessee undertook improvements to the land after the day the contract for sale was completed and before 29 October 2014 (the ***after-purchase improvements***); and

(b) the territory planning authority is satisfied that the after-purchase improvements have had a significant effect on the value of the affected lease including improvements.

(4) The prescribed amount is the greater of the following amounts:

(a) the amount of the purchase price set out in the contract for sale, plus the value of the after-purchase improvements;

(b) the amount payable to the lessee under the Act, section 358.

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90 Payment amount—contract entered after 18 February 2014 and completed after 28 October 2014—Act, s 364 (2)

(1) This section applies if—

(a) a lessee entered into a contract for sale of land described in an affected lease after 18 February 2014 but before 28 October 2014; and

(b) the contract for sale is completed after 28 October 2014; and

(c) the lessee surrenders the affected lease under the LAIE buyback program.

(2) The prescribed amount is the greater of the following amounts:

(a) the amount of the purchase price set out in the contract for sale;

(b) the amount payable to the lessee under the Act, section 358.

91 Payment amount—lease acquired before 18 February 2014 other than by contract—Act, s 364 (2)

(1) This section applies if a lessee—

(a) before 19 February 2014, acquired an interest in land described in an affected lease other than by entering into a contract for sale; and

(b) surrenders the affected lease under the LAIE buyback program.

(2) The prescribed amount is the greater of the following amounts:

(a) the amount payable to the lessee for the surrender under the LAIE buyback program valuation procedure;

(b) the amount payable to the lessee under the Act, section 358.

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92 Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease before 18 February 2014—Act, s 364 (2)

(1) This section applies if—

(a) a person (the ***transferor***) acquired an interest in land described in an affected lease before 19 February 2014; and

(b) after 18 February 2014, a lessee acquires from the transferor an interest in the land other than by entering into a contract for sale; and

(c) the lessee surrenders the affected lease under the LAIE buyback program.

(2) The prescribed amount is the greater of the following amounts:

(a) the amount payable to the lessee for the surrender under the LAIE buyback program valuation procedure;

(b) the amount payable to the lessee under the Act, section 358.

93 Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease after 18 February 2014—Act, s 364 (2)

(1) This section applies if—

(a) a person (the ***transferor***) entered into a contract for sale of land described in an affected lease after 18 February 2014 but before 28 October 2014; and

(b) after 18 February 2014, a lessee acquires from the transferor an interest in the land other than by entering into a contract for sale; and

(c) the lessee surrenders the affected lease under the LAIE buyback program.

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(2) The prescribed amount is the greater of the following amounts:

(a) the amount of the purchase price set out in the contract for sale;

(b) the amount payable to the lessee under the Act, section 358.

(3) However, subsection (4) applies if—

(a) a lessee makes a submission to the territory planning authority before surrendering the affected lease, stating that the transferor or lessee undertook improvements to the land after the day the transferor completed the contract for sale and before 29 October 2014 (the ***after-purchase improvements***); and

(b) the territory planning authority is satisfied that the after-purchase improvements have had a significant effect on the value of the affected lease including improvements.

(4) The prescribed amount is the greater of the following amounts:

(a) the amount of the purchase price set out in the contract for sale, plus the value of the after-purchase improvements;

(b) the amount payable to the lessee under the Act, section 358.

94 Requirements for refund on surrender of leases—LAIE buyback program—Act, s 364 (3)

The territory planning authority may pay an amount mentioned in sections 88 to 93 only if all outstanding amounts payable to the Territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid.

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95 Payment amount under this division includes payment for improvements

An amount paid to a lessee under any of the following provisions is taken to include any payment the territory planning authority may be liable to pay to the lessee under the Act, section 358 (Authority must pay for certain improvements) in relation to the surrender:

(a) section 88 (2) (a);

(b) section 89 (2) (a) and (4) (a);

(c) section 90 (2) (a);

(d) section 91 (2) (a);

(e) section 92 (2) (a);

(f) section 93 (2) (a) and (4) (a).

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Part 15 Leases with building and development provisions

96 Meaning of *noncompliance period*—pt 15

In this part:

noncompliance period means the total period during which works are not completed as required by a building and development provision.

97 Approval of transfer for personal reasons—Act, s 371 (2) (a)

(1) The following are prescribed:

(a) mental or physical illness or trauma to the lessee, or a member of the lessee's immediate family, after the purchase of the lease that has a demonstrable effect on the lessee's ability to develop the lease;

(b) the lessee moving to a place interstate or overseas because the lessee's or the lessee's domestic partner's employment is or will be at the place;

(c) the lessee, or the lessee's domestic partner, has been unemployed for at least 3 months before the request for the assignment or transfer of the lease is made, if the lessee satisfies the territory planning authority that reasonable attempts have been made to obtain alternative employment.

(2) For subsection (1) (a), the territory planning authority must consider any medical certificate by a doctor about the mental or physical illness or trauma.

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(3) In this section:

immediate family, of a lessee, means—

(a) the lessee's domestic partner; or

(b) a parent or sibling of the lessee; or

(c) an adult child of the lessee; or

(d) another relative of the lessee who is a member of the same household as the lessee; or

(e) a sole or primary carer who is living with a person mentioned in paragraphs (a) to (d).

98 Considerations for transfer of leases—Act, s 373

The following matters are prescribed:

(a) the proposed transferee's financial ability to comply with the lease's building and development provision;

(b) the proposed transferee's history of compliance with building and development provisions in relation to leases in which the proposed assignee or transferee has, or has had, an interest;

(c) the lessee's history of compliance with building and development provisions in relation to leases in which the lessee has, or has had, an interest;

(d) the time remaining for compliance with the lease's building and development provision when the application to the territory planning authority for its approval of the transfer of the lease is made;

(e) a written undertaking from the proposed transferee that the transferee will comply with the lease's building and development provision.

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99 Noncompliance fee—Act, s 374 (2)

(1) For each year, or part year, of the noncompliance period, the lessee must pay the amount worked out as follows:

$$A \times \frac{\text{days}}{365} \times \text{rates}$$

(2) In this section:

A means—

(a) for the 1st to 4th year of the noncompliance period—0; and

(b) for the 5th or later year of the noncompliance period—1.

days means—

(a) for a year—365; or

(b) for a part year—the number of days in the part year.

rates means the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land described in the lease for the financial year in which the noncompliance fee is worked out.

Example

Lyndall's lease includes a building and development provision requiring the works to be completed by 1 July 2025, but the works are not completed in time.

The works are eventually completed on 1 January 2030 (4 years and 184 days late). No fee is payable for the first 4 years of the noncompliance period (until 1 July 2029). Rates for the 2029-30 financial year are $5 000. Lyndall is liable to pay the following noncompliance fee:

$$1 \times \frac{184}{365} \times 5\,000 = \$2\,520.55$$

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

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100 Application for reduction or waiver for hardship—Act, s 374 (4)

(1) A lessee may apply to the territory planning authority for a reduction or waiver of a noncompliance fee if—

(a) the lessee is an individual; and

(b) any of the following reasons (a ***hardship reason***) apply:

(i) the lessee, or someone on whom the lessee is financially dependent, has a medical condition that prevents full-time employment;

(ii) the lessee, or someone on whom the lessee is financially dependent, is unemployed;

(iii) the lessee, or someone on whom the lessee is financially dependent, is bankrupt or personally insolvent;

(iv) someone on whom the lessee is financially dependent has died;

(v) an unforeseen major event outside the lessee's control happened after the lessee was granted the lease, and the event has had a demonstrable effect on the lessee's ability to develop the land described in the lease.

Examples—unforeseen major event

1 a bushfire

2 large increase in interest rates

(2) However, a lessee may not apply for a reduction or waiver of a noncompliance fee—

(a) in relation to multiple incomplete works at a time; or

(b) if the lessee has received a reduction or waiver of a noncompliance fee for a hardship reason in relation to another lease within 5 years of making the application.

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(3) The application must be in writing and be accompanied by evidence of the hardship reason.

(4) In this section:

medical condition includes a physical or mental illness or disability.

101 Decision on application for reduction or waiver for hardship—Act, s 374 (4)

(1) On application under section 100, the territory planning authority may reduce or waive a noncompliance fee only if satisfied that—

(a) a hardship reason applies to the lessee; and

(b) the reduction or waiver is necessary because of the hardship reason.

(2) In satisfying itself under subsection (1) (a), the territory planning authority may, in writing, ask the applicant for further evidence or other information in relation to the application.

(3) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—

(a) if a time is stated in the request for giving the evidence or other information—within the stated time; or

(b) in any other case—within 10 working days.

(4) In deciding to reduce a noncompliance fee, the territory planning authority may allow the reduced fee to be paid in instalments.

(5) In this section:

hardship reason—see section 100 (1) (b).

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102 Application for waiver for lease transferred or assigned in special circumstances—Act, s 374 (4)

(1) A lessee, or if the lessee has died, the lessee's estate, may apply to the territory planning authority for a waiver of a noncompliance fee if the lease was transferred or assigned in any of the following circumstances (a ***special circumstance***):

(a) the lessee has died;

(b) the transfer or assignment is made under any of the following orders:

(i) an order of the Family Court;

(ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwth);

(iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship;

(c) the transfer or assignment happened by operation of, or under, bankruptcy or insolvency;

(d) the transfer or assignment happened in the exercise by an ADI or finance company of a power of sale under the *Land Titles Act 1925*, section 94 that arose from a default in payment by the lessee.

(2) The application must be in writing and be accompanied by evidence of the special circumstance.

103 Decision on application for waiver for lease transferred or assigned in special circumstances—Act, s 374 (4)

(1) On application under section 102, the territory planning authority may waive a noncompliance fee only if satisfied that the lease to which the application applies was transferred or assigned in special circumstances.

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(2) In satisfying itself under subsection (1), the territory planning authority may, in writing, ask for further evidence or other information in relation to the application.

(3) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—

(a) if a time is stated in the request for giving the evidence or other information—within the stated time; or

(b) in any other case—within 10 working days.

(4) The period for which a waiver may be approved must not be longer than the period for completing the works under the building and development provision when the lease to which the application relates was granted.

(5) In this section:

special circumstance—see section 102 (1).

104 Application for waiver for external reason—Act, s 374 (4)

(1) A lessee may apply to the territory planning authority for a waiver of a noncompliance fee if the lessee is unable to complete the works required under the building and development provision for the lease because of any of the following reasons (an ***external reason***):

(a) road or traffic infrastructure to be provided by the Territory is not complete;

(b) a sewerage, electricity, water or gas service to be provided by the Territory is not installed or connected;

(c) a delay in obtaining statutory approval required for the works, other than a delay caused wholly or partly by—

(i) the lessee; or

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(ii) a decision to refuse, or impose a condition on, a statutory approval required for the works.

Example—acceptable delay

a third party applies for review of a decision on a development application

Example—delay caused by lessee

a development application does not comply with all of the requirements in the Act, s 166

(2) The application must be in writing and be accompanied by evidence of the external reason.

105 Decision on application for waiver for external reason—Act, s 374 (4)

(1) On application under section 104, the territory planning authority may waive a noncompliance fee only if satisfied that an external reason applies to the lessee.

(2) In satisfying itself under subsection (1), the territory planning authority may, in writing, ask for further evidence or other information in relation to the application.

(3) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—

(a) if a time is stated in the request for giving the evidence or other information—within the stated time; or

(b) in any other case—within 10 working days.

(4) In this section:

external reason—see section 104 (1).

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Part 16 Controlled activities

Division 16.1 Unclean leaseholds

105A Application—div 16.1

This division applies if—

(a) a person has made a complaint to the territory planning authority in accordance with the Act, section 414 (Form of complaints); and

(b) the controlled activity to which the complaint relates is that another person was, is or will be failing to keep a leasehold clean.

105B Investigation of complaint about unclean leasehold

(1) When investigating a complaint under the Act, section 417, the territory planning authority may undertake any of the following steps:

(a) view the leasehold from a public place near the leasehold;

(b) consider whether there are items on the leasehold that can be seen from the public place;

(c) consider whether the items are of a kind that must be removed to clean up the leasehold;

(d) consider whether the volume of the items is at a level that must be reduced to clean up the leasehold;

(e) consider whether the items detract from the use or enjoyment of the surrounding area of the leasehold;

(f) consider any other matter the territory planning authority considers relevant.

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(2) For subsection (1) (c)—

(a) items of a kind that must be removed to clean up the leasehold include the following:

(i) builders spoil;

Example—builders spoil

leftover material from renovations

(ii) car bodies;

(iii) furniture;

(iv) household appliances;

(v) machinery or parts of machinery;

(vi) parts of vehicles;

(vii) scrap material;

(viii) graffiti, litter or vegetation, if the graffiti, litter or vegetation accompanies an item of a kind that must be removed to clean up the leasehold;

(ix) unless otherwise permitted under a territory law—shipping containers; and

(b) items of a kind that do not need to be removed to clean up the leasehold include the following:

(i) registered vehicles;

(ii) items stored in an approved structure on the leasehold;

(iii) items that are permitted under a territory law to be on the leasehold;

Example—item permitted on the leasehold

a shipping container permitted under the *Planning (Exempt Development) Regulation 2023*

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(iv) items that are temporarily on the leasehold.

Examples—items temporarily on the leasehold

1 items on the leasehold being stored for an on-site construction project that will be removed at the completion of the project

2 a large waste bin used for the collection of litter that will be removed after the litter has been collected

(3) In this section:

litter—see the *Litter Act 2004*, section 7.

public place—see the *Litter Act 2004*, dictionary.

105C Referral of complaint to another entity

(1) If the territory planning authority is required to refer a complaint in accordance with the Act, section 419 (1) (b), the territory planning authority must—

(a) if the complaint is only about graffiti on a building or other structure on the leasehold—refer the complaint to be dealt with by the administrative unit responsible for administering the *Public Unleased Land Act 2013*; or

(b) if the complaint is about insanitary conditions on the leasehold—refer the complaint to be dealt with by the administrative unit responsible for administering the *Public Health Act 1997*; or

(c) if the complaint is about smoke, odour or noise coming from items on the leasehold—refer the complaint to be dealt with by the environment protection authority.

Examples—noise

1 operating heavy machinery on the leasehold which is in a residential area

2 operating machinery on the leasehold after hours

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(2) In this section:

insanitary condition—see the *Public Health Act 1997*, dictionary.

public place—see the *Litter Act 2004*, dictionary.

Division 16.2 Miscellaneous

106 Time to decide application for controlled activity order—Act, s 426 (3)

The period prescribed is 20 working days.

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Part 17 Miscellaneous

107 Expiry of University of NSW lease provisions

(1) This section applies if a lease of land in the UNSW campus is not granted to the University of NSW by 26 November 2028.

(2) This section and the following provisions expire on 26 November 2028:

(a) section 39 (1), definitions of ***UNSW campus*** and ***UNSW precinct deed***;

(b) section 41 (Meaning of *UNSW campus* and *UNSW precinct deed*—pt 7);

(c) section 42 (d) (Direct sales requiring approval by Executive—Act, s 266 (1) (a));

(d) section 44 (4) (Direct sale criteria for non-government educational establishments—Act, s 266 (1) (a) (i));

(e) section 47 (Direct sale criteria for UNSW campus land for University of NSW—Act, s 266 (1) (a) (i));

(f) section 56 (Required provisions in direct sale leases for UNSW campus land—Act, s 269 (2));

(g) dictionary, note 2, dot point mention of 'University of NSW';

(h) dictionary, definitions of ***UNSW campus*** and ***UNSW precinct deed***.

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Schedule 1 Development proposals requiring environmental impact assessment

(see s 12 and s 20)

Part 1.1 Interpretation—sch 1

1.1 Definitions—sch 1

In this schedule:

city waste—

(a) means—

(i) domestic waste left for kerbside collection or taken directly to a waste station or transfer station; and

(ii) waste produced from maintaining the environment, for example, from street cleaning, emptying public rubbish bins and cleaning parks; but

(b) does not include sewage.

clearing native vegetation—see the *Nature Conservation Act 2014*, section 234.

conservation dependent species—see the *Nature Conservation Act 2014*, dictionary.

crest, of a water storage dam, means the highest point of the dam wall or embankment excluding any parapet, handrail or similar structure on the wall or embankment.

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critically endangered species—

(a) see the *Nature Conservation Act 2014*, dictionary; and

(b) includes a species included in the critically endangered category of the list of threatened native species under the EPBC Act.

endangered species—

(a) see the *Nature Conservation Act 2014*, dictionary; and

(b) includes a species included in the endangered category of the list of threatened native species under the EPBC Act.

listed migratory species—see the EPBC Act, section 528.

listed threatened ecological community—see the EPBC Act, section 528.

lowest point of the general foundations, of a water storage dam, means the point where the dam wall or embankment meets the lowest point of the bed of the river or stream on the downstream side of the wall or embankment.

major electricity storage facility means equipment and associated buildings for electricity storage with a capacity of at least 5MW, or a grid connection of at least 66kV.

major road means a road with physically separated carriageways, which has at least 4 lanes (in either direction) and is at least 1km long.

minor public works means—

(a) maintenance of—

(i) a road or car park; or

(ii) a footpath, bicycle path, bicycle parking facility, walking track or other pedestrian area; or

Examples—maintenance of other pedestrian area

tree planting and repaving, reconstruction of kerbs and gutters

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(iii) a culvert or drainage line; or

(b) bushland regeneration, landscaping, gardening, tree planting, tree maintenance, tree removal or fire fuel reduction or maintenance of a fire trail; or

(c) installation or maintenance of any of the following:

(i) a water tank or trough, including a water meter attached to the tank or trough;

(ii) a fence;

(iii) a stockyard;

(iv) an erosion control structure;

Example

a retaining wall

(v) a sign;

(vi) park furniture;

Example

bench seat or shelter

(vii) small tower or support structure; or

Example

small tower housing a telemetry unit or solar panel

(d) installation of a bollard, rock or log for habitat enhancement or to limit vehicle access.

minor public works code—see the *Nature Conservation Act 2014*, section 318A (1).

native vegetation, for an area—see the *Nature Conservation Act 2014*, section 232.

native vegetation area—see the *Nature Conservation Act 2014*, section 233.

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normal operating level, of a reservoir formed by a water storage dam, means the full water supply level of the reservoir when not affected by flood.

placard quantity—see the *Work Health and Safety Regulation 2011*, dictionary.

protected native species—see the *Nature Conservation Act 2014*, section 110.

provisionally listed threatened species means a species included in the provisional category in the threatened native species list under the *Nature Conservation Act 2014*.

Ramsar wetland—see the *Nature Conservation Act 2014*, section 190 (1).

Note The *Nature Conservation Act 2014*, s 190 defines a Ramsar wetland to be a declared Ramsar wetland under the EPBC Act, s 17.

recommended design flood has the same meaning as in the Guidelines on Dam Safety Management 2003, as published from time to time by the Australian National Committee on Large Dams Incorporated.

Note The Guidelines on Dam Safety Management 2003 may be purchased at www.ancold.org.au.

regionally conservation dependent species—see the *Nature Conservation Act 2014*, dictionary.

regionally threatened species—see the *Nature Conservation Act 2014*, dictionary.

regulated waste—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

reserve—see the *Nature Conservation Act 2014*, section 169.

schedule 11 hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

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statement of heritage effect—see the *Heritage Act 2004*, section 61G (1).

threatened ecological community—

(a) see the *Nature Conservation Act 2014*, section 67; and

(b) includes a listed threatened ecological community.

Note Threatened ecological communities are divided into the following categories (see *Nature Conservation Act 2014*, s 69):

- collapsed ecological communities;
- critically endangered ecological communities;
- endangered ecological communities;
- vulnerable ecological communities;
- provisionally listed threatened ecological communities.

vulnerable species—

(a) see the *Nature Conservation Act 2014*, dictionary; and

(b) includes a species included in the vulnerable category of the list of threatened native species under the EPBC Act.

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Part 1.2 Development proposals requiring environmental impact assessment

column 1 item	column 2 development proposal	column 3 environmental significance opinion
1	proposal for construction of a transport corridor including a major road, a dedicated bus way, a railway, or a light rail corridor, on any land, other than land in a future urban area or transport and services zone, if the proposal is likely to have a significant adverse environmental impact on— (a) air quality so as to be detrimental to the health of people in an adjoining residential, commercial or community facility zone; or (b) ambient noise or vibration so as to be detrimental to the health of people in an adjoining residential, commercial or community facility zone	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
2	proposal that involves— (a) electricity transmission line construction, including additions or realignment works, exceeding 500m in length, that are intended to carry underground or above-ground transmission lines with a voltage of 132kV or more; or (b) a coal electricity generating station; or (c) an electricity generating station (other than a coal electricity generating station) including gas, wind, hydroelectric, geothermal, bio-material, solar power or co-generation that is capable of supplying— (i) if the station generates electricity from gas or gas and another energy source—more than 10MW of electrical power; or (ii) if the station generates electricity from wind, solar, hydro, biomass or geothermal energy sources—more than 20MW of electrical power; or (d) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the body of water; or (e) a major electricity storage facility that is capable of storing more than 150MW of electrical power	environmental significance opinion from the territory planning authority indicating that the proposal is not likely to have a significant adverse environmental impact

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
3	proposal for construction of a water storage dam— (a) that will be at least 15m high when measured from the lowest point of the general foundations to the crest of the dam; or (b) that will be at least 10m high when measured from the lowest point of the general foundations to the crest of the dam if— (i) the crest is not less than 500m in length; or (ii) the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1 000 000m^3; or (iii) the recommended design flood discharge dealt with by the dam is at least 2 000m^3 per second	
4	proposal for construction of a water storage dam— (a) in the river corridor zone under the territory plan; or (b) on a continuously flowing river in a non-urban zone under the territory plan	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact
5	proposal for construction of an airport or airfield (other than a helicopter landing facility used exclusively for emergency services purposes, including medical evacuation, firefighting, retrieval or rescue)	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
6	proposal for construction of a wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that— (a) will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; or (b) will be able to treat each day more than— (i) 2 500 people equivalent capacity; or (ii) 750kL; or (c) will have capacity to store more than 1kt of sewage, sludge or effluent; or (d) will incinerate sewage or sewage products; or (e) will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year; but (f) is not— (i) a plant for the treatment of stormwater; or (ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent); or (iii) a residential on-site wastewater treatment system (including a septic tank)	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
7	proposal for expansion of an existing wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that— (a) will increase the plant's ability to treat each day by more than— (i) 2 500 people equivalent capacity; or (ii) 750kL; or (b) will increase the plant's capacity to store sewage, sludge or effluent by more than 1kt; or (c) will increase the plant's capacity to treat wastewater (excluding stormwater) by more than 100ML each year; but (d) is not— (i) a plant for the treatment of stormwater; or (ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent); or (iii) a residential on-site wastewater treatment system (including a septic tank)	
8	proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time	
9	proposal for construction of a permanent venue for the conduct of motor racing events	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
10	proposal for beginning a use of land for a commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if— (a) the intended capacity of the facility is more than 5kt each year, or 20kt in total; or (b) the facility will be— (i) in an area with a high water table, highly permeable soils, sodic soils or saline soils; or (ii) less than 2km from the boundary of a residential block or residential unit in a residential or commercial zone	
11	proposal for expansion of an existing commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if the increased capacity of the facility is more than 5kt each year, or 20kt in total	
12	proposal for the construction of a waste management facility that is— (a) an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and city waste; or (b) for the sterilisation of clinical waste; or (c) for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
13	proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including city waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station— (a) is intended to handle more than 30kt of waste each year; or (b) will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; but (c) is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit	
14	proposal for expansion of an existing waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including city waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station— (a) is intended to handle more than 30kt of additional waste each year; but (b) is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit	

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
15	proposal that involves storage of the placard quantity of a schedule 11 hazardous chemical on land, or in a building or other structure on land, that is not mentioned in the *Planning and Development (Placard Quantity Premises) List 2018* (NI2018-532) (repealed)	environmental significance opinion from the territory planning authority indicating that the proposal is not likely to have a significant adverse environmental impact
16	proposal that is likely to have a significant adverse environmental impact on 1 or more of the following: (a) a critically endangered species; (b) an endangered species; (c) a vulnerable species; (d) a conservation dependent species; (e) a regionally threatened species; (f) a regionally conservation dependent species; (g) a provisionally listed threatened species; (h) a listed migratory species; (i) a threatened ecological community; (j) a protected native species; (k) a Ramsar wetland; (l) any other protected matter	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact
17	proposal involving— (a) the clearing of more than 0.5ha of native vegetation in a native vegetation area, other than on land in a future urban area; or (b) the clearing of more than 5.0ha of native vegetation in a native vegetation area on land in a future urban area	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
18	proposal for development in a reserve, unless the proposal is for minor public works to be carried out by or for the Territory in accordance with a minor public works code approved by the conservator of flora and fauna under the *Nature Conservation Act 2014*, section 318A	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact
19	proposal that is likely to have a significant adverse environmental impact on— (a) a domestic water supply catchment; or (b) an environmental value for a waterway determined under the *Water Resources Act 2007*, section 15A	
20	proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for an urban lake, pond or retardation basin or a wastewater reuse scheme— (a) in an existing urban area or future urban area; and (b) that is designed in accordance with the water-sensitive urban design considerations under the territory plan and design guides	
21	proposal that is likely to have a significant adverse environmental impact on the heritage significance of a place or object registered under the *Heritage Act 2004*, unless the proposal is the demolition of a building that is affected residential premises, and the heritage council has approved a statement of heritage effect in relation to the proposal	environmental significance opinion from the heritage council indicating that the proposal is not likely to have a significant adverse environmental impact

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
22	proposal, other than on land in an existing urban area or a future urban area, with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity or university	
23	proposal involving land included on the register of contaminated sites under the *Environment Protection Act 1997*	environmental significance opinion from the territory planning authority indicating that the proposal is not likely to have a significant adverse environmental impact
24	proposal for which the annual expected greenhouse gas emissions from operating the development is more than 1kt	
25	proposal that is likely to result in a key threatening process under the *Nature Conservation Act 2014*	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact

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Schedule 2 Buyback program valuation procedure

(see s 87 (1), def ***LAIE buyback program valuation procedure***)

Part 2.1 Interpretation

2.1 Definitions—sch 2

In this schedule:

Asbestos Response Taskforce means the Asbestos Response Taskforce established by the ACT government in June 2014.

assessment day means 28 October 2014.

LAIE buyback program valuation—see section 2.6.

presidential determination, of the reasonable value of an affected lease—see section 2.8 (2).

reasonable value, of an affected lease, means the value of the lease, including the improvements, assuming that the lease, including the improvements, were offered for sale on the open market on the assessment day on the reasonable terms and conditions that a genuine seller might require.

Part 2.2 Buyback program valuation procedure

2.2 Valuation of affected lease

(1) Two valuations of the reasonable value of an affected lease must be carried out.

(2) The affected lease, including the improvements, must be valued as at the assessment day.

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(3) A valuation must not take into account to any of the following:

(a) the presence of loose-fill asbestos insulation at the affected residential premises on the affected lease;

(b) minor maintenance work needing to be carried out on the affected residential premises on the affected lease as at the assessment day;

(c) minor maintenance work or cosmetic improvements carried out on the affected residential premises on the affected lease after the assessment day.

2.3 Accredited valuers to carry out valuation

(1) Each valuation of the reasonable value of an affected lease must be carried out by an accredited valuer who is independent of—

(a) the other accredited valuer carrying out a valuation of the affected lease; and

(b) the Territory and the lessee.

(2) Each accredited valuer must be selected by the Australian Property Institute Limited ACN 608 309 128.

2.4 Valuation to be given to lessee and Asbestos Response Taskforce

An accredited valuer who carries out a valuation of the reasonable value of an affected lease must give a copy of the valuation to—

(a) the lessee of the affected lease; and

(b) the Asbestos Response Taskforce.

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2.5 Presidential determination—request by Asbestos Response Taskforce

(1) If the difference between the 2 valuations given to the Asbestos Response Taskforce is 10% or more, but less than 10.5%, of the lower valuation, the Asbestos Response Taskforce may ask for a presidential determination of the reasonable value of the affected lease.

(2) In deciding whether to ask for a presidential determination, the Asbestos Response Taskforce must consider—

(a) the views of the lessee of the affected lease; and

(b) the difference between the valuations; and

(c) the cost involved in obtaining a presidential determination.

(3) If the difference between the valuations is 10.5% or more of the lower valuation, the Asbestos Response Taskforce must ask for a presidential determination of the reasonable value of the affected lease.

(4) If the Asbestos Response Taskforce asks for a presidential determination, the taskforce—

(a) must tell the lessee; and

(b) is liable for the cost of the determination.

2.6 LAIE buyback program valuation

The ***LAIE buyback program valuation*** for an affected lease is worked out as follows:

$$\frac{V_1 + V_2}{2}$$

V_1 means the first valuation of the reasonable value of the affected lease.

V_2 means the second valuation of the reasonable value of the affected lease.

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2.7 Presidential determination—request by lessee

(1) If a lessee of an affected lease rejects a buyback program valuation for the affected lease, the lessee may ask for a presidential determination of the reasonable value of the affected lease.

(2) If the lessee asks for a presidential determination, the lessee is liable for the cost of the determination.

2.8 Presidential determination

(1) This section applies if the Asbestos Response Taskforce or the lessee asks for a presidential determination of the reasonable value of an affected lease.

(2) The president of the ACT Division of the Australian Property Institute Limited ACN 608 309 128 must appoint a valuer (a ***presidential valuer***) to carry out a valuation (a ***presidential determination***) of the reasonable value of the affected lease.

(3) The presidential valuer must be an accredited valuer and independent of—

(a) the valuers mentioned in section 2.3; and

(b) the Territory and the lessee.

(4) The lessee may give any information or material to the presidential valuer that the lessee considers relevant to the valuation—

(a) if the Asbestos Response Taskforce asks for the presidential determination—before the presidential valuer starts the presidential determination; or

(b) if the lessee asks for the presidential determination—at the time the lessee asks for the presidential determination.

(5) The presidential valuer must make a presidential determination in the same way as the valuations of the reasonable value of the affected lease were carried out.

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(6) A presidential determination is binding on the lessee and the Asbestos Response Taskforce.

2.9 Amount payable for surrender of affected lease

(1) This section applies if a lessee of an affected lease surrenders the lease under the LAIE buyback program.

(2) The amount payable to the lessee for the surrender of the affected lease is—

(a) if a presidential determination is made of the reasonable value of the affected lease—the reasonable value determined by the presidential determination; or

(b) in any other case—the LAIE buyback program valuation for the affected lease.

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions relevant to this regulation. For example:

- Australian statistician
- building code
- city renewal authority
- conservator of flora and fauna
- doctor
- domestic partner (see s 169 (1))
- emergency service
- emergency services commissioner
- environment protection authority
- heritage council
- surveyor-general
- territory-owned corporation
- working day.

Note 2 Terms used in this regulation have the same meaning that they have in the *Planning Act 2023*. For example, the following terms are defined in the Act, dict:

- block
- building and development provision (s 256)
- Commonwealth entity
- community lease (s 293 (1))
- concessional lease (s 258 (1))
- custodian
- deal
- development (s 14 (1))
- development application (s 166 (1))
- development approval
- development proposal
- ecologically sustainable development (s 9)
- EIS (s 94 (c))

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- environmental impact assessment (s 102 (1))
- environmental significance opinion (s 102) (2))
- EPBC Act
- future urban area
- holding period (s 349)
- inquiry
- inquiry panel (s 132 (1) (a))
- land sublease
- lease
- light rail
- market value lease (s 259)
- offset (s 223)
- offset condition (s 244)
- protected matter (s 221 (1))
- public land
- rental lease
- revised EIS (s 118 (1) (b))
- scoping document (s 109 (2) (b))
- significant development (s 94)
- structure
- territory entity
- territory plan
- tree management plan
- University of NSW
- zone.

added value, for the variation of a nominal rent lease, for division 12.2 (Chargeable variations of nominal rent leases)—see section 72 (1).

affected lease—see section 87 (1).

affected residential premises—see section 87 (1).

affected residential premises register—see the *Dangerous Substances Act 2004*, section 47P (1).

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allocated land, in relation to the housing commissioner, for part 7 (Direct sale of leases)—see section 39 (1).

Asbestos Response Taskforce, for schedule 2 (Buyback program valuation procedure)—see schedule 2, section 2.1.

assessment day, for schedule 2 (Buyback program valuation procedure)—see schedule 2, section 2.1.

business-case criteria, in relation to the direct sale of a lease to a person, for part 7 (Direct sale of leases)—see section 40.

business-case documentation, in relation to a proposed development by a person, for part 7 (Direct sale of leases)—see section 40.

city waste, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

class, for a building or other structure, means the class of building or structure under the building code.

clearing native vegetation, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 234.

conservation dependent species, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, dictionary.

constitution, for a corporation under the Corporations Act—see the Corporations Act, dictionary.

crest, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

critically endangered species, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

direct sale, in relation to a lease, for part 7 (Direct sale of leases)—see section 39 (1).

dwelling—see section 6 (1).

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earlier index number, in relation to a lease, for part 13 (Discharge amounts for rural leases)—see section 81.

educational establishment, for part 7 (Direct sale of leases)—see the territory plan, dictionary.

endangered species, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

excluded amount, in relation to a lease, for part 13 (Discharge amounts for rural leases)—see section 81.

index number, for part 13 (Discharge amounts for rural leases)—see section 81.

LAIE buyback program valuation, for schedule 2 (Buyback program valuation procedure)—see schedule 2, section 2.6.

LAIE buyback program valuation procedure—see section 87 (1).

listed migratory species, for schedule 1 (Development proposals requiring environmental impact assessment)—see the EPBC Act, section 528.

listed threatened ecological community, for schedule 1 (Development proposals requiring environmental impact assessment)—see the EPBC Act, section 528.

loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47I.

loose-fill asbestos insulation eradication buyback program (or ***LAIE buyback program***)—see section 87 (1).

lowest point of the general foundations, of a water storage dam, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

major electricity storage facility, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

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major road, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

member, for division 4.3 (EIS inquiry panels)—see section 21.

minor public works, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

minor public works code, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 318A (1).

native vegetation, for an area, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 232.

native vegetation area, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 233.

noncompliance period, for part 15 (Leases with building and development provisions)—see section 96.

normal operating level, of a reservoir formed by a water storage dam, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

placard quantity, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Work Health and Safety Regulation 2011*, dictionary.

presidential determination, of the reasonable value of an affected lease, for schedule 2 (Buyback program valuation procedure)—see schedule 2, section 2.8 (2).

presiding member, of an inquiry panel, for division 4.3 (EIS inquiry panels)—see section 21.

proposed lease, for part 11 (Grants of community leases)—see section 66 (2) (a).

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protected native species, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 110.

provisionally listed threatened species, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

Ramsar wetland, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 190 (1).

reasonable value, of an affected lease, for schedule 2 (Buyback program valuation procedure)—see schedule 2, section 2.1.

recently commenced lease, in relation to the variation of a lease, for division 12.2 (Chargeable variations of nominal rent leases)—see section 73 (1).

recommended design flood, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

regionally conservation dependent species, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, dictionary.

regionally threatened species, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, dictionary.

regulated waste, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Environment Protection Act 1997*, schedule 1, section 1.1A.

reserve, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Nature Conservation Act 2014*, section 169.

rules, in relation to an incorporated association—see the *Associations Incorporation Act 1991*, dictionary.

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schedule 11 hazardous chemical, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Work Health and Safety Regulation 2011*, dictionary.

special Pialligo lease, for part 13 (Discharge amounts for rural leases)—see section 81.

statement of heritage effect, for schedule 1 (Development proposals requiring environmental impact assessment)—see the *Heritage Act 2004*, section 61G (1).

supportive accommodation, for part 7 (Direct sale of leases)—see section 39 (1).

territory entity, for part 7 (Direct sale of leases)—see section 39 (1).

threatened ecological community, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

threshold criteria, in relation to a tender for a community lease, for part 7 (Community leases—grant by tender)—see section 68.

UNSW campus, for part 7 (Direct sale of leases)—see section 41 (1).

UNSW precinct deed, for part 7 (Direct sale of leases)—see section 41 (1).

vulnerable species, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
underlining = whole or part not commenced or to be expired

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3 Legislation history

Planning (General) Regulation 2023 SL2023-20
notified LR 11 September 2023
s 1, s 2 commenced 11 September 2023 (LA s 75 (1))
remainder commenced 27 November 2023 (s 2 and see Planning Act 2023 A2023-18, s 2 (2) and CN2023-10)

as amended by

Urban Forest (Consequential Amendments) Act 2023 A2023-52 sch 1 pt 1.7
notified LR 11 December 2023
s 1, s 2 commenced 11 December 2023 (LA s 75 (1))
sch 1 pt 1.7 commenced 1 January 2024 (s 2 and see Urban Forest Act 2023 A2023-14, s 2)

Planning (General) Amendment Regulation 2024 (No 1) SL2024-21
notified LR 2 September 2024
s 1, s 2 commenced 2 September 2024 (LA s 75 (1))
remainder commenced 3 September 2024 (s 2)

Heritage and Planning Legislation Amendment Act 2025 A2025-15 pt 4
notified LR 26 May 2025
s 1, s 2 commenced 26 May 2025 (LA s 75 (1))
pt 4 commenced 2 June 2025 (s 2)

Planning (General) Amendment Regulation 2025 (No 1) SL2025-18
notified LR 11 September 2025
s 1, s 2 commenced 11 September 2025 (LA s 75 (1))
remainder commenced 12 September 2025 (s 2)

Planning Legislation Amendment Act 2026 A2026-8 pt 4
notified LR 15 May 2026
s 1, s 2 commenced 15 May 2026 (LA s 75 (1))
pt 4 commenced 22 May 2026 (s 2)

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

People to be given consultation notice and extension notice—Act, s 63 (2) and (5) (b)
s 10 hdg sub A2026-8 s 10

Referral entities for development generally—Act, s 170 (1) (a)
s 33 am A2023-52 amdt 1.44; pars renum R2 LA

Definitions—pt 7
s 39 def ***UNSW campus*** exp 26 November 2028 (s 107 (2))
def ***UNSW precinct deed*** exp 26 November 2028 (s 107 (2))

Meaning of *UNSW campus* and *UNSW precinct deed*—pt 7
s 41 exp 26 November 2028 (s 107 (2))

Direct sales requiring approval by Executive—Act, s 266 (1) (a)
s 42 (d) exp 26 November 2028 (s 107 (2))

Direct sale criteria for non-government educational establishments—Act, s 266 (1) (a) (i)
s 44 (4) exp 26 November 2028 (s 107 (2))

Direct sale criteria for UNSW campus land for University of NSW—Act, s 266 (1) (a) (i)
s 47 exp 26 November 2028 (s 107 (2))

Required provisions in direct sale leases for UNSW campus land—Act, s 269 (2)
s 56 exp 26 November 2028 (s 107 (2))

Grants of community leases
pt 11 hdg sub SL2025-18 s 4

Prescribed community lease uses—Act, s 291 (1), def *community lease use*, par (k)
s 64A ins SL2025-18 s 5

Unclean leaseholds
div 16.1 hdg ins SL2024-21 s 4

Application—div 16.1
s 105A ins SL2024-21 s 4

Investigation of complaint about unclean leasehold
s 105B ins SL2024-21 s 4

Referral of complaint to another entity
s 105C ins SL2024-21 s 4

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Miscellaneous
div 16.2 hdg ins SL2024-21 s 4

Expiry of University of NSW lease provisions
s 107 am A2025-15 s 42, s 43
exp 26 November 2028 (s 107 (2))

Development proposals requiring environmental impact assessment
sch 1 pt 1.2 am A2025-15 s 44

Dictionary
dict note 2 dot point mention of 'University of NSW' exp 26 November 2028 (s 107 (2))
def ***proposed lease*** am SL2025-18 s 6
def ***UNSW campus*** exp 26 November 2028 (s 107 (2))
def ***UNSW precinct deed*** exp 26 November 2028 (s 107 (2))

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 27 Nov 2023	27 Nov 2023– 31 Dec 2023	not amended	new regulation
R2 1 Jan 2024	1 Jan 2024– 2 Sept 2024	A2023-52	amendments by A2023-52
R3 3 Sept 2024	3 Sept 2024– 1 June 2025	SL2024-21	amendments by SL2024-21
R4 2 June 2025	2 June 2025– 11 Sept 2025	A2025-15	amendments by A2025-15
R5 12 Sept 2025	12 Sept 2025– 21 May 2026	SL2025-18	amendments by SL2025-18

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