



Leases and licences

(Draft Planning Bill - Chapter 10)

Land in the Territory is held under Crown Leases. This is known as the leasehold system.



The leasing system plays two important roles in the Territory:

1. It is central to the system of title by registration, where proof of land ownership is provided through registration of Crown Leases (or other interests).
2. Leases regulate the use of land, predominantly through lease purpose clauses.

Our approach in the Planning Bill

The removal of the leasehold system was determined to be outside the scope of the Planning System Review and Reform Project.

Few changes have been made in the leasing chapter in the draft Planning Bill compared to the provisions of the Planning and Development Act 2007. The leasing chapter regulates the sale of Crown Leases and makes special provision for specified types of lease (e.g. a concessional lease) and particular lease clauses (e.g. building and development provisions). Most policy positions underpinning the leasing and licensing chapter remain effective and unchanged.

Removing concessional status of leases

Under the 2007 Act, the lessee of a concessional lease can apply to the planning authority to vary the lease and remove its concessional status.

The planning authority must refuse a development application to vary a concessional lease if the Minister for Planning and Land Management decides that considering the application is not in the public interest. In making the decision, the Minister must take into account various matters, such as:

- whether the proposed change would cause disadvantage to the community having regard to other potential assessable uses of the land
- whether the Territory should buy back or acquire the land
- whether the Territory should continue to monitor the use of the land.

The current legislative provisions are difficult to understand, and the distinct roles of the Minister and the planning authority are unclear. The Planning Bill revises the process.

Under the Bill, the Minister will determine whether it is in the public interest to remove the concessional status of a lease. The development application will be referred to the Minister for consideration and decision in accordance with specific criteria relevant to assessing the public interest. Those criteria will build upon the criteria in the 2007 Act and require the ACT Government Executive's approval.





Land use for other than leased purpose where public benefit

The use of lease purpose clauses to regulate land use in the Territory means that the use of land is regulated with a degree of inflexibility. There are circumstances where land needs to be used for purposes that are not set out in a Crown Lease.

The Planning Bill will allow the Territory Planning Authority to authorise, for a short-term period, the use of land for additional purposes where there is a significant public benefit and time criticality. The Territory Planning Authority may only authorise an extended use where it is satisfied that giving the authorisation is necessary, considering the urgent nature of the proposed use of the land.

Example: Following a huge hailstorm, land was needed to support the insurance assessment of thousands of cars; it was difficult to identify land that could be used for that purpose and there was a significant need affecting thousands of people in our community. The new power could be used to authorise using land for a short period to store, assess and process hail-damaged vehicles where it wouldn't normally be allowed.

