

# CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

## Planning (General) Regulation 2022

### Subordinate Law SL2022-

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The Australian Capital Territory Executive makes the following regulation under the *Planning Act 2022*.

Dated \_\_\_\_\_ 2022.

Chief Minister

Minister

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Planning Act 2022

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## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Planning (General) Regulation 2022*.

### 2 Commencement

This regulation commences on the commencement of the *Planning Act 2022*, section 525 (Regulation-making power).

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 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 ‘*general exemption criteria*—see the *Planning (Exempt Development) Regulation 2022*, dictionary.’ is defined in that dictionary 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.

### 5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

**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

(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.

## **Part 2                      Significant development**

### **Division 2.1              Design review panel**

#### **7                      Development proposals requiring consultation with design review panel—Act, s 97 (1)**

The following development proposals are prescribed:

- (a) a proposal for a building with 5 or more storeys;
- (b) a proposal—
  - (i) to increase the floorspace of a shop by more than 2 000m<sup>2</sup>;  
and
  - (ii) that is fully or partly located within 1 or more of the  
following:
    - (A) a residential zone;
    - (B) a commercial zone;
    - (C) a community facility zone;
    - (D) a parks and recreation zone.

*Note*      **Zone** means a zone identified in the territory plan (see Act,  
dict).

### **Division 2.2              Environmental impact assessment**

#### **8                      When EIS required for development proposal—Act, s 102 (a)**

An EIS is required for a development proposal mentioned in an item  
in schedule 1, part 1.2, column 2.

*Note*      In some cases a proponent is allowed to produce an environmental  
significance opinion instead of an EIS (see s 15).

## 9 Requirements for preparation of EIS—Act, s 109 (3)

- (1) An EIS for a development proposal that is 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.
- (2) An EIS for a development proposal (including a proposal to which subsection (1) applies) must include the following:
  - (a) a non-technical summary of the EIS, including a summary of its recommendations;
  - (b) a glossary of technical terms and any abbreviations and acronyms used in the EIS;
  - (c) a description of the proposal, including—
    - (i) the location of the land to which the proposal relates; and
    - (ii) if the land is leased—the lessee’s name; and
    - (iii) if the land is unleased land or public land—the custodian of the land; and
    - (iv) the purposes for which the land may be used; and
    - (v) if the land is leased—
      - (A) the block and section number and division of the land and the volume and folio of the lease (the *head lease*); or
      - (B) if the land is under a land sublease—the sublease plan number and the volume and folio of the head lease; and
    - (vi) a statement of the proposal’s objectives; and
    - (vii) the time for implementation of the proposal, including for any stage; and

- (viii) details of any action taken by the proponent or any other entity in relation to the land to which the proposal relates; and
- (ix) details of any alternatives to the proposal considered in developing the proposal;

**Examples—alternatives**

- 1 alternative siting within the land to which the proposal relates
- 2 alternative designs, methods of construction, materials and sources of materials
- 3 alternative locations for the development
- 4 alternative uses of the land to which the proposal relates

- (d) a description of the EIS process, including—
  - (i) any statutory approval obtained or required for the proposal; and
  - (ii) the base information used for predicting each potentially significant environmental impact identified in the scoping document for the EIS; and
  - (iii) the criteria used for assessing the significance of each environmental impact and the performance of any alternative to the proposal considered under paragraph (c) (ix);
- (e) a statement about the proposal's compatibility with the principles of ecologically sustainable development;
- (f) for each potentially significant environmental impact identified in the scoping document for the development proposal—
  - (i) an identification of the relevant environmental values; and
  - (ii) an identification of 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;

*Note* An EIS must also address each matter raised in the scoping document for the development proposal (see Act, s 109 (1) (a) and s 115 (4) (a)).

- (g) a description of the consultation carried out on the EIS;
- (h) for a revised EIS—a summary of the representations made during the public consultation period;

*Note* For other requirements in relation to representations, see the Act, s 115 (4) (b).

- (i) the EIS's recommendations.

- (3) For subsection (2) (f), each potentially significant environmental impact identified in the scoping document for the EIS must be addressed in its own part of the EIS.
- (4) For subsection (2) (f) (v), the proposed approach to environmental management of the land may be set out in a management plan for the land.
- (5) An EIS must be prepared in accordance with any requirement set out in the scoping document for the EIS.
- (6) In this section:

***EIS*** means an EIS to be prepared for the Act.



**10            Entities to consult in preparation of scoping document—  
                 Act, s 106 (3)**

- (1) In preparing a scoping document for a development proposal, the territory planning authority must consult with the entities prescribed by section 28 (1) (Referral entities for significant development—Act, s 166 (1) (a)).
- (2) The territory planning authority may also consult with—
  - (a) the ACT community (including part of the community); and
  - (b) any other entity.

**Examples—other entities**

- 1 a territory-owned corporation
  - 2 the director-general of an administrative unit not mentioned in s 27 (2)
  - 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
- (3) However, the territory planning authority must not consult with an entity if it is the proponent of the development proposal.

**11            Time for consulting entities in preparation of scoping  
                 document**

- (1) This section applies if the territory planning authority receives an application under the Act, section 106 (Application for EIS scoping document) in relation to a development proposal.
- (2) Within 5 working days after the day the territory planning authority receives the application, the authority must, as far as practicable, give each entity that must be consulted under section 10, and any other entity the authority considers appropriate—
  - (a) the scoping documentation for the development proposal; and

- (b) a written notice—
  - (i) inviting written comments on the scoping documentation; and
  - (ii) giving the entity 15 working days after the day the entity receives the notice to make written comments to the authority on the scoping documentation.
- (3) 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 (2) (b) (ii); or
  - (b) if the period is extended under section 12—the extended period.
- (4) In this section:  
*scoping documentation*, in relation to an application under the Act, section 115, means—
  - (a) the application; and
  - (b) a draft of the scoping document for the development proposal to which the application relates; and
  - (c) any other documents the territory planning authority considers are relevant to the proposal.

## **12 Extension of time to comment on scoping documentation**

- (1) An entity given scoping documentation under section 11 may apply to the chief planner for the period to be extended before the end of the 15-working day period mentioned in a notice under section 11 (2).
- (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) If the chief planner allows an extension of the period, the territory planning authority must tell each entity given the documentation under section 11 about the extended period for giving comments.

### **13 Content of scoping documents—Act, s 107 (1)**

- (1) A scoping document for an EIS must contain the following:
  - (a) the name, address, telephone number and email address of the people who prepared the document;
  - (b) a list of the entities that provided comments in accordance with an invitation under section 11 (Time for consulting entities in preparation of scoping document) for the preparation of the scoping document;
  - (c) a list of entities that must be consulted by the proponent of the development proposal to which the EIS relates in preparing the EIS;
  - (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 development proposal to which the EIS relates;
  - (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 requirements for the form and format of the EIS;

#### **Examples—requirements about format of EIS**

- 1 the structure of the EIS
- 2 how factual information is to be referenced in the EIS

- (h) the number of copies of the EIS to be given to the territory planning authority.
  - (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 may also include any of the following:
    - (a) requirements in relation to the methods of assessment to be used in the EIS;
    - (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 consider 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;
- Note* If an offset is required, the Minister may impose an offset condition on the development approval (see Act, s 185 (2) (h)). An offset condition may require the proponent to prepare an offset management plan for the offset (see Act, s 239).
- (c) a list of impacts that are not significant environmental impacts that can be addressed through an altered design or in some other way.

**14            Criteria for consultants—Act, s 107 (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.

**15            When environmental significance opinion allowed for development proposal—Act, s 135 (1)**

An environmental significance opinion mentioned in an item in schedule 1, part 1.2, column 3 may be produced instead of an EIS for a development proposal mentioned in the item, column 2.

**Division 2.3                    EIS inquiry panels**

**16            Definitions—div 2.3**

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 130 (2) as the presiding member of the panel.

**17            Disclosure of interests by panel members**

- (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.
- (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.

## **18 Presiding member's functions**

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.

## **19 Formation of inquiry panel**

- (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.
- (3) If the inquiry panel is changed, the panel may, for the purposes of the inquiry, have regard to any record of the inquiry before the previous panel, including a record of any evidence taken.

## **20 Inquiry to be public**

- (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.

## **21 General procedure for inquiry panel**

- (1) 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 114 (Representations about draft EIS);
  - (d) anyone else who has, in the inquiry panel's opinion, a proper interest in the inquiry.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) An interested person may appear and be heard by an inquiry panel in person or may be represented by another person.
- (6) 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.

## **22 Arrangements for the use of staff and facilities**

- (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.

## Division 2.4 Prohibited development

### 23 Prescribed encroachment for development encroaching on adjoining territory land—Act, s 155 (1) (b)

A distance of 20m is prescribed.

### 24 Sites that are not waste facilities—Act, s 158 (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) To avoid any doubt, subsection (1) is not intended to permit the territory planning authority to accept a development application from an existing small waste site that would, if it were approved, permit an increase in the amount of waste handled each year on the site to more than 15kt.

*Note* For the Act, s 158, a site that handles not more than 15kt of waste each year is a prescribed site under s (1) and therefore not a waste facility (see Act, s 158 (2), def *waste facility*, par (b) (ii)). However, if a development application is lodged to increase the amount of waste handled each year on the site to more than 15kt, the site is a waste facility and the application is a prohibited waste facility development application (see Act, s 158 (2)).

## Division 2.5 Development applications

### 25 Required person for development application—Act, s 162 (2) (a)

- (1) An application for development approval must be signed by the following:
  - (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 for the land or the planning and land authority; and
    - (B) in any other case—the custodian for 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).

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

**26      Annual amount of expected greenhouse gas emissions—  
Act, sch 2, pt 2.2, item 12**

The prescribed annual amount of the expected greenhouse gas emissions from operating a development is 250t.

**27 Referral entities for significant development generally—  
Act, s 166 (1) (a)**

- (1) The following entities are prescribed for a development application:
  - (a) if the development application relates to land in an urban renewal precinct—city renewal authority;
  - (b) if the development application relates to any part of a declared site under the *Tree Protection Act 2005*—the conservator of flora and fauna;
  - (c) if the development application relates to unleased land or public land—the custodian of the land;
  - (d) the heritage council, if—
    - (i) the development application relates to a place registered or provisionally registered under the *Heritage Act 2004*; or
    - (ii) the territory planning authority is aware that the proposed development may impact an Aboriginal object or place.
- (2) In this section:  
*urban renewal precinct*—see the *City Renewal Authority and Suburban Land Agency Act 2017*, section 35.

**28 Referral entities for significant development—Act,  
s 166 (1) (a)**

- (1) The following entities are prescribed for a development application in relation to a development proposal requiring an EIS:
  - (a) Icon Water Limited ACN 069 381 960;
  - (b) ActewAGL Distribution;
  - (c) the conservator of flora and fauna;
  - (d) the emergency services commissioner;
  - (e) the environment protection authority;

- (f) the heritage council;
  - (g) the director-general of the administrative units responsible for the following matters:
    - (i) health policy;
    - (ii) municipal services;
  - (h) if the application relates to unleased land or public land—the custodian of the land;
  - (i) if the territory planning authority, or the Minister, may impose an offset condition on the development approval for the application, and the offset condition would affect—
    - (i) leased land—the lessee of the land; or
    - (ii) unleased land or public land—the custodian of the land.
- (2) In this section:

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

## **29 Required response time for entity advice—Act, s 168 (2)**

The number of days prescribed is—

- (a) for a referral under the Act, section 166 (When authority must refer development application)—
  - (i) if the development application is for a significant development—20 working days from the day the referral is made; and
  - (ii) for any other development application—15 working days from the day the referral is made or a shorter period agreed in writing by the authority; and

- (b) for a referral under the Act, section 167 (Further entity referral—more information or amended application)—10 working days from the day the referral is made.

**30 Public notification period—Act, s 171 (2) (a)**

The prescribed period is—

- (a) for a development application for a significant development—25 working days; and
- (b) for any other development application—15 working days.

**31 Public notification exemptions—Act, s 171 (3)**

A development application for a development proposal mentioned in an item in table 31, column 2 is exempt from a public notification requirement under a provision mentioned in column 3 for the item.

**Table 31**

<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 exempt requirement</b>
1	public works in a future urban area, if the works are—  (a) the building, alteration or demolition of a building or structure; or  (b) the carrying out of earthworks or other construction work that would affect the landscape of the area	s 171 (1) (a) and (b)
2	the building, alteration or demolition of a single dwelling, if the development would not result in more than 1 dwelling being on a block	s 171 (1) (a) and (b)
3	the demolition of a building or 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	s 171 (1) (a) and (b)

column 1 item	column 2 development proposal	column 3 exempt requirement
4	the building, alteration or demolition of a class 10 building or structure  <i>Note</i> A class 10 building or structure is a non-habitable building or structure (see building code)	s 171 (1) (a) and (b)
5	the putting up, attaching or displaying of a sign (whether permanent or temporary) on land, or to a building or structure on land  <i>Note</i> A sign may be exempt from requiring development approval under the <i>Planning (Exempt Development) Regulation 2022</i>	s 171 (1) (a) and (b)
6	Estate development plan in a future urban area	s 173 and s 174

## Division 2.6 Development approvals

### 32 When development approvals do not require amendment—Act, s 204 (3)

- (1) A changed development proposal is taken to be in accordance with the development approval if—
  - (a) the change relates only to a matter (the *relevant matter*) to which schedule 2 (Permitted variations to approved and exempt development) applies; and
  - (b) the change complies with the criteria for the relevant matter in schedule 2; and

- (c) a designated development for the development, as changed by the relevant matter, complies with the general exemption criteria that apply to the development except to the extent that the development approval allows the development to not comply with the criteria.

*Note* The development must also comply with the lease for the land on which it is carried out.

- (2) Also, a changed development proposal is taken to be in accordance with the development approval if—
  - (a) the change would not need development approval if the change were made after completion of the development; or

**Example—change**

Construction of a dwelling has development approval. The developer wishes to change the slope of the roof by less than 5° (see *Planning (Exempt Development) Regulation 2022*, sch 1, s 1.25). The developer may construct the dwelling with the changed roof slope without seeking approval for the change.

- (b) the change consists of adding an exempt development to the development.

**Example—change**

Construction of a dwelling has development approval. The developer wishes to incorporate a skylight that complies with the conditions in the *Planning (Exempt Development) Regulation 2022*, sch 1, s 1.27, and so is an exempt development. The developer may construct the dwelling with the skylight without seeking approval for the skylight.

- (3) However, subsection (2) does not apply if the change results in non-compliance with 1 or more of the following in the *Planning (Exempt Development) Regulation 2022*:
  - (a) schedule 1, section 1.15 (Criterion 5—no multiple occupancy dwellings);



- (b) the requirement under schedule 1, section 1.41 that there be not more than 2 exempt class 10 buildings in a boundary clearance area in conjunction with schedule 1, section 1.17 (Criterion 7—compliance with other applicable exemption criteria);
  - (c) the requirement under schedule 1, section 1.130 (Compliant single dwellings) that there be not more than 1 dwelling on a block.
- (4) In this section:

***designated development***—see the *Planning (Exempt Development) Regulation 2022*, dictionary.

*Note* The development may still need building approval, or further building approval, under the *Building Act 2004*.

## Part 3 Direct sale of leases

### Division 3.1 Interpretation—div 3.1

#### 33 Definitions—div 3.1

In this division:

***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 (Placing unleased land under housing commissioner's control).

***business-case criteria***, in relation to the direct sale of a lease—see section 34.

***business-case documentation***, in relation to a proposed development—see section 34.

***direct sale***, in relation to a lease, means the grant of the lease under the Act, section 255 (1) (d).

***educational establishment***—see the territory plan (XX).

***retirement complex***—see section 70 (2).

***supportive accommodation*** means any of the following:

- (a) a retirement complex;
- (b) residential care accommodation within the meaning of the territory plan (XX);
- (c) a retirement village within the meaning of the territory plan (XX);
- (d) supportive housing within the meaning of the territory plan (XX).

***territory entity*** does not include the housing commissioner.

**34      Meaning of *business-case criteria* and *business-case documentation*—div 3.1**

In this division:

***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;
- (c) a list of all land in the ACT in which the person has an interest or that is occupied by the person;

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

**35 Meaning of *UNSW campus*—pt 3**

- (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 266 (2) (g).

**Division 3.2 Direct sales approved by Executive**

**36 Direct sales requiring approval by Executive—  
Act, s 258 (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 a contiguous lease;
- (d) a lease of land in the UNSW campus to the University of NSW;
- (e) a lease to a community organisation;
- (f) a lease for supportive accommodation;
- (g) a rural lease.

**37 Direct sale criteria for territory and Commonwealth entities—Act, s 258 (1) (a) (i)**

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

- (a) the land is the most suitable land for the entity's proposed use of the land, having regard to 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.

**38 Direct sale criteria for non-government educational establishments—Act, s 258 (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) a registered non-government school; or
    - (ii) if the land is for an additional campus for a registered non-government school—registered under the *Education Act 2004*, section 88B (Registration at additional campus); or
    - (iii) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3; or
    - (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 suffer disadvantage in the provision of educational services unless their special needs are met.

**Examples—par (b) (ii) (B)**

- 1 Aboriginal or 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.
  - (3) For subsection (1) (b) (ii), 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:

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

**39      Direct sale criterion for unallocated land for housing commissioner—Act, s 258 (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*.

**40      Direct sale criteria for leases of contiguous unleased land that is public land—Act, s 258 (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 is contiguous with 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 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.

**Example—par (a) (ii)—good planning outcome**

the incorporation of several small areas of unleased land into an existing lease to improve the use and maintenance of the land and to rationalise the land custodian's responsibilities in relation to land in areas near the lease

- (2) In this section:

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

**41 Direct sale criteria for UNSW campus land for University of NSW—Act, s 258 (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.



**42 Direct sale criteria for community organisations—  
Act, s 258 (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.
- (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.

**43 Direct sale criteria for supportive accommodation—  
Act, s 258 (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
    - (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.

**44 Direct sale criteria for rural leases—Act, s 258 (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 contiguous 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 the Act, s 342.

### **Division 3.3 Direct sales approved by Minister**

#### **45 Direct sales requiring approval by Minister— Act, s 258 (1) (b)**

The following leases are prescribed:

- (a) a lease granted to the Territory, other than a lease to which section 48 (1) (g) (Certain direct sales not requiring approval—Act, s 258 (1) (d)) applies;
- (b) a lease of unleased land, other than public land, to the lessee of a contiguous lease.

#### **46 Direct sale criteria for Territory—Act, s 258 (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.

**47 Direct sale criteria for leases of contiguous unleased land other than public land—Act, s 258 (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 is contiguous with 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 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.

**Example—par (a) (ii)—good planning outcome**

the incorporation of several small areas of unleased land into an existing lease to improve the use and maintenance of the land and to rationalise the land custodian's responsibilities in relation to land in areas near the lease

- (2) In this section:
- encroachment* includes a projection at, above or below ground level.

## Division 3.4      Certain direct sales not requiring approval

### 48      Certain direct sales not requiring approval—Act, s 258 (1) (e)

- (1) The direct sale of the following leases is 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;
  - (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 255 (1) (a).

***ballot***, in relation to a lease, means a ballot of the lease under the Act, section 255 (1) (c).

***Community Housing Providers National Law (ACT)*** means the provisions applying because of the *Community Housing Providers National Law (ACT) Act 2013*, section 7.

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

*tender*, in relation to a lease, means a tender for the lease under the Act, section 255 (1) (b).

**49 Direct sales of affected leases—Act, s 258 (1) (e)**

- (1) The direct sale of the following leases is 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
  - (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
    - (B) 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).

***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.

## **50 Required provisions in direct sale leases for UNSW campus land—Act, s 261 (2)**

A lease granted under the Act, section 255 (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.

## Part 4 Grants of leases generally

### 51 Period for failure to accept and execute lease—Act, s 265 (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.

### 52 Exemptions from restrictions on dealings with certain single dwelling house leases—Act, s 271 (1) (c) (ii)

A single dwelling house lease is prescribed if the lease provides that the lessee cannot deal with the land, or part of the land, described in the lease without the prior written consent of the planning and land authority.

### 53 Exemptions from restrictions on dealings with certain leases—Act, s 272 (3)

- (1) The following leases are exempt:
- (a) a lease to a registered community housing provider;
  - (b) a lease granted under the Act, section 255 (1) by auction, tender or ballot if—
    - (i) the class of people eligible or ineligible for the grant was restricted under the Act, section 257; and
    - (ii) the lease is sold for market value; and
    - (iii) the Act, section 271 (1) (a) or (d) does not apply to the lease;
  - (c) a lease (the *exempt lease*) of public land granted under the Act, section 255 (1) (d) to the lessee of a lease that is contiguous with the exempt lease;



- (d) a lease (the *exempt lease*) of unleased land, other than public land, granted under the Act, section 255 (1) (d) to the lessee of a lease that is contiguous with the exempt lease;
  - (e) a lease granted under the Act, section 259 if—
    - (i) the lease is sold for market value; and
    - (ii) the Act, section 271 (1) (a) or (d) does not apply to the lease.
- (2) In this section:
- registered community housing provider*—see section 48 (2).

## Part 5 Subletting of leases

### 54 Criteria for giving approval of sublease of land—Act, s 276 (3) (a)

- (1) The following are prescribed:
  - (a) the sublease must be for a use authorised by the lease;
  - (b) for a land sublease—
    - (i) 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.
- (2) In this section:  
*designated development* means the building of a building or structure.

### 55 Prescribed matters in land sublease—Act, s 276 (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 Crown 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
- (e) include a provision dealing with termination of the sublease, including breach of the sublease, that is fair and equitable between the parties having regard to 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 having regard to 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 municipal services is available to the land under the land sublease.

**Examples—municipal services**

waste removal and recycling services, 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.

***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*** means communications carried by a telecommunications network.

***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.

## Part 6 Grants of further leases

### 56 Criteria for grant of further leases for unit title schemes— Act, s 281 (1) (f)

- (1) The following are the criteria 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.

**57            Criteria for grant of further leases for community title schemes—Act, s 281 (1) (f)**

- (1) The following are the criteria for a further lease of a lot in a community title scheme:
- (a) the application is made by the body corporate for the scheme;
  - (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.

**58            Criteria for grant of further community leases—  
                 Act, s 281 (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 288 (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 289 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.

## Part 7                      Community leases—grant by tender

### 59                      Definitions—pt 7

In this part:

*proposed lease*—see section 61 (2) (a).

*threshold criteria*, in relation to a tender for a community lease—see section 62.

### 60                      Community lease provisions—Act, s 284, 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 63 (1) (c).

### 61                      Tender process—expressions of interest—Act, s 287 (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.

*Note*        **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see Legislation Act, dict, pt 1).

- (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.

## **62 Grant by tender—threshold criteria—Act, s 287 (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) (ii);
- (d) the community organisation has experience and expertise in doing the things mentioned in paragraph (b) (i) (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).

### **63 Tender process—content of tenders—Act, s 287 (b)**

- (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 61; and
  - (b) a statement addressing the additional criteria mentioned in subsection (2); and
  - (c) if more than 1 potential use is identified for the land in a statement under the Act, section 286 (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 paragraph (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

- (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.

**64      Tender process—assessment of tenders—Act, s 287 (b)**

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

- (a) the threshold criteria; and
- (b) the additional criteria in section 63 (2).

## **Part 8                      Lease variations**

### **Division 8.1              Variation of rental leases**

#### **65              Lease classes for variation to pay out rent— Act, s 312 (1) (b)**

The classes of lease are as follows:

- (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 68 (Meaning of *recently commenced lease*—div 8.2); or
  - (ii) that is a recently commenced lease within the meaning of the *Planning and Development Regulation 2008* (repealed), section 180 (Meaning of *recently commenced lease*—div 5.5.3); or
  - (iii) granted to a community organisation under the *Land (Planning and Environment) Act 1991* (repealed), section 163 (Leases to community organisations).

#### **66              Decision on rent payout lease variation application— Act, s 313 (1)**

The period of 20 working days is prescribed.

## Division 8.2                      Chargeable variations of nominal rent leases

### 67                      **Meaning of *added value*—div 8.2**

- (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:

*V1*—see the Act, section 324 (3).

*V2*—see the Act, section 324 (3).

### 68                      **Meaning of *recently commenced lease*—div 8.2**

- (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 281 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 an area identified in the territory plan as a future urban area; and
  - (ii) the surrendered lease commenced not more than 5 years before the application for the variation is made; or

- (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.

**69 Exempt variations—Act, s 319, 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;

- (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 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).

**70      Standard chargeable variations—Act, s 319, 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;



- (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 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 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 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
  - (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 20 residential units permitted on the land under the lease 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 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).

***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 248.

***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 (XX).

***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.

**71      Combination of standard and non-standard chargeable variations—Act, s 322 (2) (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 323—the determined charge for the variation; and
- (b) for each non-standard chargeable variation—the charge worked out under the Act, section 324 for the variation.

**72      Appointment of independent valuer—Act, s 328 (4) (b) (ii)**

The president of the ACT division of the Australian Property Institute Limited ABN 49 007 505 866 is prescribed.

**73      Requirements for independent valuer—Act, s 328 (4) (c)**

A valuer preparing an independent valuation must be a current member of the Australian Property Institute Limited ABN 49 007 505 866.

**74      Increase of lease variation charge for concessional leases—Act, s 331**

- (1) The variation of a concessional lease is prescribed if—
  - (a) the variation is for a use other than a community use; or  
*Note      Community use*—see the territory plan (XX).
  - (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 75 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.
- (3) In this section:  
*consolidated or subdivided concessional lease*—see the Act, section 252 (4).

**75 Increase of lease variation charge for recently commenced leases—Act, s 331**

- (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 74 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.

## Part 9 Discharge amounts for rural leases

### 76 Definitions—pt 9

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.

**77 Discharge amount for rural leases other than special Pialligo leases—Act, s 341, 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:

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

***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 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.

**78 Discharge amount for special Pialligo leases—Act, s 341, 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



- (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:

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

- (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.

## **Part 10**                      **Surrendering and terminating leases**

### **Division 10.1**              **Payment of amount on surrender or termination of leases—certain leases**

#### **79**              **Application—div 10.1**

- (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).

#### **80**              **Amount of refund on surrender or termination of certain leases—Act, s 356 (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 81;
- (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 81.

**81 Requirements for refund on surrender or termination of leases—Act, s 356 (3)**

The territory planning authority may pay an amount mentioned in section 80 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 363 or section 364; 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 10.2 Payment of amount on surrender of leases—LAIE buyback program**

**82 Definitions**

- (1) In this regulation:

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

*LAIE buyback program valuation procedure* means the procedure set out in schedule 2A

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

- (2) In this division:

*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.

- (3) In this section:

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

**83      Payment amount—contract entered on or before  
18 February 2014—Act, s 356 (2)**

- (1) This section applies if—

- (a) a lessee enters into a contract for sale to purchase land described in an affected lease on or before 18 February 2014; and
- (b) the contract is completed on or before 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 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 350 (Authority must pay for certain improvements).

**84      Payment amount—contract entered after  
18 February 2014 and completed on or before  
28 October 2014—Act, s 356 (2)**

- (1) This section applies if—
  - (a) a lessee enters into a contract for sale of land described in an affected lease after 18 February 2014; and
  - (b) the contract for sale was completed on or before 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 350 (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 on or before 28 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 350.

**85            Payment amount—contract entered after  
18 February 2014 and completed after 28 October 2014—  
Act, s 356 (2)**

- (1) This section applies if—
  - (a) a lessee enters 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 350.

**86            Payment amount—lease acquired before 18 February  
2014 other than by contract—Act, s 356 (2)**

- (1) This section applies if a lessee—
  - (a) on or before 18 February 2014, acquires 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 350.

**87      Payment amount—lease acquired after 18 February 2014  
other than by contract, and transferor acquired lease  
before 18 February 2014—Act, s 356 (2)**

- (1) This section applies if—
  - (a) a person (the *transferor*) acquires an interest in land described in an affected lease on or before 18 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 350.

**88      Payment amount—lease acquired after 18 February 2014  
other than by contract, and transferor acquired lease  
after 18 February 2014—Act, s 356 (2)**

- (1) This section applies if—
  - (a) a person (the *transferor*) enters 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.

- (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 350.
- (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 on or before 28 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 350.

**89 Requirements for refund on surrender of leases—LAIE buyback program—Act, s 356 (3)**

The territory planning authority may pay an amount mentioned in section 83 to section 88 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.



**90      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 350 (Authority must pay for certain improvements) in relation to the surrender:

- (a) section 83 (2) (a);
- (b) section 84 (2) (a), (4) (a);
- (c) section 85 (2) (a);
- (d) section 86 (2) (a);
- (e) section 87 (2) (a);
- (f) section 88 (2) (a), (4) (a).

## Part 11 Leases with building and development provisions

### 91 Approval of transfer for personal reasons—Act, s 363 (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.
- (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 paragraph (a) to (d).

## **92 Considerations for transfer of leases—Act, s 365**

The following matters are prescribed in deciding whether to approve the transfer of a lease under the Act, section 363 or section 364:

- (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.

**93 Required fee for extension of time—Act, s 368 (4), def A**

- (1) The prescribed figure for **A** for a year, or part of a year, is the figure mentioned in table 93, column 3 in relation to the year of the period of extension mentioned in column 2.

**Table 93**

column 1 item	column 2 year	column 3 figure
1	1st to 4th years	0
2	5th or later year	1

- (2) In this section:

*period of extension*—see the Act, section 368 (6).

**94 Application for reduction etc of required fee—general rule—Act, s 368 (4), def A**

- (1) This section applies to an application to reduce or waive the required fee for an extension of time to complete work under the Act, section 370 (other than an application to which section 95 section 96 or section 97 applies).
- (2) If a year, or part of a year, of the period of extension falls on or after 22 June 2012, the prescribed figure for **A** for the year, or part of the year, is the figure mentioned in table 94.1, column 3 in relation to the year of the period of extension mentioned in column 2.

**Table 94.1**

column 1 item	column 2 year	column 3 figure
1	1st to 4th year	0.01
2	5th or later year	5

- (3) If a year, or part of a year, of the period of extension falls before 22 June 2012, the prescribed figure for *A* for the year, or part of the year, is the figure mentioned in table 94.2, column 3 in relation to the year of the period of extension mentioned in column 2.

**Table 94.2**

column 1 item	column 2 year	column 3 figure
1	1st year	1
2	2nd year	2
3	3rd year	3
4	4th year	4
5	5th or later year	5

- (4) In this section:

*period of extension*—see the Act, section 368 (6).

## **95 Application for reduction etc of required fee for hardship reason—Act, s 368 (4), def A**

- (1) This section applies to an application to reduce or waive the required fee for an extension of time to complete work under the Act, section 370 in relation to a single dwelling house lease or a lease granted to a community organisation (other than an application to which section 96 or section 97 applies) if the territory planning authority is satisfied that—
- (a) a hardship reason applies in relation to the lessee; and
  - (b) the extension sought is necessary because of the hardship reason.

- (2) If a year, or part of a year, of the period of extension falls on or after 22 June 2012, the prescribed figure for **A** for that year, or part of the year, is the figure mentioned in table 95.1, column 3 in relation to the year of the period of extension mentioned in column 2.

**Table 95.1**

column 1 item	column 2 year	column 3 figure
1	1st and 2nd year	0
2	3rd and 4th year	0.01
3	5th or later year	4

- (3) If a year, or part of a year, of the period of extension falls before 22 June 2012, the prescribed figure for **A** for that year, or part of the year, is the figure mentioned in table 95.2, column 3 in relation to the year of the period of extension mentioned in column 2.

**Table 95.2**

column 1 item	column 2 year	column 3 figure
1	1st and 2nd year	0
2	3rd year	2
3	4th year	3
4	5th or later year	4

- (4) However, this section does not apply to an application to reduce or waive a required fee for an extension of time in relation to a single dwelling house lease if the lessee—
- (a) is the lessee of another lease; and
  - (b) has applied for, or been granted, an extension of time to commence or complete development in relation to that lease.

- (5) In this section:

*hardship reason*, in relation to a lessee—see the Act, section 370 (1) (b).

*period of extension*—see the Act, section 368 (6).

**96      Application for waiver of required fee for lease transferred in special circumstances—Act, s 368 (5), def A**

- (1) This section applies to an application to waive the required fee for an extension of time to complete work under the Act, section 372 for an extension of time in relation to a lease if—
- (a) the lease was transferred in circumstances mentioned in subsection (3); and
  - (b) the extension sought is for a period that—
    - (i) starts on or after the day of the transfer; and
    - (ii) is not longer than the period allowed under the building and development provision when the lease was granted.
- (2) The prescribed figure for A is 0.
- (3) For subsection (1) (a), the circumstances are that—
- (a) the lessee has died; or
  - (b) the transfer 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* (Cwlth);
    - (iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or

- (c) the transfer happened by operation of, or under, bankruptcy or insolvency; or
- (d) the transfer happened in the exercise by an authorised deposit taking institution 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.

**97      Application for waiver of required fee for external reason—Act, s 368 (5), def A**

- (1) This section applies to an application to waive the required fee for an extension of time to complete work under the Act, section 374 for an extension of time in relation to a lease if the territory planning authority is satisfied that—
  - (a) an external reason applies in relation to the lessee; and
  - (b) the extension sought is necessary because of the external reason.
- (2) The prescribed figure for *A* is 0.
- (3) In this section:  
*external reason*, in relation to a lessee—see the Act, section 374 (1).



## Part 12                      Miscellaneous

### 98                      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 8 July 2025.
- (2) This section and the following provisions expire on 8 July 2025:
  - (a) section 35 (Meaning of *UNSW campus*—pt 3);
  - (b) section 36 (d) (Direct sales requiring approval by Executive—Act, s 255 (1) (a));
  - (c) section 38 (4) (Direct sale criteria for non-government educational establishments—Act, s 258 (1) (a) (i));
  - (d) section 41 (Direct sale criteria for UNSW campus land for University of NSW—Act, s 258 (1) (a) (i));
  - (e) section 50 (Required provisions in direct sale leases for UNSW campus land—Act, s 261 (2));
  - (f) dictionary, note 2, dot point mention of “University of NSW”;
  - (g) dictionary, definitions of *UNSW campus* and *UNSW precinct deed*.

## Schedule 1      Development proposals requiring environmental impact assessment

(see s 8 and s 15)

### Part 1.1      Interpretation—sch 1

#### 1.1      Definitions—sch 1

***action plan***, for a relevant species, relevant ecological community or key threatening process—see the *Nature Conservation Act 2014*, section 99.

***affected residential premises***—see the *Dangerous Substances Act 2004*, section 47I.

***biodiversity corridor*** means a river corridor or wildlife corridor identified in the territory plan, the nature conservation strategy for the ACT or an action plan.

***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.

***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.

***domestic water supply catchment*** means a domestic water supply catchment identified in the territory plan.

***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 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 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

- (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).

***municipal 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.

***native species conservation plan***, for a native species—see the *Nature Conservation Act 2014*, section 115.

***native vegetation***, for an area—see the *Nature Conservation Act 2014*, section 232.

***native vegetation area***—see the *Nature Conservation Act 2014*, section 233.

***nature conservation strategy***, for the ACT—see the *Nature Conservation Act 2014*, section 47.

***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.

***owner***, for land under a sublease, means the sublessee.

***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.

*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 are accessible at [www.ancold.org.au](http://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.

***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 *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

***water sensitive urban design*** means a design in accordance with a water sensitive urban code in the territory plan.

## **Part 1.2**

### **Development proposals requiring environmental impact assessment**

<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 environmental significance opinion</b>
1	<p>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 on land designated under the territory plan as a future urban area or in a transport and services zone, if the proposal is likely to have a significant adverse environmental impact on—</p> <ul style="list-style-type: none"><li>(a) air quality so as to be detrimental to the health of people in an adjoining residential, commercial or community facility zone; or</li><li>(b) ambient noise or vibration so as to be detrimental to the health of people in an adjoining residential, commercial or community facility zone</li></ul>	

**Schedule 1**  
**Part 1.2**

Development proposals requiring environmental impact assessment  
Development proposals requiring environmental impact assessment

Section 1.1

column 1 item	column 2 development proposal	column 3 environmental significance opinion
2	<p>proposal that involves—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) a coal electricity generating station; or</li> <li>(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— <ul style="list-style-type: none"> <li>(i) if the station generates electricity from gas or gas and another energy source—more than 10MW of electrical power; or</li> <li>(ii) if the station generates electricity from wind, solar, hydro, biomass or geothermal energy sources—more than 20MW of electrical power; or</li> </ul> </li> <li>(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</li> </ul>	<p>an environmental significance opinion from the territory planning authority indicating that the proposal is not likely to have a significant adverse environmental impact</p>



<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 environmental significance opinion</b>
3	<p>proposal for construction of a water storage dam—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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— <ul style="list-style-type: none"> <li>(i) the crest is not less than 500m in length; or</li> <li>(ii) the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1 000 000m<sup>3</sup>; or</li> <li>(iii) the recommended design flood discharge dealt with by the dam is at least 2 000m<sup>3</sup> per second</li> </ul> </li> </ul>	
4	<p>proposal for construction of a water storage dam—</p> <ul style="list-style-type: none"> <li>(a) in the river corridor zone under the territory plan; or</li> <li>(b) on a continuously flowing river in a non-urban zone under the territory plan</li> </ul>	an 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)	

**Schedule 1**  
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Development proposals requiring environmental impact assessment  
Development proposals requiring environmental impact assessment

Section 1.1

column 1 item	column 2 development proposal	column 3 environmental significance opinion
6	<p>proposal for construction of a wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that—</p> <ul style="list-style-type: none"> <li>(a) will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; or</li> <li>b) will be able to treat each day more than— <ul style="list-style-type: none"> <li>(i) 2 500 people equivalent capacity; or</li> <li>(ii) 750kL; or</li> </ul> </li> <li>(c) will have capacity to store more than 1kt of sewage, sludge or effluent; or</li> <li>(d) will incinerate sewage or sewage products; or</li> <li>(e) will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year; but</li> <li>(f) is not— <ul style="list-style-type: none"> <li>(i) a plant for the treatment of stormwater; or</li> <li>(ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent); or</li> <li>(iii) a residential on-site wastewater treatment system (including a septic tank)</li> </ul> </li> </ul>	

<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 environmental significance opinion</b>
7	<p>proposal for expansion of an existing wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that—</p> <ul style="list-style-type: none"> <li>(a) will increase the plant’s ability to treat each day by more than— <ul style="list-style-type: none"> <li>(i) 2 500 people equivalent capacity; or</li> <li>(ii) 750kL; or</li> </ul> </li> <li>(b) will increase the plant’s capacity to store sewage, sludge or effluent by more than 1kt; or</li> <li>(c) will increase the plant’s capacity to treat wastewater (excluding stormwater) by more than 100ML each year; but</li> <li>(d) is not— <ul style="list-style-type: none"> <li>(i) a plant for the treatment of stormwater; or</li> <li>(ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent); or</li> <li>(iii) a residential on-site wastewater treatment system (including a septic tank)</li> </ul> </li> </ul>	
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	

**Schedule 1**  
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Development proposals requiring environmental impact assessment

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column 1 item	column 2 development proposal	column 3 environmental significance opinion
10	<p>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—</p> <ul style="list-style-type: none"> <li>(a) the intended capacity of the facility is more than 5kt each year, or 20kt in total; or</li> <li>(b) the facility will be— <ul style="list-style-type: none"> <li>(i) in an area with a high water table, highly permeable soils, sodic soils or saline soils; or</li> <li>(ii) less than 2km from the boundary of a residential block or residential unit in a residential or commercial zone</li> </ul> </li> </ul>	
11	<p>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</p>	
12	<p>proposal for the construction of a waste management facility that is—</p> <ul style="list-style-type: none"> <li>(a) an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and municipal waste; or</li> <li>(b) for the sterilisation of clinical waste; or</li> <li>(c) for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste</li> </ul>	

<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 environmental significance opinion</b>
13	<p>proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station—</p> <ul style="list-style-type: none"><li>(a) is intended to handle more than 30kt of waste each year; or</li><li>(b) will be less than 1km from the boundary of a residential block or residential unit in a residential or commercial zone; but</li><li>(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</li></ul>	
14	<p>proposal for expansion of an existing waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station—</p> <ul style="list-style-type: none"><li>(a) is intended to handle more than 30kt of additional waste each year; but</li><li>(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</li></ul>	

**Schedule 1**  
**Part 1.2**

Development proposals requiring environmental impact assessment  
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Section 1.1

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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 structure on land, that is not mentioned in the <i>Planning and Development (Placard Quantity Premises) List 2018</i> (NI2018-532) (repealed)	an 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: <ul style="list-style-type: none"><li>(a) a critically endangered species;</li><li>(b) an endangered species;</li><li>(c) a vulnerable species;</li><li>(d) a conservation dependent species;</li><li>(e) a regionally threatened species;</li><li>(f) a regionally conservation dependent species;</li><li>(g) a provisionally listed threatened species;</li><li>(h) a listed migratory species;</li><li>(i) a threatened ecological community;</li><li>(j) a protected native species;</li><li>(k) a Ramsar wetland;</li><li>(l) any other protected matter</li></ul>	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact

<b>column 1 item</b>	<b>column 2 development proposal</b>	<b>column 3 environmental significance opinion</b>
17	proposal involving— <ul style="list-style-type: none"><li>(a) the clearing of more than 0.5ha of native vegetation in a native vegetation area, other than on land that is designated as a future urban area under the territory plan; or</li><li>(b) the clearing of more than 5.0ha of native vegetation in a native vegetation area, on land that is designated as a future urban area under the territory plan</li></ul>	environmental significance opinion from the conservator of flora and fauna indicating that the proposal is not likely to have a significant adverse environmental impact
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 <i>Nature Conservation Act 2014</i> , s 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— <ul style="list-style-type: none"><li>(a) a domestic water supply catchment; or</li><li>(b) a water use purpose mentioned in the territory plan (water use and catchment general code); or</li><li>(c) a prescribed environmental value mentioned in the territory plan (water use catchment general code) of a natural waterway or aquifer</li></ul>	

**Schedule 1**  
**Part 1.2**

Development proposals requiring environmental impact assessment  
Development proposals requiring environmental impact assessment

Section 1.1

column 1 item	column 2 development proposal	column 3 environmental significance opinion
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 on land that has been designated as a future urban area; and (b) that is designed in accordance with the water sensitive urban design general code under the territory plan	
21	proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the <i>Heritage Act 2004</i> , 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 impact
22	proposal, other than on land in an existing urban area or land that is designated under the territory plan as 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 <i>Environment Protection Act 1997</i>	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 the amount prescribed under s 26	



## **Schedule 2      Permitted variations to approved and exempt development**

(see s 32)

### **Part 2.1              Interpretation**

#### **2.1              Definitions—sch 2**

In this schedule:

*approved development* means a development covered by a development approval.

*exempt development* means a development exempt from requiring development approval under the *Planning (Exempt Development) Regulation 2022*.

*exemption declaration*—see the *Planning (Exempt Development) Regulation 2022*, schedule 1, section 1.131 (1) (d).

*height*—see the *Planning (Exempt Development) Regulation 2022*, dictionary.

*relevant solar building envelope*—see the *Planning (Exempt Development) Regulation 2022*, dictionary.

*surface water*—see the *Water Resources Act 2007*, section 8.

#### **2.2              Terms defined in territory plan**

A term defined in the territory plan has the same meaning in this schedule.

## Part 2.2                      Permitted construction tolerances

### 2.3                      Permitted variations—horizontal siting tolerances for buildings and structures

- (1) This section applies to the horizontal siting on a block of a building or structure that does not comply with the applicable siting criteria.
- (2) This section does not apply if—
  - (a) a relevant solar building envelope applies to the block; and
  - (b) any point of the building or structure extends beyond the relevant solar building envelope (an *encroachment*); and
  - (c) the encroachment is not permitted by a development approval or exemption declaration.
- (3) The building or structure must be horizontally sited so that—
  - (a) for any point of the building or structure that the applicable siting criteria allows or requires to be sited on, or not more than 900mm horizontally from, a boundary of the block—
    - (i) for a boundary fence—the point is sited so that the centre of the fence’s panelling is not more than 50mm horizontally from the boundary; and
    - (ii) in any other case—the point is sited wholly on the block and not more than 50mm horizontally from where the applicable siting criteria allow or require it to be sited; and
  - (b) for any point of the building or structure that the applicable siting criteria allows or requires to be sited more than 900mm horizontally from a boundary of the block—the point is sited wholly on the block and not more than 340mm horizontally from where the applicable siting criteria allow or require it to be sited; and

- (c) compared to the approved development or exempt development, the building or structure does not do either or both of the following:
  - (i) increase the diversion or concentration of the flow of surface water—
    - (A) in a way that causes ponding; or
    - (B) onto other land;
  - (ii) change the number of stories in the building or structure.

**Example—s (3)**

An exemption for the construction of a house requires a wall to be sited not closer than 900mm horizontally from the western boundary of the block. The house is constructed so that its western wall is 850mm horizontally from the boundary (50mm less than required). The siting of the house is within the allowed tolerance under par (a) (ii) because it breaches the siting requirement under the exemption by not more than 50mm.

*Note 1* The development, as changed in accordance with this section, must also comply with the general exemption criteria.

*Note 2* A change to the height of the finished floor level of the level immediately above a basement may mean that the space is counted as a storey and may also affect the calculation of gross floor area.

- (4) If the territory planning authority makes an exemption declaration that extends the permitted horizontal dimension of a dwelling, the distance of 340mm mentioned in subsection (3) (b) is reduced—
  - (a) if the dimension is extended by not more than 290mm—by the extended distance stated in relation to the dimension in the exemption declaration; or
  - (b) if the dimension is extended by more than 290mm—by 290mm.

- (5) In this section:

***applicable siting criteria***, in relation to a point of a building or structure on a block, means the criteria about the horizontal siting of the point on the block under—

- (a) if the building or structure would be covered by a development approval other than for its horizontal siting on the block—the approval; or
- (b) if the building or structure would be an exempt development other than for its horizontal siting on the block—the *Planning (Exempt Development) Regulation 2022*, schedule 1, part 1.4 (Development exempt from development approval).

***on***, a block or a boundary of a block, includes above or below ground level for the block or boundary.

## **2.4 Permitted variations—height tolerances for buildings and structures**

- (1) This section applies to the vertical siting on a block of a building or structure that does not comply with the applicable height criteria.
- (2) This section does not apply if—
  - (a) a relevant solar building envelope applies to the block; and
  - (b) any point of the building or structure extends beyond the relevant solar building envelope (an ***encroachment***); and
  - (c) the encroachment is not permitted by a relevant development approval or exemption declaration.

- (3) The building or structure must be vertically sited so that—
- (a) for any point of the building or structure that the applicable height criteria allows or requires to be sited at a particular height—
- (i) the point is sited wholly within the lease to which the point relates and is not more than 340mm above or below where the applicable height criteria allow or require the point to be sited; but
- (ii) if the point is the sill of an exterior window—the sill is not more than 50mm closer to the finished floor level immediately adjacent to the window’s sill; and

**Example—subpar (i)**

A multistorey block of apartments is divided into separate units under the *Unit Titles Act 2001*. Each apartment must be within the spatial lease for the unit.

- (b) compared to the approved development or exempt development, the building or structure does not do any of the following:
- (i) increase the diversion or concentration of the flow of surface water—
- (A) in a way that causes ponding; or
- (B) onto other land;
- (ii) reduce the accessibility of the building or structure for people with disabilities;
- (iii) change the number of stories in the building or structure.

*Note 1* The development, as changed in accordance with this section, must also comply with the general exemption criteria.

*Note 2* A change to the height of the finished floor level of the level immediately above a basement may mean that the space is counted as a storey and may also affect the calculation of gross floor area.

- (4) If the territory planning authority makes an exemption declaration that extends a permitted height criterion of a dwelling, the distance of 340mm mentioned in subsection (3) (a) (i) is reduced—
- (a) if the criterion is extended by not more than 290mm—by the extended distance stated in the exemption declaration for the criterion; or
  - (b) if the criterion is extended by more than 290mm—by 290mm.

- (5) In this section:

***applicable height criteria***, in relation to a point of a building or structure, means the criteria about the height of the point under—

- (a) if the building or structure would be covered by a development approval other than for the height of the point—the approval; or
- (b) if the building or structure would be an exempt development other than for the height of the point—the *Planning (Exempt Development) Regulation 2022*, schedule 1, part 1.4 (Development exempt from development approval).

***lease*** includes a land sublease.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions relevant to this regulation.  
For example:

- appoint
- Australian statistician
- building code
- city renewal authority
- conservator of flora and fauna
- contravene
- doctor
- document
- domestic partner (see s 169 (1))
- emergency service
- emergency services commissioner
- entity
- environment protection authority
- exercise
- function
- heritage council
- land titles register
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- person (see s 160)
- public servant
- registered surveyor
- territory land
- territory-owned corporation
- the Territory
- under

- working day.

*Note 2* Terms used in this regulation have the same meaning that they have in the *Planning Act 2022*. For example, the following terms are defined in the *Planning Act 2022*, dict:

- accredited valuer
- building and development provision
- Commonwealth entity
- community lease
- concessional lease
- custodian
- deal
- development
- development application
- development approval
- development proposal
- ecologically sustainable
- EPBC Act
- EIS
- environmental impact assessment
- environmental significance opinion
- exempt development
- holding period
- inquiry
- inquiry panel
- land management plan
- land sublease
- lease
- light rail
- market value lease
- offset
- offset condition
- protected matter
- public land



- rental lease
- scoping document
- significant
- significant development
- single dwelling house lease
- structure
- territory entity
- territory plan
- University of NSW
- zone.

*Note 3* Terms used in sch 2 (Permitted variations to approved and exempt development) have the same meaning that they have in the territory plan (see s 2.2). For example, the following terms are defined in the territory plan:

- basement
- finished floor level
- finished ground level
- gross floor area
- secondary residence
- storey.

***action plan***, for Schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***affected residential premises***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***approved development***, for schedule 2 (Permitted variations to approved and exempt development)—see schedule 2, section 2.1.

***biodiversity corridor***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***class***, for a building or structure, means the class of building or structure under the building code.

***clearing***, for Schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***conservation dependent species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***constitution***, for a corporation under the Corporations Act—see the Corporations Act, dictionary.

***critically endangered species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***domestic water supply catchment***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***dwelling***—see section 6.

***endangered species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***exempt development***, for schedule 2 (Permitted variations to approved and exempt development)—see schedule 2, section 2.1.

***general exemption criteria***—see the *Planning (Exempt Development) Regulation 2022*, dictionary.

***listed migratory species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***listed threatened ecological community***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***lowest point of the general foundations***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**major road**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**member**, for division 2.3—see section 16.

**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 schedule 1, section 1.1.

**municipal waste**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**native species conservation plan**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**native vegetation**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**native vegetation area**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**nature conservation strategy**, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

**normal operating level**, 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 schedule 1, section 1.1.

**presiding member**, for division 2.3—see section 16.

***protected native species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***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 schedule 1, section 1.1.

***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 schedule 1, section 1.1.

***regionally threatened species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***regulated waste***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***relevant solar building envelope***, for schedule 2 (Permitted variations to approved and exempt development)—see schedule 2, section 2.1.

***reserve***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***rules***, for an incorporated association—see the *Associations Incorporation Act 1991*, dictionary.

***schedule 11 hazardous chemical***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***statement of heritage effect***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***surface water***—for schedule 2 (Permitted variations to approved and exempt development)—see schedule 2, section 2.1.

***threatened ecological community***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***UNSW campus***, for part 3 (Direct sale of leases)—see section 35 (1).

***UNSW precinct deed***, for part 3 (Direct sale of leases)—see section 35 (1).

***vulnerable species***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

***water sensitive urban design***, for schedule 1 (Development proposals requiring environmental impact assessment)—see schedule 1, section 1.1.

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## Endnotes

### 1 Notification

Notified under the Legislation Act on 2022.

### 2 Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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