

# CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

## Planning Bill 2022

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# CONSULTATION DRAFT

(Prepared by Parliamentary Counsel's Office)

## Planning Bill 2022

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### **A Bill for**

An Act about planning and development in the ACT

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Planning Act 2022*.

### 2 Commencement

- (1) The following provisions commence on [date to be advised]:
  - (a) section 37 (District strategy);
  - (b) part 5.2 (Transitional—draft territory plan).
- (2) The remaining provisions commence on a day to be fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (3) If a provision of this Act has not commenced before [date], it automatically commences on that day.
- (4) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Dictionary

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

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

For example, the signpost definition '*declared site*—see the *Tree Protection Act 2005*, dictionary' means that the term 'declared site' is defined in that dictionary and the definition applies to this Act.

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

### 4 Notes

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

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

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

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

*Note 2* *Penalty units*

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



- (f) *Ministerial powers*—to identify priority development proposals for progressing through the development approval system;
  - (g) the *compliance and enforcement framework*—which sets out a variety of offences and enforcement arrangements;
  - (h) *review processes*—for internally and externally reviewing administrative decisions;
  - (i) *access to information provisions*—which outline what information is available to the public and how it is accessible.
- (3) Subsection (2) is intended only as a guide to readers.

## **7 Object of Act**

- (1) The object of this Act is to support and enhance the Territory’s liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system that—
- (a) is outcomes-focussed; and
  - (b) promotes and facilitates ecologically sustainable development that is consistent with planning strategies and policies; and
  - (c) provides a scheme for community participation.
- (2) As part of achieving the object mentioned in subsection (1), the planning system is intended to—
- (a) be based on policies, processes and practices that are easy to understand; and
  - (b) promote certainty of processes and consistent application of policies while at the same time providing scope for innovation in development proposals; and
  - (c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan; and

- (d) engage with other laws to support the efficient delivery of other related government policy objectives; and
  - (e) promote high standards for the built environment through an emphasis on design quality and universal design for the benefit of people with differing needs and capabilities; and
  - (f) provide for community participation in relation to the development of planning strategies and policies, and development assessment.
- (3) The following matters are important in achieving the object of the Act:
- (a) the knowledge, culture and tradition of the traditional custodians of the land, the Ngunnawal people;
  - (b) planning for population growth and evolution of the Territory while protecting those aspects that make the Territory an attractive place in which to live;
  - (c) the ACT's biodiversity and landscape setting, including the integration of natural, built, cultural and heritage elements;
  - (d) high-quality, people-focussed and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;
  - (e) a sustainable and resilient environment that is planned, designed and developed for a net-zero greenhouse gas future using integrated mitigation and adaptation best practices.

## **8 Meaning of *ecologically sustainable development***

(1) In this Act:

*ecologically sustainable development* means development involving the effective integration of the following principles:

- (a) the protection of ecological processes and natural systems at local, Territory and broader landscape levels;
- (b) the achievement of economic development;
- (c) the maintenance and enhancement of cultural, physical and social wellbeing of people and communities;
- (d) the precautionary principle;
- (e) the inter-generational equity principle.

(2) In this section:

*achievement of economic development* includes achieving a diverse, efficient, resilient and strong Territory economy that allows communities to meet their needs without compromising the ability of future generations to meet their needs.

***maintenance and enhancement of cultural, physical and social wellbeing of people and communities*** includes—

- (a) creating and maintaining well-serviced, healthy, prosperous, liveable and resilient communities with affordable, efficient, safe and sustainable development; and
- (b) conserving or enhancing places of special aesthetic, architectural, cultural, heritage, historic, scientific, social or spiritual significance; and
- (c) providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction; and
- (d) accounting for the potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development and design.

***protection of ecological processes and natural systems*** includes—

- (a) conserving, enhancing or restoring the life-supporting capacities of air, ecosystems, soil and water for present and future generations; and
- (b) conserving biological diversity and ecological integrity; and
- (c) appropriately valuing and pricing environmental resources.

***the inter-generational equity principle*** means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

***the precautionary principle*** means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

## Part 2.2 Planning principles

### 9 Principles of good planning

- (1) In developing planning strategies, plans and policies, consideration must be given to the object of the Act and the following principles of good planning:
- (a) activation and liveability principles;
  - (b) high quality design principles;
  - (c) integrated delivery principles;
  - (d) investment facilitation principles;
  - (e) long-term focus principles;
  - (f) urban regeneration principles;
  - (g) sustainability and resilience principles;
  - (h) natural environment conservation principles.

- (2) In this Act:

***activation and liveability principles*** means the following:

- (a) planning and design should support diverse economic and social activities, including through promoting different but compatible uses for buildings and other areas;
- (b) urban areas should include a range of high-quality housing options with an emphasis on living affordability;
- (c) urban areas should be designed to promote active travel and convenient and efficient use of public transport;
- (d) districts should be planned, designed and developed to support active and healthy lifestyles and to cater for a diverse range of cultural and social activities;

- (e) policies should support and enhance the quality of life and wellbeing of residents.

***high-quality design principles*** means the following:

- (a) development should be focussed on people and designed to—
  - (i) reflect local setting and context; and
  - (ii) have a distinctive identity that responds to the existing character of its locality; and
  - (iii) effectively integrate built form, infrastructure and public spaces;
- (b) public spaces should be designed to be used, appropriately landscaped and vegetated, and should be designed to contribute to the urban forest;
- (c) built form and public spaces should be designed to be inclusive and accessible to people with differing needs and capabilities, including through the serious consideration of universal design practices;
- (d) developments should be planned and designed to be well-connected and integrated with surrounding development in ways that facilitate the safe, secure and effective movement of people within and through them.

***integrated delivery principles*** means the following:

- (a) policies relating to planning, including those arising outside the planning system, should be coordinated to efficiently and effectively achieve planning outcomes;
- (b) planning, design and development should promote integrated transport connections and equitable access to services and amenities;
- (c) infrastructure, public spaces and facilities should be planned to meet future needs and designed to be integrated with related development;

- (d) built form should be durable, designed to be adaptive (including in relation to the reuse of buildings or parts of buildings) and compatible with surrounding public spaces.

***investment facilitation principles*** means the following:

- (a) planning and design should be undertaken with a view to strengthening the economic prosperity of the Territory and contributing to diversification of the economy, economic security and growth;
- (b) planning outcomes should be achieved by facilitating coordinated approaches that promote public and private investment towards common goals.

***long-term focus principles*** means the following:

- (a) policy frameworks should be based around long-term priorities, be ecologically sound, and seek to promote equity between present and future generations;
- (b) policy frameworks should be able to respond to emerging challenges and cumulative impacts identified by monitoring, benchmarking and evaluation programs.

***natural environment conservation principles*** means the following:

- (a) planning and design should promote healthy and resilient ecosystems, by avoiding or minimising loss of habitat and other key threatening processes for biodiversity;
- (b) policies, planning and design should integrate and promote—
  - (i) nature-based solutions to climate change and water security; and
  - (ii) the valuation and maintenance of the ecosystem services and amenity provided by a healthy natural environment;
- (c) biodiversity connectivity and habitat values should be integrated across urban areas, including through appropriate planning for, and landscaping of, urban open space and travel corridors.

*sustainability and resilience principles* means the following:

- (a) places should be planned, designed and developed to be sustainable and resilient;
- (b) effort should be focussed on adapting to the effects of climate change, including through mitigating the effects of urban heat, managing water supplies and achieving energy efficient urban environments;
- (c) policies and practices should promote the use, reuse and renewal of sustainable resources, and minimise use of resources.

*urban regeneration principles* means the following:

- (a) growth should be mostly within the existing urban footprint, or in areas close to the existing urban footprint, while maintaining environmental values;
- (b) urban regeneration should seek to make the best use (as appropriate) of underlying or latent potential associated with land, buildings and infrastructure.

## **10 Principles of good consultation**

- (1) The Minister may make guidelines about principles of good consultation and how the principles are to be implemented.
- (2) A person required to carry out consultation under this Act must take the guidelines into consideration when carrying out the consultation.
- (3) A guideline is a notifiable instrument.

## Part 2.3 Important concepts

### 11 Meaning of *development* and *exempt development*

(1) In this Act:

*development*, in relation to land, means the following:

- (a) building, altering or demolishing a building or structure on the land;
- (b) carrying out earthworks or other construction work on or under the land;
- (c) carrying out work that would affect the landscape of the land;
- (d) using the land, or a building or structure on the land;
- (e) subdividing or consolidating the land;
- (f) varying a lease relating to the land (other than a variation that reduces the rent payable to a nominal rent);
- (g) putting up, attaching or displaying a sign or advertising material other than in accordance with—
  - (i) a licence issued under this Act; or
  - (ii) a sign approval under the *Public Unleased Land Act 2013*, section 25 (Approval to place sign on public unleased land); or
  - (iii) a public unleased land permit under the *Public Unleased Land Act 2013*, part 3.

*exempt development*—see section 141.

(2) In this section:

*consolidation*—see section 248 (Definitions—ch 10).

***subdivision***—

- (a) includes the following:
  - (i) the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases;
  - (ii) the subdivision of land under the *Unit Titles Act 2001*;
  - (iii) the subdivision of land in future urban areas; but
- (b) does not include a sublease.

**12 Meaning of *use***

In this Act:

***use*** of land, or a building or structure on the land, means any of the following:

- (a) begin a new use of the land, building or structure;
- (b) continue a use of the land, building or structure;
  - Note* Development approval is not required for continuing use lawfully commenced (see s 405 and s 408).
- (c) change a use of the land, building or structure, whether by adding a use, stopping a use and substituting another use or otherwise.

## **Chapter 3            Territory planning authority                                  and chief planner**

### **Part 3.1                Territory planning authority**

#### **13            Establishment of authority**

- (1) The Territory Planning Authority is established.
- (2) The territory planning authority is a corporation.
- (3) The chief planner is the territory planning authority.

#### **14            Authority represents the Territory**

- (1) Anything done in the name of, or for, the territory planning authority or the chief planner in exercising a function of the authority is taken to have been done for, and binds, the Territory.
- (2) The territory planning authority has the same status, privileges and immunities as the Territory so far as it represents the Territory.

## **Part 3.2**                      **Functions of territory planning authority**

### **15**                      **Authority functions**

- (1) The territory planning authority has the following functions:
  - (a) to prepare and administer the territory plan;
  - (b) to continually review the territory plan, propose amendments and consider amendments initiated by proponents and the Minister, as necessary;
  - (c) to plan and regulate the development of land;
  - (d) to advise on planning and land policy, including the broad spatial planning framework for the ACT and the achievement of desired future planning outcomes;
  - (e) to promote and implement the planning strategy and district strategies;
  - (f) to promote high-quality design and good planning outcomes;
  - (g) to maintain the digital cadastral database under the *Districts Act 2002*;
  - (h) to make available land information;
  - (i) to grant, administer, vary and end leases on behalf of the Executive;
  - (j) to grant licences over unleased territory land;
  - (k) to decide applications for approval to undertake development;
  - (l) to make controlled activity orders under part 13.3 (Controlled activity orders) and take other compliance and enforcement action under this Act and other territory laws;
  - (m) to provide planning services, including services to entities outside the ACT;

- (n) to review its own decisions and participate in external review processes;
  - (o) to provide opportunities for participation in planning and decision-making processes;
  - (p) to promote public education about, and understanding of, the planning system, including by providing easily accessible public information and documentation on planning and land use.
- (2) The territory planning authority may exercise any other function given to the authority under this Act, another territory law or a Commonwealth law.
- Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196).
- (3) The territory planning authority must exercise its functions, if relevant—
- (a) in accordance with the object of this Act; and
  - (b) taking into account the principles of good planning in section 9; and
  - (c) taking into consideration the statement of planning priorities made by the Minister.

## **16 Authority to comply with directions**

The territory planning authority must comply with any directions given to the authority under this Act or another territory law.

## Part 3.3 Operations of territory planning authority

### 17 Ministerial directions to authority

- (1) The Minister may give a written direction to the territory planning authority—
  - (a) about the general policies the authority must follow; or
  - (b) requiring the authority to prepare an amendment of the territory plan, or a provision of the plan, or review the plan.

*Note* If s 61 or s 66 applies to a draft major plan amendment, the Minister may not do anything under par (b) that would be inconsistent with the territory plan if it were amended in accordance with the major plan amendment.

- (2) Before giving a direction, the Minister must—
  - (a) tell the territory planning authority about the proposed direction; and
  - (b) give the authority a reasonable opportunity to comment on the proposed direction; and
  - (c) consider any comment made by the authority.
- (3) A direction is a notifiable instrument.
- (4) A direction must be published on the authority website.

### 18 Assembly may recommend directions to authority

- (1) The Legislative Assembly may, by resolution, recommend that the Minister give the territory planning authority a stated direction under section 17.
- (2) The Minister must consider the recommended direction and must either—
  - (a) direct the territory planning authority under section 17; or

(b) tell the Legislative Assembly that the Minister does not propose to direct the authority as recommended and give reasons for the decision.

(3) A direction mentioned in subsection (2) (a) may be in accordance with the Legislative Assembly's resolution or as amended by the Minister.

**19 Provision of planning services to others—Ministerial approval**

The territory planning authority may provide planning services to somebody other than the Territory only with the Minister's written approval.

**20 Reports by authority to Minister**

(1) The territory planning authority must give the Minister a report, or information about its operations, required by the Minister.

(2) The report must be prepared in the form (if any) that the Minister requires.

(3) This section is in addition to any other provision about the giving of reports or information by the territory planning authority.

**21 Authority's role in cohesive urban renewal and suburban land development**

The territory planning authority must work with the city renewal authority and suburban land agency to encourage cohesive planning and development of land.

**22 Delegations by authority**

(1) The territory planning authority may delegate—

(a) the authority's functions under this Act or another territory law to a public servant or a member of the authority's staff; and

- (b) the authority's functions under part 10.14 (Licences for unleased land) in relation to an area of land to the custodian of the land.
- (2) The territory planning authority may also delegate the function of granting leases on behalf of the Executive to the following:
  - (a) the city renewal authority;
  - (b) the suburban land agency.

*Note* For laws about delegations, see the Legislation Act, pt 19.4.

## Part 3.4 Chief planner

### 23 Appointment of chief planner

- (1) The Executive must appoint a person as the Chief Planner.
- (2) The Executive must not appoint a person as the chief planner unless satisfied that the person—
  - (a) has the management and planning experience and expertise to exercise the functions of the chief planner; and
  - (b) either—
    - (i) has qualifications that are appropriate to exercise the functions of the chief planner; or
    - (ii) is eligible to be registered with a representative body.
- (3) An appointment must be for a term of not longer than 5 years.
- (4) An appointment is a notifiable instrument.

*Note* For laws about appointments, see the Legislation Act, pt 19.3.
- (5) In this section:

***representative body*** means an entity that has as a main purpose the promotion of the interests of professionals with qualifications that are appropriate to exercise the functions of the chief planner.

### 24 Chief planner's conditions of appointment

The chief planner's conditions of appointment are the conditions agreed between the Executive and the chief planner, subject to any determination under the *Remuneration Tribunal Act 1995*.

**25 Chief planner must avoid conflict of interest**

If the chief planner has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict, with the functions of the chief planner or the territory planning authority, the chief planner must disclose, in writing, the nature of the interest and the conflict or potential conflict to the Executive.

**26 Chief planner must not do inconsistent work etc**

The chief planner must not engage in—

- (a) any other paid activity without the Minister’s written approval;  
or
- (b) any unpaid activity that is inconsistent with the functions of the chief planner or the territory planning authority.

**27 Functions of chief planner**

The chief planner may exercise the functions given to the chief planner under this Act or another territory law.

**28 Delegation by chief planner**

- (1) The chief planner may delegate the chief planner’s functions under this Act or another territory law to—
  - (a) a public servant; or
  - (b) a member of the territory planning authority’s staff.
- (2) However, the chief planner must not delegate the function of deciding a development application for a territory priority project under section 180 (3) (Deciding development applications).

## **29 Suspending chief planner's appointment**

- (1) The Executive may suspend the chief planner—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity affects the exercise of the chief planner's functions; or
  - (c) for failing, without reasonable excuse, to comply with section 25 (Chief planner must avoid conflict of interest); or
  - (d) for failing, without reasonable excuse, to comply with section 26 (Chief planner must not do inconsistent work etc); or
  - (e) if the chief planner is absent, without approval or reasonable excuse, for 14 consecutive days or for 28 days in any 12 month period; or
  - (f) if the chief planner is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
  - (g) if the chief planner is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) If the Executive suspends the chief planner, the Executive must give the chief planner written notice of the suspension and a copy of the statement of reasons for the suspension.

*Note* For what must be included in a statement of reasons, see the Legislation Act, s 179.
- (3) The suspension takes effect when the notice and statement are given to the chief planner under subsection (2).
- (4) The Executive must present to the Legislative Assembly the statement of reasons for the suspension not later than the first sitting day after the day the chief planner is suspended.

- (5) The Legislative Assembly may, not later than 6 sitting days after the day the statement is presented to the Assembly, make a resolution requiring the Executive to end the chief planner's appointment.
- (6) The chief planner's suspension ends—
  - (a) if the Executive does not comply with subsection (4)—at the end of the day the Executive should have presented to the Legislative Assembly the statement mentioned in that subsection; or
  - (b) if the Assembly does not pass a resolution mentioned in subsection (5) before the end of the 6 sitting days—at the end of the 6th sitting day.
- (7) The chief planner is entitled to be paid salary and allowances while suspended.

### **30 Ending chief planner's appointment**

The Executive must end the chief planner's appointment if—

- (a) the Legislative Assembly passes a resolution under section 29 (5); or
- (b) the chief planner becomes bankrupt or personally insolvent.

## **Part 3.5 Authority staff and consultants**

### **31 Authority's staff**

- (1) The chief planner may employ staff for the territory planning authority on behalf of the Territory.
- (2) The territory planning authority staff must be employed under the *Public Sector Management Act 1994*.

*Note* The *Public Sector Management Act 1994*, div 8.2 applies to the chief planner in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

### **32 Arrangements for staff**

The chief planner may arrange with the head of service to use the services of a public servant.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see *Public Sector Management Act 1994*, s 18).

### **33 Authority consultants**

- (1) The territory planning authority may engage consultants.
- (2) However, the territory planning authority must not enter into a contract of employment with a consultant.
- (3) The conditions of a consultant's engagement are the conditions agreed between the chief planner and the consultant.



- (b) the Minister under the following provisions:
    - (i) section 38 (1) (Statement of planning priorities);
    - (ii) section 67 (3) (a) (Certain draft major plan amendments give to Minister under s 64);
    - (iii) section 72 (3) (c) (Minister’s powers in relation to draft major plan amendments);
    - (iv) section 87 (2) (e) (Consideration of whether review of territory plan necessary); and
  - (c) the Executive under section 36.
- (1) The planning strategy is not a relevant consideration for any other decision under this Act by the territory planning authority, the Minister or another entity under any of the following chapters:
- (a) chapter 6 (Significant development);
  - (b) chapter 7 (Development assessment and approvals);
  - (c) chapter 8 (Territory priority projects).

**36 Consideration of whether review of planning strategy necessary**

- (1) The Executive must, at least once every 5 years after the planning strategy is made, consider whether the planning strategy should be reviewed.
- (2) In deciding whether the planning strategy should be reviewed, the Executive must consider whether the planning strategy continues to reflect the long-term planning policy and goals for the ACT.
- (3) After the Executive considers whether the planning strategy should be reviewed, the Minister must prepare a notice stating—
  - (a) that the Executive has considered whether the planning strategy should be reviewed; and

- (b) the Executive’s decision on whether the planning strategy should be reviewed; and
  - (c) the date of the Executive’s decision; and
  - (d) if the Executive decides that the planning strategy should be reviewed—the scope of the review.
- (4) A notice under subsection (3) is a notifiable instrument.
- (5) If the Executive decides that the planning strategy should be reviewed, the Executive must arrange for the planning strategy to be reviewed.

### **37 District strategy**

- (1) The Executive may make a plan for a district (a *district strategy*) that states the long-term planning policy and goals for the district, consistent with the planning strategy.
- (2) A district strategy may—
- (a) include strategies, spatial policies and desired future planning outcomes for the district to guide and manage change in the district; and
  - (b) set out principles and policies for development of areas within the district, including future urban areas; and
  - (c) identify areas within the district for future detailed planning; and
  - (d) include other government strategies and policies applying to the district, if appropriate.
- (3) The Executive must undertake public consultation before making the district strategy.
- (4) A district strategy is a notifiable instrument.
- (5) A district strategy must be published on the authority website.

**38 Statement of planning priorities**

- (1) The Minister may give the territory planning authority a written statement (the *statement of planning priorities*) that sets out the priorities arising from the planning strategy.
- (2) The statement of planning priorities must identify the actions to be taken in the short to medium term to achieve the planning priorities.
- (3) To remove any doubt, the statement of planning priorities does not authorise a person to whom section 46 (Effect of territory plan) applies to do anything inconsistent with the territory plan.

**Example**

The statement of planning intent may include policy material inconsistent with the territory plan, but the plan would have to be amended before the policy could be implemented.

- (4) The statement of planning priorities is a notifiable instrument.
- (5) The statement of planning priorities must be published on the authority website.

## Part 4.2 Estate development plans

### 39 Estate development plan

- (1) For this Act, an *estate development plan*, for an estate, is a plan that sets out the proposed development of the estate, and the creation of blocks in the estate, in a way that is consistent with—
  - (a) the principles and policies set out in the district strategy for development of the area in which the estate is proposed to be developed; and
  - (b) the provisions of the territory plan that apply to the development proposal for the estate.
- (2) An estate development plan must identify—
  - (a) the boundaries of the estate and individual blocks within the estate; and
  - (b) if the estate is in a future urban area—the existing and proposed land use zones designated in the territory plan for the area; and
  - (c) if the estate is not in a future urban area—the existing zones in the estate.
- (3) An estate development plan for the estate may include the following:
  - (a) design and construction requirements for roads;
  - (b) design and construction requirements for infrastructure works and landscaping;
  - (c) a requirement that stated areas be used for stated purposes;
  - (d) a tree management plan;
  - (e) design and construction requirements for reticulated services;
  - (f) design and construction requirements for works on proposed public land;

- (g) a provision, which is consistent with the territory plan, that is proposed to apply to the ongoing development of a block in the estate (an *ongoing provision*) that—
  - (i) relates to the subject matter addressed by an existing mandatory provision applying to the block; and
  - (ii) does not permit the development of the block in a way that would not be permitted by the existing mandatory provision.

**Example—par (c)**

An estate development plan may identify an area to be zoned for community use and state that it must be used for a primary school.

**Examples—par (g)**

- 1 an increased setback requirement
- 2 a reduced building envelopes

- (4) In this section:

*mandatory provision* means a provision stated in the territory plan as being mandatory.

**40 Effect of approval of estate development plan**

- (1) This section applies to an area the subject of an estate development plan if the plan is approved under a development application.
- (2) The territory planning authority must, within a reasonable time after the approval of the estate development plan, amend the territory plan under section 83 (Making minor plan amendments) to—
  - (a) if the land the subject of the estate development plan is in a future urban area—identify the zones that will apply to the land, consistent with the plan; and
  - (b) incorporate any ongoing provision that—
    - (i) was included in the plan under section 39 (3) (g); and

- (ii) the territory planning authority determined should be incorporated in the territory plan; and
- (c) incorporate any ongoing provision that—
  - (i) was not included in the estate development plan under section 39 (3) (g); and
  - (ii) the territory planning authority determined should be incorporated in the territory plan.
- (3) An amendment of the territory plan under subsection (2) has the effect that, if the land the subject of the estate development plan is in a future urban area, the land ceases to be in a future urban area.

## **Chapter 5            Territory plan**

### **Part 5.1            Establishment, object, key                          components and effect**

#### **41            Territory plan**

- (1) There must be a territory plan that applies to the ACT.

*Note*        The territory plan can be amended (see pt 5.3 and pt 5.4).

- (2) The territory plan is a notifiable instrument.

#### **42            Object of territory plan**

The object of the territory plan is to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.

#### **43            Territory plan to give effect to strategic planning                          outcomes**

The territory plan—

- (a) must promote principles of good planning; and
- (b) must give effect to the planning strategy and district strategies;  
and
- (c) may give effect to relevant outcomes related to planning contained in other government strategies and policies.

#### 44 Contents of territory plan

- (1) The territory plan must—
  - (a) include a map (the *territory plan map*) that identifies districts and designates land use zones; and
  - (b) set out the planning principles and policies for giving effect to the object of the plan, including—
    - (i) the policy outcomes to be achieved by the plan; and
    - (ii) requirements and outcomes against which development proposals are assessed; and
    - (iii) provisions that support compliance with requirements for undertaking development.
- (2) The territory plan may, but need not, include anything else relevant to the object of the territory plan.
- (3) The territory plan may apply, adopt or incorporate a law of another jurisdiction or an instrument as in force from time to time.
- (4) The Legislation Act, section 47 (6) does not apply to an instrument applied, adopted or incorporated under subsection (3).

#### 45 Format of territory plan

- (1) In preparing the territory plan, the territory planning authority must endeavour to make the territory plan, and any amendments of the plan, easy for users of the territory plan to read and understand.
- (2) The territory plan may be supported by background material, guidelines, advisory notes or anything else (the *supporting material*) that the territory planning authority considers will help readers in understanding and applying the territory plan.
- (3) The supporting material must be published on the authority website.

**46**      **Effect of territory plan**

The Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan.

*Note*      The territory plan has no effect to the extent that it is inconsistent with the national capital plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 26).

## **Part 5.2**                      **Transitional—draft territory plan**

### **47**                      **Territory plan—preparation**

- (1) For section 41 (Territory plan), the territory planning authority must prepare a draft of the territory plan in accordance with this part not later than 6 months after this section commences.
- (2) Division 5.3.1 (Preliminary—pt 5.3), division 5.3.3 (Consultation) and division 5.3.4 (Action after consultation about draft major plan amendments) apply to the preparation of the draft territory plan (with necessary changes) as if—
  - (a) a reference to a major plan amendment were a reference to the territory plan; and
  - (b) a reference to the Minister were a reference to the Executive.
- (3) Section 59 (f) (Minister-initiated draft major plan amendments—consultation) does not apply to the preparation of the draft territory plan.

### **48**                      **Draft territory plan to be given to Executive etc**

- (1) This section applies to the draft territory plan prepared under section 47—
  - (a) if the consultation period for the draft territory plan has ended; and
  - (b) as revised, in accordance with—
    - (i) section 63 (2) (Revision and withdrawal of draft major plan amendments) as applied under section 47; or
    - (ii) a request under section 49 (2) (b).

- (2) The territory planning authority must give the draft territory plan, or revised draft territory plan, to the Executive for making, together with the following documents:
  - (a) the background papers relating to the draft territory plan;
  - (b) a written report (a ***consultation report***) about the authority's consultation with the following:
    - (i) the public;
    - (ii) the national capital authority;
    - (iii) the conservator of flora and fauna;
    - (iv) the environment protection authority;
    - (v) the heritage council;
  - (c) a copy of any written comments (including consultation comments) about the draft territory plan received from an entity mentioned in paragraph (b).
- (3) The consultation report must include the issues raised in any consultation comments about the draft territory plan.

#### **49 Territory plan—Executive's powers**

- (1) This section applies if the Executive is given the draft territory plan (including a revised draft territory plan) under section 48 (2).
- (2) The Executive must—
  - (a) for section 41 (Territory plan), make the draft territory plan in the form given; or

*Note* The territory plan is a notifiable instrument (see s 41 (2)).
  - (b) return it to the territory planning authority and request the authority to do 1 or more of the following:
    - (i) conduct further stated consultation;
    - (ii) consider any change suggested by the Executive;

- (iii) change the draft territory plan in a stated way.
- (3) Before taking action under subsection (2), the Executive must consider the following:
  - (a) the planning strategy;
  - (b) district strategies (if any);
  - (c) the background papers mentioned in section 48 (2) (a);
  - (d) the consultation report mentioned in section 48 (2) (b);
  - (e) the written comments mentioned in section 48 (2) (c).
- (4) The territory planning authority must publish on the authority website—
  - (a) the making of the territory plan under subsection (2) (a); and
  - (b) a request under subsection (2) (b).

**50 Commencement of notified territory plan—approval by Legislative Assembly**

- (1) This section applies if the Executive makes the draft territory plan under section 49 (2) (a) (the *notified plan*).
- (2) Despite anything in the notified plan or the Legislation Act, section 73, the notified plan commences only if the Legislative Assembly, by motion, approves the plan.
- (3) If the Legislative Assembly approves the notified plan, it commences—
  - (a) if approved before the commencement day—on the commencement day; or
  - (b) if approved on or after the commencement day—the day after it is approved.
- (4) In this section:  
*commencement day* means the day section 41 commences.

## Part 5.3 Territory plan—major plan amendments

### Division 5.3.1 Preliminary—pt 5.3

#### 51 Application—pt 5.3

- (1) This part does not apply to amendments of the territory plan that are minor plan amendments under part 5.4.
- (2) In this section:  
*minor plan amendment*—see section 82.

#### 52 Definitions—pt 5.3

In this part:

*background papers*, in relation to a draft major plan amendment or major plan amendment—each of the following is a *background paper* in relation to the proposed amendment:

- (a) a copy of each of the following documents:
  - (i) any relevant direction of the Minister under section 17;
  - (ii) any comment received during consultation under section 60 (1) (c) (Public consultation—notification and availability of draft major plan amendments etc);
  - (iii) any relevant supporting report for the proposed amendment;
- (b) a statement, by the territory planning authority, of the reasons for any inconsistency between the draft plan and any of the following:
  - (i) a direction mentioned in paragraph (b) (i);

- (ii) a recommendation in a supporting report for the proposed amendment;
- (c) any other document—
  - (i) considered by the authority to be necessary or useful in explaining the proposed amendment; or
  - (ii) designated by the authority, in writing, as a background paper.

***consultation comments***, in relation to a draft major plan amendment—see section 60 (1) (c) (i).

***consultation notice***, for a draft major plan amendment—see section 60 (1) (c).

***consultation period*** means a stated period of at least 30 working days.

***corresponding major plan amendment***, for a draft major plan amendment, means the major plan amendment developed from the draft major plan amendment.

***draft major plan amendment***—

- (a) in relation to an application for a proponent-initiated amendment—see section 56; and
- (b) in relation to an amendment prepared by the territory planning authority on its own initiative or in response to a direction by Minister under section 17—see section 57.

***interested person***, in relation to land—see section 53.

***major plan amendment*** means a draft major plan amendment approved by the Minister under section 72 (2) (a) (Minister’s powers in relation to draft major plan amendments).

***proponent-initiated amendment***—see section 54.

***public availability notice***, for a draft major plan amendment—see section 65 (a).

***relevant Assembly committee*** means the committee of the Legislative Assembly whose functions include the examination of matters related to planning and development.

***supporting report***, for a proponent-initiated amendment, draft major plan amendment or major plan amendment, means a report setting out all of the following:

- (a) the need for the proposed amendment;
- (b) the positive and negative impacts of the proposed amendment;
- (c) a statement about how the proposed amendment would give effect to the planning strategy and any relevant district strategy; and
- (d) a statement about how the proposed amendment would be consistent or inconsistent with relevant planning outcomes contained in other government strategies and policies;
- (e) for a proponent-initiated amendment—any consultation undertaken by the interested person who proposed the amendment.

### **53 Meaning of *interested person*—pt 5.3**

For this part, a person is an ***interested person*** in relation to land if—

- (a) the person is the lessee or custodian of the land; or
- (b) the person is acting with the consent of the lessee or custodian of the land.

## **Division 5.3.2 Initiation of major plan amendments**

### **54 Proponent-initiated amendment—application**

- (1) An interested person in relation to land may apply to the territory planning authority for an amendment of the territory plan (a ***proponent-initiated amendment***) in relation to that land.

- (2) The application must—
  - (a) include—
    - (i) the applicant’s name and address; and
    - (ii) if the applicant is not the lessee or custodian of the land—  
the name of the lessee or custodian; and
  - (b) identify the land that is the subject of the proposed amendment;  
and
  - (c) include a description of the change to the territory plan the  
applicant is seeking from the amendment; and
  - (d) include a supporting report for the proposed amendment.
- (3) The applicant may withdraw the application any time before it is  
accepted by the territory planning authority.

**55 Proponent-initiated amendment—consideration of  
application**

- (1) The territory planning authority must, within 3 months after the day  
an interested person makes an application for a proponent-initiated  
amendment under section 54—
  - (a) accept the application; or
  - (b) refuse to accept the application.
- (2) In considering whether to accept the application, the territory  
planning authority must have regard to each of the following:
  - (a) the planning strategy;
  - (b) any relevant district strategy;
  - (c) any current or proposed amendments of, or policies in, the  
territory plan;
  - (d) the statement of planning priorities;
  - (e) anything else the authority considers relevant to the amendment.

- (3) The authority may, by written notice, require the applicant to give additional information in relation to the application.
- (4) The notice must state the time, not less than 20 working days, within which the applicant must give the territory planning authority the additional information.
- (5) The territory planning authority may refuse to accept the application if the additional information is not given to the authority within the stated time.
- (6) If the territory planning authority accepts the application, it must publish the following on the authority website when the draft amendment is published under section 60 (1) (Public consultation—notification and availability of draft major plan amendments etc):
  - (a) the decision to accept the application;
  - (b) the application;
  - (c) any request for additional information;
  - (d) the additional information given under subsection (3) in response to the notice.

**56 Authority to prepare draft major plan amendment—  
proponent-initiated amendment application**

If the territory planning authority accepts an application for a proponent-initiated amendment, the authority—

- (a) must prepare a document to amend the territory plan (a *draft major plan amendment*); but
- (b) is not bound to proceed with the proponent-initiated amendment.

**57 Territory planning authority to prepare draft major plan amendment—authority or Minister-initiated amendments**

- (1) The territory planning authority may, on the authority's own initiative, prepare a document to amend the territory plan (a *draft major plan amendment*).
- (2) The territory planning authority must prepare a draft major plan amendment if the Minister gives the authority a direction under section 17 (1) (b) (Ministerial directions to authority).

**58 Supporting report for draft major plan amendment**

- (1) If the territory planning authority prepares a draft major planning amendment (other than a draft amendment mentioned in subsection (2)), the authority must prepare a supporting report for the draft amendment.
- (2) If the territory planning authority prepares a draft major planning amendment after accepting an application for a proponent-initiated amendment, the authority must consider the supporting report included with the application for the amendment.

**Division 5.3.3 Consultation**

**59 Minister-initiated draft major plan amendments—consultation**

The territory planning authority must consult with each of the following in relation to a draft major plan amendment:

- (a) the national capital authority;
- (b) the conservator of flora and fauna;
- (c) the environment protection authority;
- (d) the heritage council;
- (e) each referral entity;

- (f) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.

**60 Public consultation—notification and availability of draft major plan amendments etc**

- (1) After preparing a draft major plan amendment, the territory planning authority must publish the following on the authority website:
  - (a) the draft amendment;
  - (b) the supporting report for the draft amendment;
  - (c) a notice that complies with section 61 (a *consultation notice*)—
    - (i) inviting people to give written comments (*consultation comments*) about the draft amendment to the authority during the consultation period for the draft amendment; and
    - (ii) stating the effect of section 62 (Public inspection of comments on draft major plan amendments).
- (2) However, the territory planning authority is not required to publish a major draft amendment if is satisfied that publication of the draft amendment—
  - (a) would disclose a trade secret; or
  - (b) would, or could reasonably be expected to—
    - (i) endanger the life or physical safety of anyone; or
    - (ii) lead to damage to, or theft of, property.
- (3) The territory planning authority may extend the consultation period for the draft major plan amendment.

- (4) If the territory planning authority extends the consultation period for the draft major plan amendment, it must—
- (a) publish a notice (an *extension notice*) on the authority website about the extended consultation period; and
  - (b) for a draft amendment prescribed by regulation—give a copy of the extension notice to each person prescribed by regulation.
- (5) A draft major plan amendment is not invalid only because the territory planning authority has not complied with subsection (4) (b).
- (6) This section does not apply in relation to a draft major plan amendment—
- (a) that has been revised by the territory planning authority in accordance with a request under section 72 (2) (c) (ii) (Minister’s powers in relation to draft major plan amendments); or
  - (b) if, in developing a government policy or strategy, a government entity has carried out consultation similar to that required under this section in relation to the substance of the draft amendment; or
  - (c) if the Minister consulted on the draft amendment as part of consultation carried out under section 212 (4) (Declaration of territory priority projects) in relation to a proposed territory priority project declaration.

**Examples—par (b)**

- 1 The amendment was included as part of a consultation process undertaken by another government entity as a consequence of consulting on a new climate change strategy.
- 2 The amendment was included in a draft review report prepared by the territory planning authority under s 88 and consulted on in accordance with that section.

**61 Public consultation—notice of interim effect etc**

- (1) A consultation notice must state whether or not subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment.
- (2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period or a period stated in the consultation notice, whichever is shorter, do or approve the doing of anything that would be inconsistent with the territory plan if it were amended in accordance with the draft major plan amendment.

*Note* The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 46).

- (3) A consultation notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment must also state—
  - (a) the effect of subsection (2) and
  - (b) a period (not longer than 12 months) that is the maximum period during which the draft amendment, or part of the draft amendment, is to have interim effect.
- (4) A consultation notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, is a notifiable instrument.
- (5) In this section:

*defined period*, for a draft major plan amendment, means the period—

- (a) starting on the day (the *notification day*) the consultation notice for the draft amendment is notified as required under subsection (4); and

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- (b) ending on the day the earliest of the following happens:
  - (i) the day the public availability notice for the draft amendment is published on the authority website as required under section 65;
  - (ii) if the draft amendment, or the corresponding major plan amendment, is withdrawn under section 63 (1) (b) (Revision and withdrawal of major plan amendments) or section 72 (2) (b) (Minister’s powers in relation to draft major plan amendments)—the day it is withdrawn;
  - (iii) the day that is 12 months after the notification day.

**62 Public inspection of comments on draft major plan amendments**

- (1) This section applies to written comments about a draft major plan amendment—
  - (a) given to the authority in response to the invitation in the consultation notice for the draft amendment under section 60 (1) (c) (i) or otherwise; or
  - (b) received from the national capital authority.
- (2) The territory planning authority must publish the comments on the authority website for not less than 30 working days, starting 10 working days after consultation period for the draft amendment ends.

**Division 5.3.4 Action after consultation about draft major plan amendments**

**63 Revision and withdrawal of draft major plan amendments**

- (1) After the end of the consultation period for a draft major plan amendment, the territory planning authority may—
  - (a) revise the draft amendment; or

- (b) withdraw the draft amendment.
- (2) In revising or withdrawing a draft major plan amendment, the territory planning authority must consider written comments (including consultation comments) about the draft amendment received from any entity, including the national capital authority.
- (3) The territory planning authority may, at any time before a draft major plan amendment is given, or given again, to the Minister, revise the draft amendment to correct a formal error.
- (4) The withdrawal of a draft major plan amendment must include a statement that the interim effect of the draft amendment ends on the day the draft amendment is withdrawn.
- (5) The territory planning authority must publish on the authority website notice of the withdrawal of a draft major plan amendment on the same day, or as soon as practicable after, the authority prepares the withdrawal.

### **Division 5.3.5      Draft major plan amendments given to Minister**

#### **64      Draft major plan amendments to be given to Minister etc**

- (1) This section applies to a draft major plan amendment—
  - (a) if—
    - (i) the consultation period for the draft amendment has ended; and
    - (ii) the territory planning authority has not withdrawn the draft amendment under section 63; and
  - (b) if the draft amendment has been revised under section 63 or section 67 (2) (c) (iii) (Certain draft major plan amendments given to Minister under s 64—action by Minister)—as revised.

- (2) This section also applies to a draft major plan amendment in relation to which section 60 (Public consultation—notification and availability of draft major plan amendments etc) does not apply.

*Note* Section 60 (6) provides that s 60 does not apply in relation to certain draft major plan amendments.

- (3) The territory planning authority must give the draft major plan amendment to the Minister for approval, together with the following documents:

- (a) the background papers relating to the draft amendment;
- (b) a written report about the authority's consultation with the following:
  - (i) the public;
  - (ii) the national capital authority;
  - (iii) the conservator of flora and fauna;
  - (iv) the environment protection authority;
  - (v) the heritage council;
  - (vi) if the draft amendment would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected;
- (c) a copy of written comments (including consultation comments) about the draft amendment received from an entity mentioned in paragraph (b).

*Note* The Minister must give a copy of the documents given to the Minister under this section to the relevant Assembly committee (see s 67).

- (4) The written report mentioned in subsection (3) (b) must include the issues raised in any consultation comments about the draft major plan amendment.

**65 Public notice of documents given to Minister**

The territory planning authority must publish on the authority website—

- (a) a notice (a *public availability notice*) stating that the documents mentioned in section 64 (3) (including the draft major plan amendment) are available on the website for public inspection; and
- (b) copies of the documents mentioned in section 64 (3) during the period stated in the public availability notice.

**66 Public availability notice—notice of interim effect etc**

- (1) A public availability notice must state whether or not subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment.
- (2) The Territory, the Executive, a Minister or a territory authority must not, during the defined period, do or approve the doing of anything that would be inconsistent with the territory plan if it were amended in accordance with the draft major plan amendment.

*Note* The Territory, the Executive, a Minister or a territory authority must also not do anything that is inconsistent with the territory plan (see s 46).

- (3) A public availability notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, must also state the effect of subsection (2).
- (4) A public availability notice that states that subsection (2) applies in relation to the draft major plan amendment, or part of the draft amendment, is a notifiable instrument.

<b>Chapter 5</b>	Territory plan
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<b>Division 5.3.6</b>	Consideration of draft major plan amendments by relevant Assembly committee

Section 67

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(5) In this section:

*defined period*, for a draft major plan amendment, means the period—

(a) starting on the day (the *notification day*) the public availability notice for the draft amendment is notified under subsection (4); and

(b) ending on the earliest of the following days:

(i) the day the corresponding major plan amendment, or part of it, commences;

*Note* See s 78 (2) and s 79 (5) (a) for when the amendment, or part of it, commences.

(ii) if the corresponding major plan amendment is rejected by the Legislative Assembly—the day it is rejected;

(iii) if the corresponding major plan amendment is withdrawn in accordance with a requirement under section 72 (2) (b) or section 79 (5) (b)—the day it is withdrawn;

(iv) the day that is 18 months after the notification day.

## **Division 5.3.6      Consideration of draft major plan amendments by relevant Assembly committee**

### **67      Certain draft major plan amendments given to Minister under s 64—action by Minister**

(1) This section applies if the Minister is given a draft major plan amendment under section 64 (Draft major plan amendments to be given to Minister etc).

- (2) Within 5 working days after the day the public availability notice for the draft major plan amendment is published on the authority website, the Minister—
- (a) may, but need not, refer the draft amendment to the relevant Assembly committee, together with the documents mentioned in section 64 (3) relating to the draft amendment and a request that the committee decide whether it will prepare a report on the draft amendment; or
  - (b) may withdraw the draft amendment; or
  - (c) may give the draft amendment to the territory planning authority and request the authority to do 1 or more of the following:
    - (i) conduct further stated consultation;
    - (ii) consider any revision suggested by the Minister;
    - (iii) revise the draft amendment in a stated way.
- (3) Before taking action under subsection (2) (a), the Minister must consider the following:
- (a) the planning strategy;
  - (b) district strategies (if any);
  - (c) the consultation report mentioned in section 64 (3) (b);
  - (d) the written comments mentioned in section 64 (3) (c).
- (4) The Minister may only approve a draft major plan amendment if the draft amendment is not inconsistent with the planning strategy or any relevant district strategy.

**68 Consideration of draft major plan amendments by relevant Assembly committee**

- (1) If the Minister refers a draft major plan amendment to the relevant Assembly committee under section 67 (2) (a), the committee—
  - (a) must tell the Minister, within 20 working days after the day the draft amendment is referred to the committee, whether or not it will prepare a report on the draft amendment; and
  - (b) if the committee has not told the Minister, within that 20-day period, whether it will prepare a report—is taken to have decided not to prepare a report.
- (2) Without limiting the matters the relevant Assembly committee may include in a report on the draft major plan amendment, the committee must include in the report—
  - (a) a recommendation that the Minister approve the draft amendment; or
  - (b) another recommendation about the draft amendment.
- (3) Subsection (4) applies if—
  - (a) the draft amendment is to facilitate the development of a territory priority project; and
  - (b) if the committee decides to prepare a report on the draft amendment—the Minister is satisfied that the risk of delay to the development of the territory priority project will be minimised if the committee’s report on the draft amendment were given to the Minister earlier than 6 months after the day it is referred to the committee.

- (4) When the Minister refers the draft major plan amendment to the relevant Assembly committee, the Minister may request that, if the committee decides to prepare a report, the report be completed and given to the Minister within a period stated by the Minister, that is not less than 3 months and not more than 6 months after the day the draft amendment is referred to the committee.

**69 Committee decides not to report**

- (1) This section applies if—
- (a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 67 (2) (a); and
  - (b) the committee has decided, or is taken to have decided, not to prepare a report on the draft amendment.
- (2) The Minister must take action in accordance with section 72 in relation to the draft major plan amendment.

**70 Committee reports on draft major plan amendments**

- (1) This section applies if—
- (a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 67 (2) (a); and
  - (b) the committee has decided to prepare a report on the draft amendment.
- (2) The Minister—
- (a) unless section 71 applies—must not take action under section 72 in relation to the draft major plan amendment until the relevant Assembly committee has reported on the draft amendment; and
  - (b) after the committee reports on the draft amendment—must take action under section 72 in relation to the draft amendment.

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<b>Division 5.3.6</b>	Consideration of draft major plan amendments by relevant Assembly committee

Section 71

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**71 Committee fails to report promptly on draft major plan amendments**

- (1) This section applies if—
- (a) the Minister has referred a draft major plan amendment to the relevant Assembly committee under section 67 (2) (a) (Draft major plan amendments given to Minister under s 64—action by Minister); and
  - (b) the committee has decided to prepare a report on the draft major plan amendment; and
  - (c) the committee has not reported on the draft amendment by the end of—
    - (i) if the Minister’s referral is made within 4 months before a general election of members of the Legislative Assembly—
      - (A) if the Minister stated a period under section 68 (4) (Consideration of draft major plan amendments by relevant Assembly committee)—the stated period commencing on the first sitting day of the Legislative Assembly after the general election; or
      - (B) in any other case—6 months after the first sitting day of the Legislative Assembly after the general election; or
    - (ii) in any other case—
      - (A) if a period was stated by the Minister under section 68 (4)—the stated period; or
      - (B) in any other case—6 months after the day the draft major plan amendment is referred to the committee.

- (2) The Minister may take action in accordance with section 72 in relation to the draft major plan amendment, even though the relevant Assembly committee has not reported on the amendment.

### **Division 5.3.7 Ministerial and Legislative Assembly action on draft major plan amendments**

#### **72 Minister's powers in relation to draft major plan amendments**

- (1) This section applies if—
- (a) the Minister is given a draft major plan amendment under section 64 (Draft major plan amendments to be given to Minister etc) and—
    - (i) section 69 (Committee decides not to report) applies; or
    - (ii) section 70 (2) (b) applies; or
    - (iii) section 71 applies and the Minister decides to take action in accordance with this section; or
  - (b) the Minister is given a draft major plan amendment under section 74 (2) or (3) (Return of draft major plan amendments to authority); or
  - (c) the Minister revokes the approval of a draft amendment under section 73.
- (2) The Minister must—
- (a) approve the draft major plan amendment in the form given; or
- Note* A draft major plan amendment approved by the Minister is a major plan amendment (see s 51, def *major plan amendment*).
- (b) withdraw the draft major plan amendment; or

- (c) return the draft major plan amendment to the territory planning authority and direct the authority to do 1 or more of the following:
  - (i) conduct further stated consultation;
  - (ii) consider any revision suggested by the Minister;
  - (iii) revise the draft amendment in a stated way.
- (3) Before taking action under subsection (2), the Minister must consider the following:
  - (a) the documents given to the Minister under section 64 (3) (Draft major plan amendments to be given to Minister etc);
  - (b) any recommendation made by the relevant Assembly committee in relation to the draft amendment, or related documents, referred to the committee under section 67 (2) (a) or otherwise;
  - (c) the planning strategy;
  - (d) any relevant district strategies.

*Note* For par (b), the Minister must not take action under this section in some circumstances if the committee has not reported (see s 70 and s 71).
- (4) The Minister may only approve a draft major plan amendment if the draft amendment is not inconsistent with the planning strategy or any relevant district strategy.
- (5) A major plan amendment approved under subsection (2) (a) is a notifiable instrument.
- (6) The following must be published on the authority website:
  - (a) a decision by the Minister under subsection (2);
  - (b) if the decision is under subsection (2) (b) or (c)—the reasons for the decision, if any.

**73 Minister may revoke approval of draft major plan amendments before presentation**

- (1) This section applies if—
  - (a) the Minister has approved a draft major plan amendment under section 72 (2) (a); and
  - (b) the corresponding major plan amendment has not been presented to the Legislative Assembly.
- (2) The Minister may revoke the approval and return the major plan amendment to the territory planning authority.
- (3) A major plan amendment returned to the territory planning authority under this section must be treated by the Minister as a draft major plan amendment to which section 72 applies.

**74 Return of draft major plan amendments to authority**

- (1) This section applies if the Minister returns a draft major plan amendment to the territory planning authority with a direction under section 72 (2) (c).
- (2) If the direction is given under section 72 (2) (c) (i) or (ii), the territory planning authority may revise the draft major plan amendment and give it to the Minister for approval with a written report about—
  - (a) the authority's response to the Minister's direction; and
  - (b) any further revision of the draft amendment under section 63 (3).
- (3) If the direction is given under section 72 (2) (c) (iii), the territory planning authority must give the Minister the draft major plan amendment, as revised in accordance with the direction, together with a written report about any further revision of the draft amendment under section 63 (5).

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<b>Part 5.3</b>	Territory plan—major plan amendments
<b>Division 5.3.7</b>	Ministerial and Legislative Assembly action on draft major plan amendments

Section 75

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**75 Presentation of major plan amendments to Legislative Assembly**

- (1) This section applies if the Minister—
  - (a) has approved a draft major plan amendment under section 72 (2) (a) (Minister’s powers in relation to draft major plan amendments); and
  - (b) has not revoked the approval under section 73 (Minister may revoke approval of draft major plan amendments before presentation).
- (2) The Minister must present to the Legislative Assembly, not later than 5 sitting days after the day the Minister approves a major plan amendment, copies of each of the following:
  - (a) the major plan amendment;
  - (b) the background papers relating to the amendment;
  - (c) any report mentioned in section 74 (2) or (3).
- (3) If a major plan amendment is not presented to the Legislative Assembly in accordance with subsection (2), the major plan amendment does not come into effect.

**76 Assembly may reject major plan amendments completely or partly**

- (1) The Legislative Assembly may, by resolution, reject a major plan amendment, or a provision of the major plan amendment, presented to the Assembly.
- (2) Notice of a motion to reject the major plan amendment or a provision of the major plan amendment (a *rejection notice*) must be given not later than 5 sitting days after the day the major plan amendment is presented to the Legislative Assembly.

- (3) The major plan amendment or provision stated in a rejection notice given in accordance with subsection (2) is taken to have been rejected by the Legislative Assembly if, at the end of 5 sitting days after the day the rejection notice has been given in the Legislative Assembly—
- (a) the motion has not been called on; or
  - (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.

## **77 Effect of dissolution etc of Legislative Assembly**

- (1) This section applies if, before the end of 5 sitting days after the day a rejection notice has been given in the Legislative Assembly under section 76 (2)—
- (a) the Legislative Assembly is dissolved or expires; and
  - (b) at the time of dissolution or expiry—
    - (i) the notice has not been withdrawn and the motion has not been called on; or
    - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of.
- (2) The major plan amendment is taken, for section 76 (2) and (3), to have been presented to the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.
- (3) In this section:  
*rejection notice*—see section 76 (2).

## **Division 5.3.8 Commencement and publication of major plan amendments**

### **78 Commencement and publication of major plan amendments**

- (1) This section applies if—
  - (a) at the end of 5 sitting days after the day a major plan amendment is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the amendment or any provision of the amendment; and
  - (b) the major plan amendment, or a provision of the major plan amendment is not taken to have been rejected under section 76 (3) (Assembly may reject major plan amendments completely or partly).
- (2) The major plan amendment commences—
  - (a) on the day after the 5th sitting day after the day it is presented to the Legislative Assembly; or
  - (b) if the major plan amendment provides for a later date or time of commencement—on that date or at that time.

### **79 Rejection of major plan amendments by Legislative Assembly**

- (1) This section applies if a major plan amendment, or a provision of the major plan amendment, is rejected, or taken to be rejected, under section 76 (Assembly may reject major plan amendments completely or partly).
- (2) The major plan amendment, or provision of the major plan amendment, does not come into force if the provision is—
  - (a) rejected, or taken to be rejected, by the Legislative Assembly under section 76 (3) ; or

(b) withdrawn under subsection (5) (b).

- (3) The territory planning authority must, in relation to each provision of the major plan amendment that is rejected, prepare a notice stating that the provision of the amendment has been rejected.

*Note* A single notice may be prepared for 1 or more rejected provisions.

- (4) The notice is a notifiable instrument.

- (5) The Minister must, in relation to each provision of the major plan amendment that is not rejected—

(a) fix a day when the provision (an ***approved provision***) is to commence; or

(b) withdraw the provision.

*Note 1* An instrument under par (a) is a ***commencement notice*** (see Legislation Act, s 11).

*Note 2* On commencement, a provision of a major plan amendment amends the territory plan according to its terms.

- (6) A withdrawal under subsection (5) (b) is a notifiable instrument.

- (7) If the notifiable instrument does not state when the instrument expires, the instrument expires 6 months after the day it is notified.

- (8) The territory planning authority must publish notice of the following on the authority website:

(a) a notice under subsection (3);

(b) a commencement notice under subsection (5) (a);

(c) a withdrawal under subsection (5) (b).

## **Division 5.3.9 Limitations on challenge to validity of territory plan provisions**

### **80 Limitations on challenge to validity of territory plan provisions**

- (1) The validity of a provision of the territory plan must not be questioned in any legal proceeding other than a proceeding begun not later than 3 months after the day the provision, or an amendment of the provision, commenced.
- (2) The validity of a provision of the territory plan must not be questioned in any legal proceeding only because the major plan amendment that inserted or amended the provision was inconsistent with the planning strategy or a district strategy.

## Part 5.4 Territory plan—minor plan amendments

### 81 Definitions—pt 5.4

In this part:

*limited consultation*—see section 84 (1).

*minor plan amendment*—see section 82.

### 82 What is a *minor plan amendment* and is consultation needed?

- (1) Each of the following territory plan amendments is a *minor plan amendment* for which no consultation is needed before it is made under section 83:
  - (a) an amendment (an *error amendment*) that—
    - (i) would not adversely affect anyone’s rights if approved; and
    - (ii) has as its only object the correction of a formal error in the plan;
  - (b) an amendment to change the boundary of a zone under section 85 (Rezoning—boundary changes);
  - (c) an amendment, other than one to which subsection (2) (b) applies, in relation to an estate development plan under section 40 (Effect of approval of estate development plan);
  - (d) an amendment required to bring the territory plan into line with the national capital plan;
  - (e) an amendment to omit something that is obsolete or redundant in the territory plan.

**Example—obsolete or redundant thing**

a provision of the territory plan that has become redundant because of the enactment of a law that applies in the Territory

- (2) Each of the following territory plan amendments is a minor plan amendment for which only limited consultation is needed under section 84:
- (a) an amendment to change the boundary of a zone under section 86 (Rezoning—development encroaching on adjoining territory land);
  - (b) an amendment in relation to an estate development plan under section 40 (Effect of approval of estate development plan) if it incorporates an ongoing provision that was not included in the plan under section 39 (3) (g) (Estate development plan);
  - (c) an amendment to clarify the language in the territory plan if it does not change the substance of the plan;
  - (d) an amendment to relocate a provision within the territory plan if the substance of the provision is not changed.

### **83 Making minor plan amendments**

- (1) This section applies if—
- (a) the territory planning authority is satisfied that a territory plan amendment would, if made, be a minor plan amendment; and
  - (b) any limited consultation needed for the amendment has taken place.
- (2) The territory planning authority may only make a minor plan amendment if the amendment is not inconsistent with the planning strategy or any relevant district strategy.
- (3) The minor plan amendment is a notifiable instrument.
- (4) The territory planning authority must fix a day when the minor plan amendment is to commence.

- (5) Not later than 5 working days after the day the minor plan amendment is notified under the Legislation Act, the territory planning authority must publish on the authority website—
- (a) a copy of the amendment as notified; and
  - (b) if the amendment as notified does state when it commences—a notice stating the date of effect of the amendment; and
  - (c) any other information considered by the authority to be necessary or useful in explaining the minor amendment.

#### **84 Limited consultation**

- (1) The territory planning authority undertakes *limited consultation* for a proposed minor plan amendment if the authority complies with this section in relation to the amendment.
- (2) The territory planning authority must publish on the authority website—
- (a) a copy of the proposed minor plan amendment and information about the amendment; and
  - (b) a notice that—
    - (i) states the consultation period and how written comments (*consultation comments*) may be made on the amendment; and
    - (ii) states that a copy of any consultation comments will be made available on the authority website for at least 15 working days, starting 10 working days after the end of the consultation period; and
  - (c) a copy of the documents mentioned in paragraph (b) (ii).
- Note* Section 504 and s 505 apply to a person who makes consultation comments under this section.
- (3) The territory planning authority must tell the national capital authority about the minor plan amendment.

- (4) The territory planning authority must consider—
- (a) any consultation comments made in the consultation period and in accordance with the notice under subsection (2) (b); and
  - (b) any views of the national capital authority.
- (5) In this section:
- consultation period* means a stated period of not less than 20 working days.

## **85 Rezoning—boundary changes**

- (1) This section applies to a zone in relation to land if the land adjoins unleased territory land or land for which the Territory is the registered proprietor (the *adjoining territory land*).
- (2) The territory planning authority may amend the territory plan under section 83 (Making minor plan amendments) to change the boundary of the zone to encroach onto the adjoining territory land if the change is consistent with—
- (a) the apparent intent of the original boundary line; and
  - (b) the desired outcomes for the zone.
- (3) The territory planning authority may amend the territory plan under section 83 to change the boundary of the zone to encroach onto the adjoining territory land if—
- (a) the authority is advised to do so by—
    - (i) the conservator of flora and fauna; or
    - (ii) the custodian of the land for the zone; and
  - (b) the conditions in subsection (2) (a) and (b) are satisfied.

**86 Rezoning—development encroaching on adjoining territory land**

- (1) The territory planning authority may amend the territory plan under section 83 (Making minor plan amendments) to change the boundary of a zone consistent with a development proposal under section 155 (Declaration for development encroaching on adjoining territory land if development prohibited) if the authority makes a declaration that the proposal satisfies the criteria in section 155 (2).

*Note* Under s 155 and s 156, a person may apply for development approval of a development proposal that encroaches on adjoining territory land if the development would otherwise be prohibited on the land. However, development approval must not be given until the minor plan amendment has commenced under section 83 (see s 180 (2)).

- (2) However, the territory planning authority must not amend the territory plan under section 83 to change the boundary of the zone if the adjoining territory land is designated as a future urban area under the territory plan.
- (3) In this section:  
*adjoining territory land*—see section 85 (1).

## Part 5.5 Review of territory plan

### 87 Consideration of whether review of territory plan necessary

- (1) The Minister must, at least once every 5 years—
  - (a) decide whether the territory plan should be reviewed; and
  - (b) if the Minister decides that the territory plan should be reviewed—direct the territory planning authority to review the territory plan.

*Note 1* The territory planning authority must also review the territory plan if directed to do so by the Minister (see s 16 and s 17 (1) (b)).

*Note 2* A direction mentioned in s (1) (b) is a notifiable instrument (see s 17 (3)).

- (2) In deciding whether the territory plan should be reviewed, the Minister must consider whether the territory plan—
  - (a) is consistent with the object of this Act; and
  - (b) is consistent with the object of the territory plan; and
  - (c) gives effect to the plan's object in a way that is not inconsistent with the national capital plan; and
  - (d) gives effect to the plan's object in a way that gives effect to the principles of good planning in section 9; and
  - (e) promotes the planning strategy.
- (3) The Minister may delay making a decision to review the territory plan for not more than 1 year.
- (4) The territory planning authority must publish on the authority website notice of—
  - (a) the decision under subsection (1); and
  - (b) any decision under subsection (3).

- (5) A decision by the Minister not to review the territory plan does not affect the territory planning authority's function under section 15 (1) (b) of continually reviewing the territory plan.

## 88 Review of territory plan

- (1) This section applies if the Minister directs the territory planning authority under section 17 (1) (b) to review the territory plan.

*Note* See also s 87 (1) (b).

- (2) The territory planning authority must review the territory plan and consider the following:
- (a) whether the territory plan remains consistent with the national capital plan;
  - (b) whether the territory plan continues to further the object of the Act and the object of the territory plan in accordance with the principles of good planning;
  - (c) whether the territory plan remains consistent with the planning strategy and district strategies;
  - (d) whether the territory plan takes into account any planning outcomes contained in other government strategies and policies that may be relevant;
  - (e) anything else prescribed by regulation.
- (3) After reviewing the territory plan, the territory planning authority must prepare a report (a ***draft review report***)—
- (a) stating that the authority has reviewed the plan; and
  - (b) stating the authority's findings on the review; and
  - (c) if the authority considers that the territory plan should be amended—including the proposed amendment of the territory plan.

- (4) The territory planning authority must consult with each of the following in relation to the draft review report:
- (a) the public;
  - (b) the national capital authority;
  - (c) the conservator of flora and fauna;
  - (d) the environment protection authority;
  - (e) the heritage council;
  - (f) each referral entity;
  - (g) if any territory plan amendment in the review report would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected.

**89 Action after consultation about draft review report**

- (1) After the end of the consultation period for a draft review report, the territory planning authority may revise the draft review report.
- (2) In revising the draft review report, the territory planning authority must consider written comments (including consultation comments) about the draft review report received in the consultation period.
- (3) The territory planning authority may, at any time before the draft review report is given, or given again, to the Minister, revise the report to correct a formal error.

**90 Draft review report to be given to Minister etc**

- (1) The territory planning authority must give the draft review report to the Minister, together with the following documents:
  - (a) a written report about the authority's consultation with the following:
    - (i) the public;
    - (ii) the national capital authority;

- (iii) the conservator of flora and fauna;
  - (iv) the environment protection authority;
  - (v) the heritage council;
  - (vi) each referral entity;
  - (vii) if any territory plan amendment in the review report would, if made, be likely to affect unleased land or leased public land—each custodian of the land likely to be affected;
- (b) a copy of any written document given to the Minister by the national capital authority in relation to the draft review report.
- (2) The written report mentioned in subsection (1) (a) must include a statement about the issues raised in any consultation comments about the draft review report.

*Note* If the Minister accepts the draft review report, the Minister may direct the territory planning authority to amend the territory plan.

## Chapter 6                      Significant development

### Part 6.1                      Preliminary

#### 91                      **Meaning of *significant development***

A proposed development is a *significant development* if it requires any of the following:

- (a) an estate development plan under section 39;
- (b) consultation with the design review panel under section 97;
- (c) an environmental impact statement under section 102.

*Note*                      A regulation cannot exempt a significant development from requiring development approval (see s 141 (2)).

### Part 6.2                      Design review panel

#### 92                      **Establishment of design review panel**

The Design Review Panel is established.

#### 93                      **Functions of design review panel**

The design review panel has the following functions:

- (a) to provide design advice to proponents of development proposals;
- (b) to exercise any other function given to the panel under this Act or another territory law.

**94 Members of design review panel**

- (1) The design review panel consists of at least 3 of the following members:
  - (a) the person appointed as the government architect;
  - (b) a representative of the national capital authority;
  - (c) 1 or more members contracted under subsection (2) to provide design review services to the panel.
- (2) The territory planning authority may, on behalf of the Territory, enter into a contract for services with a person to provide design review services to the design review panel.
- (3) However, the territory planning authority may enter into a contract with a person only if satisfied that the person has appropriate expertise in architecture, urban design, urban planning, landscape architecture, engineering or another area relevant to the urban environment.
- (4) The contract must include conditions to ensure the accountability, transparency and independence of contracted panel members, including conditions about the following:
  - (a) ending the member's contract;
  - (b) disclosure of interests;
  - (c) conflicts of interest.

**95 Rules for design review panel**

- (1) The Minister may make rules (*design review panel rules*) for the design review panel, including rules about—
  - (a) terms of reference for the panel; and
  - (b) constitution of the panel; and

- (c) conducting meetings of the panel; and
- (d) processes and procedures for assessing development proposals.

**Examples—par (a) to (c)**

- 1 the quorum at meetings
- 2 who presides at meetings
- 3 how questions are resolved at meetings
- 4 how conflicts of interest are dealt with at meetings

**Examples—par (d)**

- 1 site inspections
- 2 sources of best practice for design review

- (2) The design review panel rules may apply, adopt or incorporate an instrument as in force from time to time.
- (3) The Legislation Act, section 47 (6) does not apply to an instrument applied, adopted or incorporated under subsection (2).

*Note* The instrument does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).

- (4) The design review panel rules must be published on the authority website.

**96 Design principles**

- (1) The Minister may make principles (*design principles*) to be used by the design review panel in assessing development proposals under this Act.
- (2) The design principles must be published on the authority website.

**97 When design review panel consultation is required**

- (1) Before submitting a development application for a prescribed development proposal, the proponent must consult the design review panel about the proposal.

- (2) Also, if the Minister is satisfied that a development proposal is likely to be of economic, social or environmental significance to the Territory, the Minister may require the proponent to consult the design review panel about the proposal.
- (3) In addition, the proponent of any other development proposal may consult the design review panel about the proposal.
- (4) If the proponent of a development proposal consults the design review panel about the proposal, the consultation must be carried out in accordance with any design review panel rules.

**98 Advice of design review panel**

- (1) This section applies if—
  - (a) the proponent of a development proposal consults the design review panel about the proposal under section 97; or
  - (b) the territory planning authority refers a development proposal in a development application to the design review panel under section 167 (2) (b) (Further entity referral—more information or amended application).
- (2) The design review panel must—
  - (a) consider the proposal; and
  - (b) either—
    - (i) provide the proponent with advice about how the proposal could be made consistent, or more consistent, with any design principles (*design advice*); or
    - (ii) tell the proponent that the panel has no advice about the proposal; and

- (c) if the panel provides the proponent with design advice—give a copy of the design advice to the territory planning authority.

*Note* If design advice is given for a prescribed development, the proponent's response to the design advice must be included in the development application (see s 162 (2) (d)).

- (3) If the proponent does not submit a development application for the development proposal within 18 months after the design advice is provided, the design advice expires.

## **Part 6.3                      Environmental impact assessment**

### **Division 6.3.1              Overview and key concepts**

#### **99                      Overview of environmental impact assessment**

- (1) Environmental impact assessment is the formal assessment of a development proposal's potential environmental impact.
- (2) Environmental impact assessment is typically undertaken through an environmental impact statement (an *EIS*), but may be undertaken through an environmental significance opinion if allowed.
- (3) If environmental impact assessment is required for a proposal, the development application for the proposal must include—
  - (a) a finalised EIS (see s 125); or
  - (b) if allowed for the proposal—an environmental significance opinion (see s 135).
- (4) If an environmental significance opinion is given for a proposal, the proposed development is no longer a significant development.
- (5) Environmental impact assessment is taken into account in deciding a development application but is not itself a development application or a development approval process.
- (6) This section is intended only as a guide to readers.

#### **100                      Overview of EIS process**

- (1) If this Act requires an EIS for a development proposal, the proponent of the proposal must apply to the territory planning authority for an EIS scoping document to identify the matters to be addressed in the EIS (see s 106).
- (2) The territory planning authority must prepare and give a scoping document to the proponent (see s 106 to s 108).

- (3) The proponent must prepare a draft EIS (see s 109).
- (4) The territory planning authority must publicly notify the draft EIS (see s 111), and anyone may make a representation about the draft EIS (see s 112).
- (5) The proponent must revise the draft EIS and give the revised EIS to the territory planning authority (see s 115).
- (6) The territory planning authority must consider the EIS (see s 118) and—
  - (a) accept the EIS (see s 118 (2)); or
  - (b) give the proponent another opportunity to revise the EIS (see s 119); or
  - (c) reject the EIS (see s 120).
- (7) If the territory planning authority accepts an EIS, the authority must—
  - (a) give the EIS to the Minister (see s 122); and
  - (b) prepare an EIS assessment report (see s 123).
- (8) After receiving an EIS, the Minister may—
  - (a) establish an inquiry panel to inquire about the EIS (see s 129); or
  - (b) give the authority a notice of no action on the EIS (see s 124).
- (9) An EIS generally expires 5 years after the day it is finalised (see s 128).
- (10) This section is intended only as a guide to readers.

## **101      Meaning of *significant* adverse environmental impact**

- (1) For this Act, an adverse environmental impact is *significant* if—
  - (a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or
  - (b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.
- (2) In deciding whether an adverse environmental impact is *significant*, the following matters must be taken into account:
  - (a) the kind, size, frequency, intensity, scope and length of time of the impact;
  - (b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.
- (3) In deciding whether a development proposal is likely to have a significant adverse environmental impact, it does not matter whether the adverse environmental impact is likely to occur on the site of the development or elsewhere.

## **Division 6.3.2      EIS requirements**

### **102      When EIS is required**

An EIS is required for a development proposal if—

- (a) the proposal is prescribed by regulation and, if an environmental significance opinion is allowed for the proposal, the opinion has not been given; or

*Note* For certain proposals prescribed by regulation, an EIS is not required if an environmental significance opinion is given indicating that the proposal is not likely to have a significant adverse environmental impact (see div 6.3.10).

- (b) the Minister makes a declaration in relation to the proposal under section 103; or
- (c) the Commonwealth Minister responsible for administering the EPBC Act advises the Minister in writing that the proposed development—
  - (i) is a controlled action under that Act, section 76 (Minister may request more information for making decisions); and
  - (ii) does not require assessment under that Act, part 8 (Assessing impacts of controlled actions) because a bilateral agreement between the Commonwealth and the Territory under that Act allows the proposal to be assessed under this Act; or
- (d) the Public Health Act Minister makes a declaration for this section in relation to a development application for the proposal; and
  - (i) the application is publicly notified; and
  - (ii) the declaration is made during the public notification period for the application.

*Note* See the *Public Health Act 1997*, s 134 for declarations made by the Public Health Act Minister for this section.

### **103 EIS—declaration by Minister**

- (1) The Minister may, in writing, declare that an EIS must be carried out for a development proposal.
- (2) However, the Minister must not make a declaration in relation to the development proposal unless satisfied on reasonable grounds that there is a risk of significant adverse environmental impact from the proposed development.

*Note* The Minister may publish guidelines about how the Minister will exercise power under this section (see s 521).

**104 Effect of declaration made after development application**

- (1) This section applies to a development application if, after the application is made—
  - (a) either—
    - (i) the Minister makes a declaration under section 103 in relation to the development proposal to which the application relates; or
    - (ii) the Public Health Act Minister makes a declaration for section 102 in relation to the application; and
  - (b) the application does not satisfy the application requirements for a development requiring environmental impact assessment.
- (2) The development application is taken to have been withdrawn.
- (3) The territory planning authority must give the applicant notice of the effect of this section.

**105 Designated proponents for certain EIS decisions**

- (1) The relevant Minister in relation to a defined decision may, in writing, designate a person or territory authority as the proponent in relation to the decision.
- (2) In this section:

*defined decision* means a decision of the Territory, the Executive, a Minister or a territory authority about a proposal in relation to which a Minister is empowered—

  - (a) to direct that an EIS be prepared; or
  - (b) to establish an inquiry panel to inquire about the EIS.

*relevant Minister* means the Minister responsible for the administration of the Act or subordinate law under which—

- (a) in relation to a statement or inquiry—the statement or inquiry is authorised to be prepared or conducted; or
- (b) in relation to a defined decision—the relevant decision is authorised to be made.

### **Division 6.3.3            Scope of EIS**

#### **106            Application for EIS scoping document**

- (1) A proponent of a development proposal must apply to the territory planning authority under this section if an EIS is required for the proposal.
- (2) The territory planning authority must—
  - (a) identify the matters that are to be addressed by an EIS in relation to the development proposal; and
  - (b) prepare a document (the *scoping document*) of the matters; and
  - (c) publish the application for the scoping document and documents in support of the application on the authority’s website.

*Note*      The time for giving a scoping document to the applicant is set out in s 108.

- (3) A regulation may prescribe entities the territory planning authority may or must consult in preparing a scoping document.

#### **107            Contents of scoping document**

- (1) The matters identified in the scoping document for a development proposal must include any minimum content for scoping documents prescribed by regulation.

- (2) The territory planning authority may, in the scoping document for a development proposal—
  - (a) require the proponent to engage a consultant to help prepare an EIS for the proposal; and
  - (b) set a shorter period within which a draft EIS must be provided to the authority under section 109; and
  - (c) request any other information relevant to the proposal.

- (3) In this section:

*consultant* means a person who satisfies the criteria prescribed by regulation.

## **108 Time to provide scoping document**

- (1) The territory planning authority must give a scoping document for a development proposal to the proponent of the proposal within—
  - (a) 30 working days after the day the proponent makes an application under section 106; or
  - (b) if the chief planner extends the period to give the scoping document under subsection (2)—the extended period.
- (2) The chief planner may, in writing, extend the period to give a scoping document for a development proposal if satisfied that, because of the complexity of the proposal and the consultation required, the extension is necessary.
- (3) The chief planner must give written notice of an extension under subsection (2) to the proponent of the development proposal.

## Division 6.3.4      Drafting EIS

### 109      Preparing draft EIS

- (1) After the territory planning authority gives a scoping document for a development proposal to the proponent of the proposal, the proponent must—
  - (a) prepare a document that addresses each matter raised in the scoping document (a *draft EIS*); and
  - (b) give the draft EIS to the territory planning authority for public notification within—
    - (i) 18 months starting on the day after the scoping document is completed; or
    - (ii) if a shorter period was set under section 107 (2) (b)—the shorter period; or
    - (iii) if the authority extends the period to give the draft EIS under subsection (2)—the extended period.
- (2) The territory planning authority may extend the period for the proponent to give a draft EIS to the authority, but only once.
- (3) The regulations may prescribe requirements in relation to the preparation of a draft EIS.

### 110      Recent studies to support draft EIS

- (1) This section applies if the expected environmental impact of a development proposal has been addressed by a recent study, whether or not the recent study relates directly to the development proposal.

**Examples—recent study that may address the expected environmental impact of a development proposal**

- 1 a report about the ecological value of an area
- 2 an environmental impact statement under the EPBC Act, pt 8 (Assessing impacts of controlled actions)
- 3 an endorsed policy, plan or program under the EPBC Act, pt 10 (Strategic assessments)

- (2) The draft EIS may refer to the recent study to address a matter identified in the scoping document for the proposal.
- (3) In deciding whether the environmental impact of the proposal has been sufficiently addressed by the recent study, the territory planning authority must consider—
  - (a) whether the recent study was conducted by an appropriately qualified person with relevant expertise and experience in relation to the environmental values of the land in the proposal; and
  - (b) if the recent study does not relate directly to the proposal—whether the study is sufficiently detailed to allow assessment of the environmental impacts likely to occur if the proposal proceeds; and
  - (c) whether the part of the recent study relevant to the proposal required public consultation through a statutory process or as part of a government policy development; and
  - (d) if the recent study is more than 18 months old—whether the Minister is satisfied that the information in the study is current.

**Example—par (c)**

the public consultation process for a draft major plan amendment under div 5.3.3

- (4) If the recent study is more than 18 months old, the draft EIS must include a statement, from an appropriately qualified person with no current professional relationship with the proponent, verifying that the information in the recent study is current.
- (5) In this section:

*recent study* means a study that is less than 5 years old.

## Division 6.3.5            Consultation on EIS

### 111            Public notification of draft EIS

The territory planning authority must do the following things in relation to a draft EIS to *publicly notify* the draft EIS:

- (a) give public notice stating—
  - (i) that the draft EIS is available for public inspection and for purchase at stated places and times; and
  - (ii) how representations may be made on the draft EIS; and
  - (iii) the period, at least 20 working days, during which representations may be made on the draft EIS (the *public consultation period*);
- (b) make 1 or more copies of the draft EIS available as stated in the public notice;
- (c) make a copy of the draft EIS available on the authority website;
- (d) display a sign on the site of the development to which the draft EIS relates stating the matters under paragraph (a).

### 112            Representations about draft EIS

- (1) Anyone may make a representation about a draft EIS publicly notified under section 111.
- (2) A representation about a draft EIS must be made during the public consultation period for the draft EIS.
- (3) The territory planning authority may give public notice to extend the public consultation period.
- (4) If the territory planning authority extends the public consultation period, the authority must give the proponent of the development proposal written notice of the extension.

- (5) A person who makes a representation about a draft EIS may, in writing, withdraw the representation at any time before the territory planning authority accepts the EIS under section 118.

### **113 Publication of representations about draft EIS**

- (1) This section applies if a person makes a representation about a draft EIS in accordance with the public notice for the draft EIS under section 111.
- (2) The territory planning authority must—
- (a) make a copy of the representation available on the authority website until—
    - (i) the EIS is finalised; or
    - (ii) the representation is withdrawn; and
  - (b) give a copy of the representation to the proponent of the development proposal as soon as practicable after the public consultation period for the draft EIS ends.

*Note* This section is subject to s 504 and s 505.

### **114 Entity consultation on draft EIS**

The territory planning authority may—

- (a) consult on a draft EIS with any entity prescribed for section 106 (3); and
- (b) give a copy of any submission made by the entity to the proponent of the development proposal.

## **Division 6.3.6 Revision of EIS**

### **115 Revision of draft EIS**

- (1) After the public consultation period for a draft EIS, the territory planning authority must give the proponent of the development proposal written notice of the period within which the proponent must—
  - (a) revise the draft EIS; and
  - (b) give the revised EIS to the authority.
- (2) The period in subsection (1) must be at least 30 days, but not more than 18 months, after the day the territory planning authority gives the notice.
- (3) The territory planning authority may extend the period in subsection (1), but only once.
- (4) The revised EIS must—
  - (a) address each matter identified in the scoping document for the development proposal; and
  - (b) if a matter is raised in a representation made during the public consultation period—address the matter and demonstrate how the matter has been taken into account; and
  - (c) if a matter is raised in a submission under section 114 for the draft EIS—address the matter and demonstrate how the matter has been taken into account.

### **116 Public notification of revised EIS**

- (1) The territory planning authority may publicly notify a revised EIS as if it were a draft EIS under section 111 if the authority is satisfied that—
  - (a) the revised EIS is significantly different from the draft EIS; and

- (b) public notification of the revised EIS is justified because of the difference.
- (2) However, there is no minimum period during which representations may be made on a revised EIS.
  - Note* Normally the public consultation period for a draft EIS cannot be less than 20 working days (see s 111 (a) (iii)), but this does not apply to a revised EIS.
- (3) If the territory planning authority publicly notifies a revised EIS, the following provisions apply to the revised EIS as if it were a draft EIS:
  - (a) section 112 (Representations about draft EIS);
  - (b) section 113 (Publication of representations about draft EIS);
  - (c) section 114 (Entity consultation on draft EIS);
  - (d) section 115 (Revision of draft EIS).

## **Division 6.3.7      Consideration of EIS**

### **117      Rejection of EIS before consideration**

- (1) This section applies if the proponent of a development proposal fails to give the territory planning authority a revised EIS within the time required by a written notice under section 115 (1).
- (2) The territory planning authority must reject the EIS and give the proponent written notice of the rejection.

*Note* If the EIS is rejected, the EIS process ends and a new process must be started.

### **118      Authority consideration of EIS**

- (1) This section applies if the proponent of a development proposal gives the territory planning authority a revised EIS—
  - (a) within the time required by written notice under section 115 (1);
  - or

- (b) in accordance with a written notice under section 119 (2).
- (2) The territory planning authority must—
  - (a) if satisfied that the revised EIS meets the requirements mentioned in section 115 (4)—accept the revised EIS; or
  - (b) if section 119 applies—take action under section 119; or
  - (c) if section 120 applies—take action under section 120.
- (3) In making a decision under this division, the territory planning authority must consult each entity that made a submission to the authority about the scoping document for the draft EIS under section 106 (3).

**119 Chance to address unaddressed matters**

- (1) This section applies in relation to a revised EIS for a development proposal if the territory planning authority—
  - (a) is not satisfied that the revised EIS meets the requirements mentioned in section 115 (4); and
  - (b) has not given a second written notice in relation to the revised EIS under subsection (2).
- (2) The territory planning authority must give the proponent of the development proposal written notice stating the following:
  - (a) that the authority does not accept the EIS;
  - (b) why the authority does not accept the EIS;
  - (c) that the proponent must provide a new revised EIS within a stated period of at least 20 working days.

## **120 Rejection of EIS after consideration**

- (1) This section applies if the territory planning authority gives the proponent of a development proposal a second written notice under section 119.
- (2) The territory planning authority must reject the revised EIS if—
  - (a) the proponent does not provide a new revised EIS within the period stated in the notice; or
  - (b) the proponent responds within the period stated in the notice but the authority remains unsatisfied in relation to a matter mentioned in section 115 (4).

*Note* If the EIS is rejected, the EIS process ends and a new process must be started.

## **121 Cost recovery**

The territory planning authority may recover from the proponent of a development proposal to which an EIS relates the direct and indirect costs incurred by the authority—

- (a) in preparing an EIS assessment report for the proposal under section 123; and
- (b) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters under any of the following provisions:
  - (i) section 106 (3) (Application for EIS scoping document);
  - (ii) section 117 (Rejection of EIS before consideration);
  - (iii) section 118 (3) (Authority consideration of EIS);
  - (iv) section 119 (Chance to address unaddressed matters);
  - (v) section 120 (Rejection of EIS after consideration).

## **122 Giving EIS to Minister**

- (1) This section applies if the territory planning authority accepts an EIS under section 118 (2) (a).
- (2) However, this section does not apply if the territory planning authority has sent an invoice to the proponent of a development proposal for costs recoverable under section 121 and the invoice remains unpaid.
- (3) The territory planning authority must give the EIS to—
  - (a) the Minister; and
  - (b) for a public health EIS—the Public Health Act Minister.

## **123 EIS assessment report**

- (1) If the territory planning authority accepts an EIS under section 118 (2) (a), the authority must prepare a report (an *EIS assessment report*) that—
  - (a) confirms that the authority is satisfied in relation to the matters mentioned in section 115 (4); and
  - (b) may contain additional information about how the authority came to be satisfied in relation to those matters.
- (2) The territory planning authority must—
  - (a) if an EIS is given to the Minister under section 122—give the EIS assessment report to the Minister; and
  - (b) if a public health EIS is given to the Public Health Act Minister under section 122—give the EIS assessment report to the Public Health Act Minister.
- (3) An EIS assessment report must be published on the authority website.

**124 Notice of no action on EIS**

- (1) This section applies if—
  - (a) the territory planning authority gives the Minister an EIS under section 122; and
  - (b) the Minister decides not to establish an inquiry panel to inquire about the EIS.
- (2) The Minister must give the territory planning authority written notice that the Minister has decided to take no action in relation to the EIS.

*Note* If the Minister gives notice under this section, the EIS to which the notice relates is finalised (see s 125).

**Division 6.3.8 Finalisation and expiry of EIS**

**125 When EIS is *finalised***

For this Act, an EIS (other than a public health EIS) is *finalised* if—

- (a) the Minister gives the territory planning authority notice under section 124 (Notice of no action on EIS) in relation to the EIS; or
- (b) the Minister has established an inquiry panel for the EIS and—
  - (i) the panel has reported the results of the inquiry; or
  - (ii) the time for reporting under section 131 has ended.

**126 When public health EIS is *finalised***

For this Act, a public health EIS is *finalised* if—

- (a) notice in relation to the EIS is given to the territory planning authority by—
  - (i) the Minister under section 124 (Notice of no action on EIS); and

- (ii) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b); or
- (b) at least 15 working days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—
  - (i) the Minister has not decided, within the 15-day period mentioned in section 129 (1), to establish an inquiry panel to inquire about the EIS; and
  - (ii) the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or
- (c) both of the following apply:
  - (i) notice in relation to the EIS is given to the authority by—
    - (A) the Minister under section 124; or
    - (B) the Public Health Act Minister under the *Public Health Act 1997*, section 134 (3) (b);
  - (ii) at least 15 working days have elapsed since the EIS was given to the Minister and the Public Health Act Minister and—
    - (A) if the Minister gave the authority notice in relation to the EIS under section 124—the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or
    - (B) in any other case—the Minister has not decided, within the 15-day period mentioned in section 129 (1), to establish an inquiry panel to inquire about the EIS; or

- (d) the Minister has established an inquiry panel for the EIS and—
  - (i) the panel has reported the results of the inquiry; or
  - (ii) the time for reporting under section 131 has ended.

**127 Publication of finalised EIS**

A finalised EIS must be published on the authority website.

**128 When EIS expires**

- (1) An EIS expires 5 years after the day it is finalised.
- (2) However, if an EIS refers to a recent study in accordance with section 110 and the recent study is—
  - (a) an environmental impact statement prepared under the EPBC Act, part 8 (Assessing impacts of controlled actions) and approval of action in relation to the development has been given under that Act, part 9 (Approval of actions)—the EIS expires when the approval expires, or 5 years after the day the EIS is finalised, whichever happens later; or
  - (b) an endorsed policy, plan or program under the EPBC Act, part 10 (Strategic assessments) and approval of action in relation to the development has been given under that Act, part 10—the EIS expires when the approval expires, or 5 years after the day the EIS is finalised, whichever happens later.

**Division 6.3.9 EIS inquiry panels**

**129 When to establish inquiry panel**

- (1) The Minister must, within 15 working days after the day an EIS is given to the Minister under section 122—
  - (a) decide whether to establish a panel (an *inquiry panel*) to inquire about the EIS; and

- (b) if the Minister decides to establish an inquiry panel—tell the territory planning authority about the decision.
- (2) If the Minister decides to establish an inquiry panel to inquire about an EIS, the Minister may establish the panel to inquire about 1 or more aspects of the EIS.
- (3) However, if the Public Health Act Minister gives notice under the *Public Health Act 1997*, section 134 that a panel to conduct an inquiry about an EIS should be established, the Minister must establish an inquiry panel to inquire in relation to the effects on public health of the proposal that is the subject of the EIS.
- (4) If the Minister establishes an inquiry panel to inquire about an EIS, the Minister must—
  - (a) prepare terms of reference for the inquiry; and
  - (b) give written notice of the inquiry to the proponent of the development proposal to which the EIS relates.
- (5) The terms of reference are a notifiable instrument.

### **130 How to establish inquiry panel**

- (1) The Minister establishes an inquiry panel for an EIS by—
  - (a) appointing 1 or more people to the panel; and
  - (b) preparing written terms of reference for the inquiry.
- (2) If the Minister appoints more than 1 person to an inquiry panel, the Minister must, in writing, nominate a person appointed to be the presiding member of the panel.
- (3) However, the Minister must not appoint a person to an inquiry panel unless satisfied that the person has the expertise necessary to exercise the functions of the panel in relation to the matter inquired into.

- (4) Also, the Minister must not appoint any of the following people to an inquiry panel for an EIS:
- (a) the chief planner;
  - (b) a member of the territory planning authority's staff;
  - (c) a member of the city renewal authority's staff;
  - (d) a member of the suburban land agency's staff;
  - (e) a person prescribed by regulation in relation to the EIS.

**131 Time for reporting by inquiry panels**

- (1) An inquiry panel must report in writing to the Minister on the result of the inquiry within—
- (a) 60 working days after the day the Minister establishes the panel;  
or
  - (b) if the period under paragraph (a) is extended under subsection (2)—the extended period.
- (2) The Minister may, on application by the panel, extend by written notice the period for reporting.

**132 Inquiry panel findings and report to be independent**

- (1) The report of an inquiry panel must be the view of the inquiry panel based on the findings of the panel.
- (2) The Minister must not direct an inquiry panel in relation to the findings or report of the panel.

### 133 Protection of people on inquiry panels from liability

- (1) A person appointed to an inquiry panel is not personally liable for anything done, or omitted to be done, honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any liability that would, apart from this section, attach to a person appointed to an inquiry panel attaches instead to the Territory.

### 134 Recovery of inquiry panel costs

The direct and indirect costs to the Territory of conducting an inquiry about an EIS are recoverable from the proponent of the development proposal to which the EIS relates.

**Example—indirect costs**

the administrative overheads of staff exercising functions in relation to the inquiry

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

## Division 6.3.10 Environmental significance opinions

### 135 Application for environmental significance opinion

- (1) A regulation may prescribe a development proposal for which an agency (the *relevant agency*) may give an opinion (an *environmental significance opinion*) indicating that the proposal is not likely to have a significant adverse environmental impact.
- (2) If the territory planning authority is the relevant agency for an environmental significance opinion, the authority must not give an opinion unless it has consulted each of the following entities:
  - (a) the work health and safety commissioner;
  - (b) the environment protection authority;

- (c) the emergency services commissioner;
- (d) the technical regulator under the *Utilities (Technical Regulation) Act 2014*, section 77;
- (e) the director-general of the administrative unit responsible for the *Health Act 1993*;
- (f) if an area adjacent to the ACT could be adversely affected by development that is the subject of the development proposal—the council for the area;
- (g) an entity prescribed by regulation.

(3) In this section:

*area*—see the *Local Government Act 1993* (NSW), dictionary.

*council*—see the *Local Government Act 1993* (NSW), dictionary.

### **136 Deciding environmental significance opinion application**

- (1) A relevant agency may, by written notice, require an applicant for an environmental significance opinion to give more information in support of the application.
- (2) The notice must state the period, not shorter than 20 working days, within which the applicant must respond to the notice.
- (3) The relevant agency may refuse to decide the application if the requested information is not given to the agency within the stated period.
- (4) A relevant agency deciding an application must—
  - (a) if the relevant agency considers that the proposal is not likely to have a significant adverse environmental impact—give the environmental significance opinion; or

- (b) if the relevant agency considers that the proposal is not likely to have a significant adverse environmental impact if the development satisfies certain conditions—give the environmental significance opinion subject to the stated conditions (a *conditional environmental significance opinion*); or
- (c) reject the application.

*Note* If a conditional environmental significance opinion has been given for a development, the development approval must include a condition that the development comply with the condition in the environmental significance opinion (see s 182 (1) (d)).

In addition, an application to amend a development approval must be refused if the changed development proposal would be in breach of a condition on the approval relating to a conditional environmental significance opinion (see s 201 (2) (a) (ii)).

- (5) If a relevant agency other than the territory planning authority rejects the application, the relevant agency must notify the authority in writing of the rejection.
- (6) If the territory planning authority rejects the application or receives notice under subsection (5), the authority must notify the applicant in writing of the rejection.
- (7) A relevant agency is taken to have rejected an application for an environmental significance opinion if the agency does not give the opinion or notice under subsection (5) within—
  - (a) if no information is requested under subsection (1)—30 working days after the application is made to the agency; or
  - (b) if information is requested and the information is given to the agency—30 working days after the information is given to the agency; or

- (c) if information is requested and the information is not given to the agency within the period stated—30 working days after the stated period has ended.
- (8) However, the relevant agency may decide the application despite the rejection of the application under subsection (7).

**137 Costs of environmental significance opinion**

- (1) A relevant agency may recover from an applicant for an environmental significance opinion the direct and indirect costs incurred by the agency—
  - (a) in deciding an application for the opinion; and
  - (b) in preparing the opinion; and
  - (c) in engaging a consultant to assist with deciding the application or preparing the opinion.
- (2) If the relevant agency has sent an invoice to the applicant for the costs recoverable under subsection (1), the agency must give a copy of the invoice to the territory planning authority.
- (3) Despite section 136 (4) and (5), the relevant agency may wait until the invoice has been paid by the applicant before giving the environmental significance opinion or giving notice under section 136 (5).

**138 Notice of environmental significance opinion**

- (1) This section applies to an environmental significance opinion given by a relevant agency to the applicant for the opinion.
- (2) The relevant agency must give a copy of the environmental significance opinion to the territory planning authority when the opinion is given to the applicant.
- (3) The territory planning authority must prepare a notice including the text of the environmental significance opinion and publish it on the authority website.

- (4) An environmental significance opinion and the notice including the text of the opinion expire 18 months after the day the opinion is given to the applicant.
- (5) Giving an environmental significance opinion does not limit any power the relevant agency has under this Act or any other territory law.

## Chapter 7                      Development assessment and approvals

### Part 7.1                      Outline and important concepts

#### 139                      Outline—ch 7

- (1) This chapter sets out the following:
  - (a) the main types of development;
  - (b) requirements for development approval;
  - (c) the development approval process.
- (2) The main types of development are as follows:
  - (a) *assessable development* needs development approval and includes significant development under chapter 6;
  - (b) *prohibited development* is unlawful unless development approval is allowed under division 7.4.1;
  - (c) *exempt development* does not need development approval.
- (3) This section is intended only as a guide to readers.

#### 140                      Meaning of *decision-maker*—ch 7

In this chapter:

*decision-maker*—

- (a) for a development application, means—
  - (i) if the application is for the removal of the concessional status of a lease—the Minister; and
  - (ii) if the application is for a territory priority project—the chief planner; and

- (iii) in any other case—the territory planning authority; and
- (b) for a development approval, means—
  - (i) if the approval is for the removal of the concessional status of a lease—the Minister; and
  - (ii) if the approval is for a territory priority project—the chief planner; and
  - (iii) if the territory planning authority decided the application for the approval under section 180—the authority.

## **Part 7.2 Exempt development**

### **Division 7.2.1 Preliminary**

#### **141 Meaning of *exempt development***

- (1) In this Act:

*exempt development* means development that is exempt from requiring development approval under—

- (a) section 143 (Exempt development—authorised use); or
- (b) a regulation.

*Note* The territory planning authority may tell a proponent of a development proposal whether the development is likely to be exempt if asked by the proponent (see s 160 and s 161). A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 147).

- (2) For the definition of *exempt development*, paragraph (b), a regulation may not exempt any of the following from requiring development approval:

- (a) a significant development;
- (b) a development that is inconsistent with an essential design element identified in a development approval.

*Note* *Essential design element*, of a development proposal—see s 183.

**142 Meaning of *authorised use*—pt 7.2**

In this part:

*authorised use*, of land or of a building or structure on land—

- (a) means a use authorised by any of the following (whether expressly or by implication):
  - (i) a lease;
  - (ii) a licence under this Act;
  - (iii) a public unleased land permit under the *Public Unleased Land Act 2013*;
  - (iv) a sign approval or work approval under the *Public Unleased Land Act 2013*;
  - (v) a preserved lease; and
- (b) includes a use authorised by a lease that expired not more than 6 months before the use and is renewed within 6 months after the expiry; but
- (c) does not include a use authorised by section 268 (Use of land for leased purpose).

**143 Exempt development—authorised use**

- (1) An authorised use of land, or of a building or structure on land, is exempt from requiring development approval.
- (2) To remove any doubt, an authorised use of a building or structure on land is exempt from requiring development approval if the construction of the building or structure is exempt from requiring development approval.

- (3) To remove any doubt, if an authorised use of land, or of a building or structure on land, is exempt from requiring development approval under subsection (1), the right to use the land, building or structure as authorised does not end only because 1 or more of the following apply:
- (a) the use is not continuous;
  - (b) someone deals with the lease (the *affected lease*) that authorises the use;
  - (c) a further lease is granted for the affected lease on application under section 281 (Grant of further leases), whether or not the grant happens immediately after the expiry of the affected lease.
- (4) This section is subject to section 144.

**144 Authorised use that is not exempt**

- (1) An authorised use of land, or of a building or structure on land, requires development approval if—
- (a) earthworks or other construction work is carried out on the land; and
  - (b) the work requires development approval.
- (2) Also, an authorised use of land, or of a building or structure on land, requires development approval if—
- (a) a building or structure is constructed on the land, or a building or structure on the land is altered or demolished; and
  - (b) the construction, alteration or demolition requires development approval.
- (3) Also, an authorised use of land, or of a building or structure on land, requires development approval if—
- (a) the placard quantity or more of a Schedule 11 hazardous chemical is to be stored on the land or in the building or structure; and

(b) the land, building or structure is not mentioned in the *Planning and Development (Placard Quantity Premises) List 2018* (NI2018-532) (repealed).

(4) In this section:

**placard quantity**—see the *Work Health and Safety Regulation 2011*, dictionary.

**Schedule 11 hazardous chemical**—see the *Work Health and Safety Regulation 2011*, dictionary.

*Note* Because the use of land, or of a building or structure on land, is development (see s 11), if the use of the land, building or structure stops being exempt under this section, development approval will be required for the use.

## **145 Effect of s 144 on development approval**

(1) This section applies if—

- (a) there is a development proposal in relation to land; and
- (b) carrying out the proposal would result in an authorised use of the land, or of a building or structure on the land, requiring development approval because of section 144.

(2) The proponent of the proposal must apply for development approval for—

- (a) the proposal; and
- (b) any authorised use of the land, or of a building or structure on the land, that is intended to continue to apply after the proposal is carried out (the **proposed use**).

(3) In deciding the development application, the decision-maker—

- (a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use, the application would be refused; and

- (b) must not approve the application on a condition only because, if the application were an application only for the proposed use, the application would be approved on the condition.

**Example**

Maria is the lessee of land for which the authorised uses are retail and commercial and on which there are office buildings and shops. Maria wants to undertake earthworks to clear an area of vegetation for people to park on the land, which will require development approval. If the earthworks were carried out, the authorised uses of the land would stop being exempt under s 144.

In addition to applying for development approval to undertake the earthworks, Maria must also apply for development approval to use the land for retail and commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for retail purposes or commercial purposes, or use of the office buildings and shops, the decision-maker would refuse the application or approve it on conditions.

## **Division 7.2.2 Exempt development and approvals**

### **146 Exempt development—no need for approval**

An exempt development may be undertaken without any of the following:

- (a) a development application;
- (b) a development approval;
- (c) an exemption assessment.

*Note* The proposal for the exempt development may still need a building approval under the *Building Act 2004*.

## Division 7.2.3 Exemption assessments

### 147 Application for exemption assessment

- (1) A person may apply to a works assessor or building surveyor (the *exemption assessor*) for an assessment (an *exemption assessment*) of whether a development is an exempt development.

*Note* Applying for an exemption assessment is not a requirement of the development approval or building approval process (see s 146 and *Building Act 2004*, s 14A). If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor.

- (2) An application must be—
- (a) in writing submitted by the applicant; and
  - (b) approved in writing by any other prescribed person; and
  - (c) accompanied by information, plans and other documents prescribed by regulation.
- (3) The application may relate to development that is to be undertaken or has been undertaken.
- (4) In this section:

*building surveyor*—see the *Construction Occupations (Licensing) Act 2004*, section 9.

*works assessor*—see the *Constructions Occupations (Licensing) Act 2004*, section 14A.

### 148 Exemption assessment and notice

- (1) This section applies if—
- (a) a person applies to an exemption assessor for an exemption assessment under section 147; and
  - (b) the exemption assessor agrees to do the exemption assessment.

- (2) The exemption assessor must—
  - (a) assess the application; and
  - (b) give the applicant a notice (an *exemption assessment D notice*)—
    - (i) stating whether the development is, in the assessor's opinion, an exempt development; and
    - (ii) including anything else prescribed by regulation.
- (3) The exemption assessor must give a copy of the exemption assessment D notice to the territory planning authority within 5 days after the day the notice is given to the applicant.
- (4) The exemption assessor may, in assessing the application, request more information from the applicant.
- (5) If the applicant does not provide the requested information, the exemption assessor need not assess the application or give the exemption assessment D notice.
- (6) The exemption assessor may charge a fee for giving the exemption assessment D notice.

#### **149 Effect of exemption assessment D notice**

- (1) An exemption assessment D notice in relation to a development yet to be undertaken certifies that the development is, or is not, an exempt development.
- (2) An exemption assessment D notice in relation to a development that has been undertaken certifies that the development is, or is not, exempt from requiring development approval based on whether the development—
  - (a) was exempt from requiring development approval at the time it was done; or
  - (b) is currently exempt from requiring development approval.

## **Part 7.3**                      **Development proposals not exempted**

### **150**                      **Development proposal for lease variation in designated area**

The following provisions do not apply to a development proposal that is a variation of a lease in a designated area:

- (a) section 46 (Effect of territory plan);
- (b) section 61 (Public consultation—notice of interim effect etc);
- (c) a provision of this Act that refers to any part of the territory plan.

**Example—par (c)**

s 184 (1) (a)

## Part 7.4 Prohibited development

### Division 7.4.1 Applications for prohibited development—general

#### 151 Meaning of *prohibited development*

- (1) For this Act, a development is a *prohibited development* if either of the following applies to the development or a part of the development:
  - (a) the development is prohibited under the territory plan;
  - (b) for a development that is in a future urban area—
    - (i) the development is undertaken by an entity other than the Territory or a territory authority; and
    - (ii) the territory plan states that the development is not prohibited.
- (2) However, if a development is an exempt development and a prohibited development, the development is taken not to be a prohibited development.

#### 152 Development applications prohibited except in stated circumstances

The territory planning authority must not accept a development application for approval of a prohibited development other than under 1 of the following sections:

- (a) section 153 (Applications for development approval in relation to use for otherwise prohibited development);
- (b) section 154 (Applications in anticipation of major plan amendment);
- (c) section 156 (Applications for development encroaching on adjoining territory land if development prohibited).

**153 Applications for development approval in relation to use for otherwise prohibited development**

- (1) This section applies to a development proposal in relation to a use of land, or of a building or structure on land, if the use is—
- (a) an authorised use to which section 144 (Authorised use that is not exempt) applies; and
  - (b) a prohibited development.

*Note* Because the use is not exempt development, s 151 (2) does not apply.

- (2) A person may apply to the territory planning authority for development approval of the development proposal.
- (3) If an application is made under subsection (2), the use is taken not to be a prohibited development.
- (4) In this section:

***authorised use***, of land, or of a building or structure on land, means—

- (a) a use authorised by—
  - (i) a lease; or
  - (ii) section 268 (Use of land for leased purposes); or
  - (iii) a preserved lease; and
- (b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

**Example**

Lisa is the lessee of land on which she operates a service station in accordance with the lease. The territory plan is amended and it now prohibits using land to operate service stations in her area. Lisa is not affected since her existing use of the land as authorised by the lease is a type of exempt development and taken not to be prohibited (see s 143 and s 151).

However, Lisa has plans to demolish and rebuild the service station. If she does this, her use of the land is no longer exempt (see s 144). Subsection (2) allows Lisa

to apply for development approval for the development proposal and s (3) provides that the use is taken not to be prohibited development.

## **154 Applications in anticipation of major plan amendment**

- (1) This section applies if the territory planning authority has—
  - (a) prepared a draft major plan amendment in accordance with section 57; and
  - (b) given the draft major plan amendment to the Minister for approval under section 64.
- (2) A person may apply for approval of a relevant development proposal after the day the draft amendment is given to the Minister as if the draft amendment were in force.
- (3) The development application must—
  - (a) identify the draft amendment; and
  - (b) state that the application is made as if the draft amendment were in force.
- (4) Despite section 46 (Effect of territory plan)—
  - (a) chapter 6 (Significant development), this chapter and chapter 10 (Leases and licences) apply to the development application as if the draft amendment were in force; and
  - (b) the territory planning authority must assess the application as if the draft amendment were in force; and
  - (c) the territory planning authority must, in publicly notifying the development application under division 7.5.4 (Public notification of development applications)—
    - (i) identify the draft amendment; and
    - (ii) state that the application is made in accordance with the draft amendment.

- (5) In this section:

*relevant development proposal*, in relation to a draft major plan amendment, means a development proposal for a prohibited development that would not be prohibited if the draft amendment were in force.

*Note* A development application made under this section may be decided only if the draft plan amendment has commenced under s 78 or s 79 (see s 180 (2) (a)).

**155 Declaration for development encroaching on adjoining territory land if development prohibited**

- (1) This section applies to a development proposal in relation to a use of land, or of a building or structure on land, if—
- (a) the land, building or structure adjoins unleased territory land or land for which the Territory is the registered proprietor (the *adjoining territory land*); and
  - (b) the use would encroach no further onto, over or under the adjoining territory land than the distance prescribed by regulation (the *encroachment*); and
  - (c) the use is a prohibited development on the adjoining territory land.
- (2) A person may apply to the territory planning authority for a declaration that the development proposal satisfies the following criteria:
- (a) the encroachment is a minor part of the development;
  - (b) carrying out the proposal in relation to the adjoining territory land would enable a more logical and appropriate development than if there were no encroachment;
  - (c) the proposed use of the land would—
    - (i) not detract from the amenity of the surrounding area; and

- (ii) promote better land management; and
  - (iii) not unreasonably restrict public access to other land;
- (d) the territory planning authority is not prohibited from granting by direct sale a lease over the encroachment.
- (3) The application must include—
  - (a) if the adjoining territory land is unleased land—written consent by the custodian of the land to the encroachment; and
  - (b) a copy of any written information given to the custodian, with each page—
    - (i) signed by the custodian; and
    - (ii) numbered by stating the page number and the total number of pages provided.
- (4) Not later than 10 working days after the day the person applies to the territory planning authority for a declaration under subsection (2), the authority must—
  - (a) make the declaration; or
  - (b) refuse to make the declaration.
- (5) If the territory planning authority makes the declaration—
  - (a) the authority must publish the declaration on the authority’s website; and
  - (b) the applicant must obtain a lease or licence over the land.

**156 Applications for development encroaching on adjoining territory land if development prohibited**

- (1) If the territory planning authority has made a declaration under section 155 in relation to a development proposal—
  - (a) the applicant for the declaration may apply to the authority for development approval of the proposal; and

(b) the use is taken not to be a prohibited development on the adjoining territory land.

(2) Despite section 46 (Effect of territory plan)—

(a) chapter 6 (Significant development), this chapter and chapter 10 (Leases and licences) apply to the application as if the territory plan were amended in accordance with section 86 (Rezoning—development encroaching on adjoining territory land) to change the boundary of the land consistent with a proposal under section 155; and

(b) the authority must assess the application as if the territory plan were amended in accordance with section 86.

*Note 1* A development application made under this section may be decided only if the territory plan has been amended under s 86 (see s 180 (2) (b)).

*Note 2* The territory planning authority must not grant a lease over an encroachment on adjoining territory land by direct sale unless the territory plan has been amended under s 86 (see s 258 (1) (i)).

(3) In this section:

*adjoining territory land*—see section 155 (1) (a).

*encroachment*—see section 155 (1) (b).

## **Division 7.4.2 Prohibited waste facility development applications**

### **157 Object—div 7.4.2**

The object of this division is to contribute to the orderly and sustainable development of waste facilities in the ACT by limiting the development of new waste facilities in the division of Fyshwick.

**158 Certain development applications for waste facilities prohibited**

- (1) The territory planning authority must not accept a prohibited waste facility development application.

- (2) In this section:

*handle*, in relation to waste, means store, sort, treat, process, recover, recycle, use, reuse or dispose of waste.

*prohibited waste facility development application* means a development application in relation to a development proposal for the use of land in the division of Fyshwick that would, if it were approved, permit—

- (a) the use of any part of the land as a waste facility; or
- (b) if the land is used, wholly or partly, as an existing waste facility—an increase in the amount of waste handled on the land each year.

*waste*—see the *Waste Management and Resource Recovery Act 2016*, section 10.

*waste facility*—

- (a) means a site used for the handling of waste and includes—
  - (i) an incineration facility; and
  - (ii) a landfill site; and
  - (iii) a recyclable material collection site; and
  - (iv) a recycling facility; and
  - (v) a waste transfer facility; and
  - (vi) a hazardous waste facility; but

(b) does not include—

- (i) if the handling of waste on a site is ancillary to the site's primary use—the site; or
- (ii) a site prescribed by regulation.

**Examples—par (b) (i)**

- 1 a paint supplier that accepts unused paint from its customers
- 2 an electrical goods retailer that uses large on-site bins for storing cardboard for recycling

## **159 Compensation—safety net**

- (1) This section applies if, apart from this section, the operation of this division would result in the acquisition of property from a person otherwise than on just terms under the Self-Government Act, section 23 (1) (a).

*Note* The Legislative Assembly has no power to make a law in relation to an acquisition otherwise than on just terms (see Self-Government Act, s 23 (1) (a)).

- (2) The Territory must pay reasonable compensation to the person for the acquisition in accordance with this section.
- (3) The Territory and the person may agree on an amount of compensation or other terms in satisfaction of the Territory's obligation under subsection (2).
- (4) If there is no agreement under subsection (3), the person may, by proceeding in a court of competent jurisdiction, recover from the Territory the reasonable compensation that the court decides.
- (5) In deciding what is reasonable compensation, the court—
  - (a) must have regard to any payment made to, or other terms agreed with, the person by or on behalf of the Territory in relation to the acquisition; and

- (b) may have regard to the following:
    - (i) any reasonable costs incurred by the person in relation to a prohibited waste facility development application;
    - (ii) any loss in value of land or buildings on the land related to the acquisition;
    - (iii) any cost of work lawfully undertaken in developing the land for use as a waste facility; but
  - (c) must not have regard to any loss of opportunity or future profit claimed by the person because of the acquisition.
- (6) In this section:
- prohibited waste facility development application*—see section 158 (2).

## Part 7.5 Assessable development

### Division 7.5.1 Pre-application matters

#### 160 Consideration of development proposals

- (1) The territory planning authority must consider a development proposal if asked by the proponent of the proposal.
- (2) However, the territory planning authority need not consider the development proposal if satisfied that the information provided by the proponent in relation to the proposal would not allow the authority to provide adequate advice under section 161.
- (3) The territory planning authority must tell the proponent if, because the authority is satisfied under subsection (2), the authority will not consider the development proposal.

#### 161 Advice on development proposals

- (1) After considering a development proposal under section 160, the territory planning authority must tell the proponent, in writing, the following in relation to the proposal:
  - (a) whether the proposed development is likely to be exempt, assessable or prohibited development;

*Note* A person may apply for an exemption assessment to work out whether a development is an exempt development (see s 147).

  - (b) whether the authority considers the proposal is for a significant development and, if so, the additional processes (if any) that apply in relation to the proposal;

##### **Examples—additional process**

- EIS
- environmental significance opinion
- design review panel advice

- (c) whether the authority considers the proposal will be referred to the conservator of flora and fauna or a referral entity under section 166 (When authority must refer development application);
  - (d) whether public notification under division 7.5.3 (Referral of development applications) will be required for the application;
  - (e) whether the proposed development is consistent with the existing lease applying to the land the subject of the development;
  - (f) if the proposal relates to a variation of a nominal rent lease—
    - (i) whether a lease variation charge is payable under division 10.8.3 (Variation of nominal rent leases) in relation to the variation; and
    - (ii) the process for determining the charge;
  - (g) generally, what more information may be required.
- (2) The territory planning authority's advice on a development proposal is intended to guide and assist the proponent in understanding the likely development assessment process applying to the proposal.
- (3) However, the territory planning authority is not bound by that advice when considering a development application submitted for the development proposal.

## **Division 7.5.2      Making a development application**

### **162      Application for development approval**

- (1) The proponent of a development proposal may apply to the territory planning authority for approval to undertake the proposed development (a *development application*).

- (2) A development application must be—
- (a) in writing and signed by the proponent and any prescribed person; and
  - (b) in the form required by the territory planning authority by notice on the authority website; and
  - (c) accompanied by the plans, drawings, specifications, assessments and other information and documents—
    - (i) sufficient to address each provision of the territory plan relevant to the proposed development; and
    - (ii) showing how the application meets each mandatory requirement of a provision of the territory plan; and
    - (iii) stating any condition of a previous development approval that affects the proposed development; and
    - (iv) showing how the proposed development integrates with the surrounding leases and other approved developments; and
    - (v) prescribed for this section; and
    - (vi) required by the territory plan or another provision of this Act; and
  - (d) if the development application is mentioned in an item in schedule 2, part 2.2, column 2—accompanied by the information or documents mentioned in the item, column 3.
- Note 1* Other territory laws may provide additional requirements for development applications under this Act (see for eg *Unit Titles Act 2001*, s 166).
- Note 2* Other requirements apply to development applications to vary a concessional lease to remove its concessional status (see s 301).
- (3) A regulation may exempt a development application from a requirement under this section.

- (4) The territory planning authority may make guidelines—
  - (a) about the preparation of the information and documents mentioned in subsection (2) (c); and
  - (b) setting out survey information requirements mentioned in schedule 2, part 2.2, item 8.
- (5) A guideline must be published on the authority website.

*Note* A development application may be made for development undertaken without approval (see s 409).

**163 Development applications—authority may request more information**

- (1) The territory planning authority may at any time, by written notice, ask an applicant for development approval to give the authority more information in relation to the development application.
- (2) The territory planning authority may ask for information under subsection (1) more than once.
- (3) The territory planning authority must publish on the authority website—
  - (a) the notice asking for more information; and
  - (b) the information given to the authority by the applicant.
- (4) The development application is taken to have been withdrawn by the applicant if the applicant does not give the territory planning authority the information within 18 months after the day it asked for the information.

*Note* A request under this section may affect the time to decide an application (see s 187).

**164 Amendment of development application**

- (1) The territory planning authority may, if asked by an applicant for development approval, amend the development application.

- (2) However, the territory planning authority must not amend the development application unless—
- (a) the request for amendment is signed by the applicant and any person prescribed for section 162 (2) (a); and
  - (b) the authority is satisfied that the proposed amended application—
    - (i) is substantially the same as the original application; and
    - (ii) if the development in the original application was not a significant development—does not result in the development becoming a significant development; and
    - (iii) meets the requirements of section 162 (2) (b) to (d); and
  - (c) for land under a land sublease—
    - (i) if the applicant is not the sublessee—the sublessee consents, in writing, to the amendment; and
    - (ii) if the applicant is not the lessee—the lessee consents, in writing, to the amendment.
- (3) The applicant must submit the information and documents under section 162 (2) sufficient to allow the authority to assess the proposed amended application in accordance with subsection (2).

**Example**

Sch 2, pt 2.2, item 13 requires certain development applications to be accompanied by a written endorsement that the proposal is consistent with a project development deed. If the development as amended would no longer be covered by the endorsement, the applicant must submit an updated endorsement.

- (4) The territory planning authority must, not later than 5 working days after the day the information and documents mentioned in subsection (3) are accepted—
- (a) amend the development application; or
  - (b) refuse to amend the development application.

- (5) The territory planning authority must publish on the authority website—
- (a) the request for amendment; and
  - (b) the decision made under subsection (4) in response to the request.

**165 Correction of development application**

- (1) The territory planning authority may, on the authority's own initiative or on application by the applicant, correct a formal error in a development application.
- (2) However, the territory planning authority must not make a correction if making the correction would adversely affect someone other than the applicant.
- (3) If the territory planning authority does not tell the applicant that the authority refuses to correct a development application by not later than 5 working days after the day the applicant asks for the correction, the authority is taken to have refused the correction.
- (4) If the territory planning authority corrects a development application on the authority's own initiative, the authority must give the applicant written notice of the correction.

**Division 7.5.3 Referral of development applications**

**166 When authority must refer development application**

- (1) The territory planning authority must refer a development application as follows:
  - (a) to an entity prescribed by regulation (a *referral entity*);
  - (b) if required by the territory plan—to the entity stated in the territory plan;

- (c) if the authority is satisfied that a proposed development is likely to have a significant adverse environmental impact on a protected matter—to the conservator of flora and fauna;
  - (d) if the authority is satisfied that a proposed development is likely to have an adverse impact on a matter in which a government entity (other than a referral entity) has an interest, or is relevant to matters over which a government entity (other than a referral entity) has an advisory role—to the government entity.
- (2) However, the territory planning authority need not refer a development application to an entity under subsection (1) if—
- (a) the authority is satisfied that the applicant has adequately consulted the entity—
    - (i) in relation to the same development proposal as the proposal in the application; and
    - (ii) not earlier than 6 months before the day the application is made; and
  - (b) the entity agrees in writing to the proposed development.
- (3) If the requirements under subsection (2) are met—
- (a) the application is taken to have been referred to the entity; and
  - (b) the agreement mentioned in subsection (2) (b) is taken to be advice received in accordance with section 168 in relation to the development application.

**167 Further entity referral—more information or amended application**

- (1) This section applies to a development application if—
- (a) either—
    - (i) the application was referred to an entity under section 166 (When authority must refer development application); or

- (ii) the development proposal in the application was referred to the design review panel for advice under section 98 (Advice of design review panel); and
  - (b) the application (the *changed application*) is changed in 1 or both of the following ways:
    - (i) the territory planning authority receives more information in relation to the application in response to a request under section 163 (Development applications—authority may request more information);
    - (ii) the authority amends the application under section 164 (Amendment of development applications).
- (2) The territory planning authority must—
  - (a) if the application was referred to an entity under section 166—refer the changed application to that entity; and
  - (b) if the application was referred to the design review panel for advice under section 98—refer the changed application to the design review panel.
- (3) The territory planning authority may refer the changed application to an additional entity mentioned in section 166 if the authority considers that the changed application is likely to have an adverse impact on a matter—
  - (a) in which the entity has an interest; or
  - (b) in relation to which the entity has an advisory role.
- (4) The territory planning authority need not refer a changed application to an entity under subsection (2) if the authority is satisfied the change—
  - (a) does not impact on the part of the application in relation to which the entity made comments; and
  - (b) is unlikely to raise an issue about which the entity may wish to comment.

- (5) If the territory planning authority decides under subsection (4) not to refer a changed application to an entity, the authority must publish the decision and reasons for the decision on the authority website.
- (6) The territory planning authority must include a brief description of the change to the application if the authority refers the changed application to an entity under this section.

### **168 Entity advice on development applications**

- (1) This section applies if a development application is referred to an entity under section 166 or section 167.
- (2) The entity must give the territory planning authority the entity's advice in relation to the development application within the number of days prescribed by regulation after the day the authority refers the application to the entity.

*Note* A written agreement to a development proposal under section 166 (2) (b) is taken to be advice given in accordance with this section in relation to a development application for the proposal (see s 166 (3)).

### **169 Effect of approvals or advice in development applications**

- (1) This section applies to an entity if the territory planning authority approves a development application and—
  - (a) if an approval of a development or certification of a thing is required by an entity before the authority can approve the development application—the entity gave a written approval or certification; or
  - (b) if the development application was referred to the entity under section 166 or section 167—the approval is substantially consistent with the entity's advice.

- (2) The entity must not act inconsistently with the development approval, certification or the advice unless—
- (a) more information in relation to the proposed development comes to the entity's attention (other than information mentioned in subsection (3)); and
  - (b) the entity did not have the information when the entity approved the development, certified the thing or gave the advice; and
  - (c) the information is relevant to the approval of, or certification or advice in relation to, the development; and
  - (d) the entity would not have approved the development, certified the thing or given the advice if the entity had the information.
- (3) Subsection (2) (a) does not apply to information in relation to a development proposed in an application if the information—
- (a) was not required in the application; and
  - (b) is required by the entity after the application is approved; and
  - (c) is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.
- (4) For this section, an entity ***acts inconsistently*** with a development approval, certification or advice if—
- (a) the entity has—
    - (i) approved the application or certified the thing; or
    - (ii) given advice that the entity will give an approval or other thing in relation to the development; and
  - (b) the entity—
    - (i) does not give an approval or other thing required for the development; or

- (ii) gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the development approved.

**Example—advice**

that the entity will agree to the digging up of a footpath to allow the development

**Example—thing required for development**

the entity's agreement to the digging up of a footpath to allow the development

- (5) Also for this section, an entity *acts inconsistently* with a development approval, certification or advice in relation to a development application if—
- (a) the approval, certification or advice states that an activity to which the approval, certification or advice relates does not require a particular authorisation (however described); and
- (b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

**Example—acting inconsistently**

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice under section 168 that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistent with the advice. The entity cannot prosecute a person for carrying out activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

## Division 7.5.4 Public notification of development applications

### 170 Definitions—div 7.5.4

In this division:

*adjoins*—land *adjoins* other land if the land touches the other land, or is separated from the other land only by a road, reserve, river, watercourse or similar division.

**registered interest holder**, in relation to a lease, means each person with a registered interest in the land described in the lease, other than the applicant for a development application relating to the land.

**171 Authority must publicly notify development applications**

- (1) The territory planning authority must **publicly notify** a development application by—
  - (a) giving public notice of the making of the application on the authority website; and
  - (b) if section 172 (Notice of development applications—adjoining land) applies—giving notice in accordance with that section; and
  - (c) if section 173 (Notice of development applications—lease variations) applies—giving notice in accordance with that section; and
  - (d) displaying a sign on the land to which the application relates stating the development proposed to be undertaken.
- (2) A development application must be notified for the period (the **public notification period**)—
  - (a) prescribed by regulation; or
  - (b) if the period prescribed is extended under section 175 (3)—the prescribed period as extended.
- (3) A regulation may prescribe development applications that are exempt from—
  - (a) public notification requirements in subsection (1) (a) and (d); or
  - (b) giving notice under section 172.

**172 Notice of development applications—adjoining land**

- (1) This section applies in relation to a development application if leased land (the *adjoining land*) adjoins the land to which the application relates.
- (2) The territory planning authority must do the following:
  - (a) if the adjoining land is occupied—give written notice of the making of the development application to the registered proprietor of the lease at the adjoining land;
  - (b) if the adjoining land is unoccupied—give written notice of the making of the development application to the lessee of the adjoining land at the lessee’s last-known address.
- (3) The territory planning authority may give written notice of the making of the development application to a lessee of land that is not adjoining land if the authority considers that the land may be affected by the proposed development in a way similar to adjoining land.
- (4) The territory planning authority may make a guideline for subsection (3) about how land may be affected by a proposed development to which a development application relates.
- (5) A guideline is a notifiable instrument.

**173 Notice of development applications—lease variations**

- (1) This section applies in relation to a development application if the application is, or includes, a lease variation.
- (2) The territory planning authority must give written notice of the application to each person with a registered interest in the land described in the lease (other than the applicant).

**174 Further public notification—changed application**

- (1) This section applies if—
  - (a) a development application is publicly notified (an *initial public notification*); and
  - (b) the development application (the *changed development application*) is changed in 1 or both of the following ways:
    - (i) the territory planning authority receives more information in relation to the application in response to a request under section 163 (Development applications—authority may request more information);
    - (ii) the territory planning authority amends the application under section 164 (Amendment of development applications).
- (2) The territory planning authority must—
  - (a) publicly notify the changed development application; and
  - (b) give written notice of the changed development application to each person who made a representation about the development application during the initial public notification.

*Note* **Publicly notify** a development application—see s 171 (1).
- (3) However, the territory planning authority need not publicly notify the changed development application if satisfied there will be no, or minimal, increase in—
  - (a) the adverse impact of the development; and
  - (b) the environmental impact of the development.
- (4) Before making a decision under subsection (3), the territory planning authority must consider—
  - (a) the representations (if any) received in response to the initial public notification of the development application; and

- (b) the cumulative impact of the changes to the development application.
- (5) If the territory planning authority decides not to publicly notify the changed development application, the authority must publish the decision and reasons for the decision on the authority website.

## **Division 7.5.5 Representations about development applications**

### **175 Making representations about development applications**

- (1) Anyone may make a written representation about a development application that has been publicly notified.
- (2) A representation about a development application must be made during the public notification period for the application.

*Note* **Public notification period**, for a development application—see s 171 (2).

- (3) The territory planning authority may, by public notice, extend the public notification period.
- (4) If the territory planning authority extends the public notification period, the authority must—
  - (a) give the applicant for the development approval written notice of the extension; and
  - (b) publish the decision to extend the public notification period on the authority website.
- (5) A person who makes a representation about a development application may, in writing, withdraw the representation at any time before the application is decided.

- (6) To remove any doubt, a representation about a development application—
- (a) may relate to how the development proposed in the application meets, or does not meet, any finding or recommendation of the EIS for the development; and
  - (b) must not relate to the adequacy of a finalised EIS.

*Note* Representations about a draft EIS may be made under s 112.

## **Division 7.5.6 Notice of development applications to registrar-general**

### **176 Notice of development applications**

- (1) The territory planning authority must give written notice of each development application submitted to the authority to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests).
- (2) The notice must include the following:
  - (a) a description of the development;
  - (b) the number allocated to the development application by the authority;
  - (c) the approval status of the application;

#### **Examples—approval status**

- pending
  - approved
  - approved on conditions
  - refused
  - under review by the ACAT
- (d) anything else prescribed by regulation.

- (3) If the approval status of a development application changes, the territory planning authority must give the registrar-general written notice of the change.

## **Division 7.5.7 Pre-decision advice**

### **177 Authority may give advice**

- (1) The territory planning authority may, at any time before deciding a development application under section 180, give the applicant for the development application advice (*pre-decision advice*) that, in the authority's opinion, the application in its current form does not meet the requirements of the territory plan.
- (2) The territory planning authority may give pre-decision advice more than once.
- (3) The territory planning authority may include advisory notes for the applicant about recommended changes to the application to meet the requirements of the territory plan.
- (4) The applicant may respond to the pre-decision advice by—
- (a) amending the development application; or
  - (b) requesting that the territory planning authority decide the application in its current form under section 180.
- Note* A response in accordance with s (4) (b) may affect the time to decide an application (see s 187).
- (5) Pre-decision advice must be published on the authority website.

## **Division 7.5.8      Development applications— termination**

### **178      Withdrawal of development applications**

An applicant may withdraw a development application at any time before the application is decided under section 180 (Deciding development applications).

### **179      Refusal, rejection or withdrawal of concurrent documents**

- (1) This section applies if—
  - (a) a development application is a concurrent development application; and
  - (b) a concurrent document, or a provision of a concurrent document, relating to the application—
    - (i) is refused, rejected or withdrawn; or
    - (ii) is taken to have been refused, rejected or withdrawn; or
    - (iii) for a draft major plan amendment—is revised in a way that no longer permits the proposed development.
- (2) The territory planning authority is taken to have refused the concurrent development application.
- (3) The territory planning authority must give the applicant for the concurrent development application written notice of the effect of this section.

(4) In this section:

*concurrent document*, in relation to a concurrent development application, means—

- (a) if the application is made under section 154 (Applications in anticipation of major plan amendment)—the draft major plan amendment that gives effect to the anticipated plan amendment; or
- (b) if the application is made under section 156 (Applications for development encroaching on adjoining territory land if development prohibited)—the proposed technical amendment.

## **Part 7.6 Development approval**

### **Division 7.6.1 Deciding development applications**

#### **180 Deciding development applications**

- (1) The decision-maker for a development application must—
  - (a) approve a development application; or
  - (b) approve a development application subject to a condition under section 182; or
  - (c) refuse a development application.

*Note 1* A development application to vary a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease is subject to a condition (see s 239).

*Note 2* In some cases a condition may be required (see s 182 (1)).

- (2) However, the decision-maker may only decide a concurrent development application if—
  - (a) for an application made under section 154 (Applications in anticipation of major plan amendment)—the draft major plan amendment has commenced under section 78 or section 79; and
  - (b) for an application made under section 156 (Applications for development encroaching on adjoining territory land if development prohibited)—the minor plan amendment has commenced under section 83.
- (3) A development application for a territory priority project must be decided by the chief planner.
- (4) If the territory planning authority approves a development application that relates to a regulated tree, the authority may, under this section—
  - (a) if a tree management plan is already in force for the tree—approve an amendment of, or replacement for, the tree management plan; or

(b) in any other case—approve a tree management plan for the tree.

(5) In this section:

*approve* a development application includes partly approving the application.

*tree management plan*—see the *Tree Protection Act 2005*, dictionary.

## **181 Considerations when deciding development applications**

In deciding a development application under section 180, the decision-maker must consider the following:

- (a) any applicable desired outcomes in the territory plan;
- (b) if the territory planning authority gave pre-decision advice in relation to the application—the pre-decision advice and any response by the applicant to that advice;
- (c) if the site of the proposed development adjoins another zone—whether the development proposal achieves an appropriate transition between the zones;
- (d) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those areas;
- (e) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;
- (f) the interaction of the proposed development with any other adjoining or adjacent development proposals for which a development application has been submitted or development approval given;
- (g) any representation about the development application received by the territory planning authority and not withdrawn;

- (h) any advice given by an entity to which the development application was referred under section 166 (When authority must refer development application) or section 167 (Further entity referral—more information or amended application);
- (i) any environmental significance opinion or conditional environmental significance opinion in relation to the development proposal;
- (j) if the proposed development relates to land that is public land—the public land management plan for the land;
- (k) if the design review panel gave advice on the development proposal—the panel’s advice and the applicant’s response to the panel’s advice;
- (l) for a development proposal in relation to which an EIS is required—
  - (i) the finalised EIS; and
  - (ii) the offsets policy; and
  - (iii) the conclusions of any inquiry about an EIS for the proposed development under division 6.3.9 (EIS inquiry panels); and
  - (iv) the EIS assessment report.

## **182 Conditional approvals**

- (1) An approval under section 180 (1)—
  - (a) must include any condition required to be included by the territory plan; and
  - (b) must not include a condition inconsistent with a condition required to be included by the territory plan; and

- (c) if the development application is for the subdivision of a units plan under the *Unit Titles Act 2001*, section 165B (Subdivision of units plan—application)—must include a condition that the units plan is cancelled; and
- (d) if a conditional environmental significance opinion has been given in relation to the development—must include a condition that the development comply with the condition in the environmental significance opinion; and

*Note* An application to amend a development approval must be refused if the changed development proposal would be in breach of the condition relating to the conditional environmental significance opinion (see s 201(2) (a) (i)).

- (e) if the application is for approval of a development on subleased land—
    - (i) may include a condition that the sublessee develops unleased territory land in a stated way; and
    - (ii) must not include a condition inconsistent with the related Crown lease.
- (2) The following are examples of the conditions subject to which development approval in relation to land may be given:
- (a) the development, or a stated stage of the development, must be carried out to the satisfaction of a stated entity;
  - (b) the development, or a stated stage of the development, must be carried out within a period stated in or under the approval;
  - (c) the approval does not take effect unless a stated approval is revoked, amended or given;
  - (d) a lease relating to the land must be varied and the variation registered under the *Land Titles Act 1925*;
  - (e) an existing licence must be varied;
  - (f) another approval relating to the land must be surrendered;

- (g) stated things must be done to prevent or minimise adverse environmental impacts;
- (h) an offset condition;
- (i) for an approval relating to use of the land, or of a building or structure on the land—the use may take place only in stated circumstances or at stated times;
- (j) for an approval to undertake a development for a stated period—
  - (i) building works or other works carried out in or on a place the subject of the approval must be removed at the end of the period; or
  - (ii) that the place where the development is to take place is to be restored to a particular state at the end of the period;
- (k) a bond must be entered into securing performance against the conditions of the approval;
- (l) for an approval in relation to a place registered, or nominated for provisional registration, under the *Heritage Act 2004*—the applicant must enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;
- (m) the development must be carried out to a stated standard;
- (n) stated works, services or facilities that the relevant authority considers reasonable in the circumstances—
  - (i) must be provided by the applicant on or to a place the subject of the approval, or on or to another place; or
  - (ii) must be paid for completely or partly by the applicant; or
  - (iii) must be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;

- (o) a plan, drawing, specification or other document must be prepared by the applicant and submitted to the territory planning authority for endorsement before the development, or a stated stage of it, starts;
  - (p) a change must be made to a plan, drawing, specification or other document forming part of the application for approval.
- (3) A condition may modify the proposed development to make it consistent with the territory plan.
- (4) The territory planning authority may endorse a change to a document previously endorsed in accordance with a condition mentioned in subsection (2) (o) if the change—
- (a) would not make the approval inconsistent with table 205 (When development approvals take effect), item 4; and
  - (b) is consistent with the approval, including any conditions of the approval.
- (5) If the change required by a condition mentioned in subsection (2) (o) is minor in nature, the condition may be annotated on the document and attached to the approval.

### **183 Essential design elements**

- (1) The territory planning authority, or ACAT, may decide that an element of a development proposal is an *essential design element*.
- (2) An essential design element—
  - (a) must be identified in a development approval; and
  - (b) may be marked on a plan.

**184 Restrictions on development approval**

- (1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following:
- (a) the relevant provisions in the territory plan;
  - (b) for development relating to land described in a rural lease—any land management agreement for the land;
  - (c) for development in relation to which an entity has given advice under section 168—the entity’s advice;

*Note* Advice given outside the time required by s 168 is not entity advice for the purpose of that section, but may be considered under s 181 (h).

- (d) for development that will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the application;
- (e) for development that is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth—any advice given by the Commonwealth Minister under section 186 in relation to the matter.

*Note* A development application cannot be approved if it is inconsistent with the territory plan (see s 46) or the National Capital Plan (see *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 11).

- (2) Subsection (1) (c) and (d) are subject to section 185 (Development approval contrary to entity advice).
- (3) If an entity mentioned in subsection (1) (c) suggests conditions for the approval in its advice, the suggested conditions are not entity advice for the purpose of this section.

- (4) Also, if an entity mentioned in subsection (1) (c) fails to give advice within the time prescribed for section 168—
- (a) the decision-maker may approve the development application despite or without the advice; and
  - (b) the validity of the development approval is not affected by the entity's failure.
- (5) The decision-maker must refuse the following development applications:
- (a) an application for a development proposal involving affected residential premises other than a remediation development;
  - (b) an application for a development proposal requiring an EIS if the finalised EIS is not provided.
- (6) The decision-maker may refuse the following development applications:
- (a) an application in which, or in relation to which, the applicant has provided false or misleading information;
- Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).
- (b) an application if the design review panel has given design advice in relation to the development proposal under section 98 and—
    - (i) the proponent has not responded to the design advice; or
    - (ii) the decision-maker considers the proponent's response to the design advice is unsatisfactory.
- (7) In this section:

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

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

*development proposal* includes a development proposal as amended in accordance with any conditions of approval.

*remediation development*, in relation to affected residential premises, means—

- (a) the demolition of each affected building on the premises including asbestos removal related to the demolition; and
- (b) the remediation of the premises.

## **185 Development approval contrary to entity advice**

- (1) A decision-maker may approve a development application if—
  - (a) the application is for—
    - (i) a development proposal that is inconsistent with entity advice mentioned in section 184 (1) (c); or
    - (ii) a territory priority project that is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (d); and
  - (b) the proposal or project does not involve a protected matter; and
  - (c) the decision-maker has considered both of the following:
    - (i) the desired outcomes applying to the proposal under the territory plan;
    - (ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and
  - (d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.

*Note* The decision-maker for an application for a territory priority project is the chief planner (see s 140).

- (2) Also, the chief planner may approve a development application if—
- (a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and
  - (b) the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (c) in relation to the protected matter; and
  - (c) the chief planner is satisfied that the proposal—
    - (i) is consistent with the offsets policy; and
    - (ii) would provide a substantial public benefit.

*Note* The chief planner's approval must be consistent with approvals required under the EPBC Act.

- (3) In this section:  
*development proposal*—see section 184 (7).

## **186 Referral of matter protected by the Commonwealth**

- (1) This section applies if—
- (a) a decision-maker proposes under section 180 to approve a development application (with or without a condition); and
  - (b) the proposed development is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth.
- (2) Before the decision-maker may approve the application, the decision-maker must refer the proposed decision to the Commonwealth Minister responsible for administering the EPBC Act.

- (3) If the Commonwealth Minister does not give the decision-maker advice about the proposed decision within 10 working days after the day the decision-maker gives the application to the Commonwealth Minister, the decision-maker may approve the application.

*Note* If the Commonwealth Minister gives the decision-maker advice about the proposed approval, development approval must not be given unless the development proposal is consistent with the advice (see s 184 (1) (e)).

## **187 Time to decide development applications**

- (1) The maximum time for deciding, under section 180, a development application mentioned in an item in table 187, is the number of working days mentioned in column 3 of the item, starting on the day mentioned in column 4 of the item.
- (2) If the territory planning authority asks for more information in relation to a development application under section 163, the time for deciding the application—
- (a) stops on the day the authority asks for the information; and
  - (b) recommences on the day the applicant gives the information.
- (3) If an applicant responds to pre-decision advice in relation to a development application under section 177 (4) (b), the time for deciding the application—
- (a) stops on the day the territory planning authority gives the applicant the advice; and
  - (b) recommences on the day the applicant responds.
- (4) However, for a development application mentioned in table 187, item 1 or 3, if the public notification period for the application falls wholly or partly between 20 December in a year and 10 January in the following year, the time for deciding the application ends not earlier than 10 working days after the public notification period ends.

**Table 187 Maximum number of days to decide development application**

<b>column 1 item</b>	<b>column 2 type of application</b>	<b>column 3 number of working days for decision</b>	<b>column 4 starting day</b>
1	development application (other than a concurrent application or application for significant development)— (a) representation made under s 175 (b) no representation made	 45 30	the later of the following days: (a) the day the application is submitted (b) if the application is amended under s 164—the day the application is amended by the authority
2	concurrent development application	10	the later of the following days: (a) the day the concurrent process is completed; (b) the day otherwise applying to the application under this section
3	development application for significant development— (a) representation made under s 175 (b) no representation made	 55 40	the later of the following days: (a) the day the application is submitted (b) if the application is amended under s 164—the day the application is amended by the authority

(5) In this section:

*day concurrent process is completed*, in relation to a concurrent development application, means—

- (a) for an application made under section 154 (Applications in anticipation of major plan amendment)—the day the draft major plan amendment commences under section 78 or section 79; or
- (b) for an application made under section 156 (Applications for development encroaching on adjoining territory land if development prohibited)—the day the minor plan amendment commences under section 83.

## **188 Development applications not decided within time**

- (1) This section applies if—
  - (a) the time for deciding a development application has ended; and
  - (b) the territory planning authority has not decided the application under section 180.
- (2) The territory planning authority may approve the application under section 180 (with or without conditions) even if the time for deciding the application has ended.
- (3) To remove any doubt, the territory planning authority is taken to have decided to refuse an application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) if the authority has not decided the application under section 180.

*Note* Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the territory planning authority will not be able to approve an application if the ACAT has decided an application for review of the deemed refusal (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

**189 Lease to be varied to give effect to development approval**

- (1) This section applies if—
  - (a) a decision-maker approves a development application under section 180; and
  - (b) the development consists of or includes a lease variation (other than the variation of a concessional lease to remove its concessional status).
- (2) The territory planning authority must vary the lease in accordance with the terms of the approval.
- (3) This section is subject to part 10.8 (Lease variations).

*Note* Table 205, item 4 and item 5 set out when development approvals requiring lease variations take effect.

**190 Refusal does not affect existing use**

The refusal of a development application in relation to the use of land does not affect an existing use of land, or use of existing developments on the land.

**Division 7.6.2 Notice of decisions on development applications**

**191 Notice of decision**

- (1) A decision-maker who decides a development application under section 180 (other than an application to remove the concessional status of a lease) must give written notice of the decision (the *decision notice*) to—
  - (a) the applicant; and
  - (b) each person who made a representation under section 175 about the application; and

- (c) each entity to whom the application was referred under section 166 (When authority must refer development application) or section 167 (Further entity referral—more information or amended application); and
  - (d) if the decision is to approve the application under section 180 (1) (a) or (b)—the registrar-general.
- (2) A decision notice given to a person mentioned in subsection (1) (a) or (b) must include the following:
- (a) a brief description of the place to which the approval relates;
  - (b) a description of the development to which the approval relates;
  - (c) the reasons for the decision;
  - (d) a summary of any advice (the *entity's advice*) in relation to the application received from an entity under section 168 (Entity advice on development applications);
  - (e) if the decision-maker did not follow the entity's advice in making the decision—the reasons for not following the advice;
  - (f) if a development application decision was referred to the Commonwealth Minister responsible for administering the EPBC Act—a summary of the Commonwealth Minister's advice (if any);
  - (g) a statement about whether the development application is for a significant development or a territory priority project;
  - (h) the date the development application was submitted;
  - (i) the date the development application was decided;
  - (j) a statement about whether the development application was—
    - (i) approved; or
    - (ii) approved in part; or
    - (iii) refused;

- (k) if any part of the application was approved—
  - (i) a statement about whether the approval is subject to conditions and, if so, what the conditions are; and
  - (ii) the date the approval takes effect;
- (l) anything else prescribed by regulation.

*Note* If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 507).

- (3) If a representation in relation to the development application has been made on behalf of 2 or more people (a *joint representation*) and 1 person is nominated as the contact person for the representation (the *nominated person*), it is sufficient for subsection (1) (b) if the decision-maker gives the decision notice to the nominated person.
- (4) A decision notice given to the nominated person is taken to be given to each person on behalf of whom the joint representation was made.
- (5) A decision notice must be published on the authority website.

### **Division 7.6.3 Reconsideration of decisions on development applications**

#### **192 Definitions—div 7.6.3**

In this division:

*original application*—see section 193 (1) (a).

*original decision*—see section 193 (1) (a).

*reconsideration application*—see section 193 (2).

## **193 Applications for reconsideration**

- (1) This section applies if—
  - (a) a development application, or an application for amendment of a development approval, (the *original application*) is approved (including partly approved) subject to a condition or refused (the *original decision*) by the territory planning authority; and
  - (b) the original decision was not made by the chief planner; and
  - (c) an application has not previously been made under this section for reconsideration of the original decision; and
  - (d) an application has not been made to the ACAT for review of the original decision.
- (2) The applicant for the original application may apply (the *reconsideration application*) for reconsideration of the original decision.
- (3) The reconsideration application must—
  - (a) be in writing signed by the applicant; and
  - (b) if the application is made by someone other than the lessee of the land to which the application relates and the land is not unleased—also be signed by the lessee of the land.
- (4) The reconsideration application must be made not later than—
  - (a) 20 working days after the day the applicant is told about the original decision by the territory planning authority; or
  - (b) any longer period allowed by the territory planning authority.
- (5) The reconsideration application must set out the grounds on which reconsideration of the original decision is sought.
- (6) A reconsideration application must be published on the authority website.

## **194 Reconsideration**

- (1) If the territory planning authority receives a reconsideration application, the authority must—
  - (a) reconsider the original decision; and
  - (b) not later than 20 working days after the day the authority receives the application—
    - (i) make any decision in substitution for the original decision that the authority could have made on the original application; or
    - (ii) confirm the original decision.
- (2) The 20 working days mentioned in subsection (1) may be extended for a stated period by agreement between the territory planning authority and the applicant.
- (3) In reconsidering the original decision, the territory planning authority—
  - (a) need not publicly notify the reconsideration application under division 7.5.4; but
  - (b) must—
    - (i) give written notice of the reconsideration application to anyone who made a representation under section 175 about the original application; and
    - (ii) allow the person reasonable time (that is not less than 2 weeks) to make a representation on the reconsideration application; and
    - (iii) consider any representation made within the time allowed.

*Note* Applications for reconsideration must be published on the authority website (see s 193 (6)).

- (4) Also, in reconsidering the original decision, the territory planning authority—
- (a) must consider any information available to the authority when it made the original decision and information given in the reconsideration application; and
  - (b) may consider any other relevant information.

**Example—other relevant information**  
information from representations

- (5) If the original decision was made on the territory planning authority's behalf, the authority or someone holding a position senior to the position held by the person who made the original decision must reconsider the decision.

## **195 Effect of ACAT application on reconsideration**

- (1) This section applies if, after a reconsideration application is made, an application is made to the ACAT for review of the original decision.
- (2) If the application to the ACAT is made by a third party, the reconsideration application is taken to be withdrawn.
- (3) However, if the ACAT makes an order dismissing or striking out the application to the ACAT, the applicant for the reconsideration application may make another reconsideration application not later than 20 working days after the day the order takes effect.
- (4) In this section:

*third party* means an entity other than the applicant for the development approval or the territory planning authority.

**196 Notice of decisions on reconsideration**

As soon as practicable after reconsidering an original decision under section 194, the territory planning authority must give written notice of the decision on the reconsideration to—

- (a) the applicant; and
- (b) anyone who was given notice of the reconsideration application under section 194 (3) (b); and
- (c) if the original decision was an approval subject to conditions—  
the registrar-general.

*Note* If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 507).

**197 No action by authority within time**

- (1) If the territory planning authority does not make a decision within the time for deciding the reconsideration application under section 194, the authority is taken to have confirmed the original decision.
- (2) However, the territory planning authority may reconsider the original application under section 194 even if the time for deciding the application ends.

**Division 7.6.4 Correction and amendment of development approvals**

**198 Correcting development approvals**

- (1) The territory planning authority may, on its own initiative or on application, correct a formal error in a development approval.
- (2) If the territory planning authority corrects a development approval, the authority must give every approval-holder written notice about the correction.

**199 Revocation of development approvals**

- (1) The territory planning authority may revoke a development approval—
  - (a) if satisfied that the approval was obtained by fraud or misrepresentation; or
  - (b) if the approval is in relation to a place registered or nominated for provisional registration under the *Heritage Act 2004* and the applicant for the approval is convicted of an offence against chapter 13 or the *Heritage Act 2004*.
- (2) The territory planning authority must tell the registrar-general about the revocation.

**200 Applications to amend development approvals**

- (1) This section applies if—
  - (a) the decision-maker has given development approval for a development proposal; and
  - (b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the development approval; and
  - (c) section 204 (When development approvals do not require amendment) does not apply to the changed development proposal.

*Note* If the development proposal changes in accordance with a condition on the development approval, the change is covered by the approval and this section does not apply.

- (2) An approval-holder may apply to the decision-maker to amend the development approval so that it covers the changed development proposal.

- (3) An application under subsection (2) must—
  - (a) be in writing signed by the applicant; and
  - (b) if the application is made by someone other than the lessee of the land to which the application relates, be signed by—
    - (i) if the land to which the application relates is subject to a lease—the lessee of the land; or
    - (ii) if the land to which the application relates is public land or unleased land—the custodian for the land; or
    - (iii) in any other case—the territory planning authority; or
  - (c) if the application relates to land under a land sublease and—
    - (i) the applicant is not the sublessee—also be signed by the sublessee; and
    - (ii) the applicant is not the lessee—also be signed by the lessee.
- (4) A person who signs an application under subsection (3) (b) (i) or (c) is taken to be an applicant in relation to the application.

## **201 Deciding applications to amend development approvals**

- (1) In deciding whether to amend a development approval in accordance with an application under section 200, the decision-maker must consider the application, and take action in relation to the application, as if—
  - (a) the development originally approved is completed; and
  - (b) the application is a development application to be decided under section 180.

### **Example**

Tony has development approval (the *original approval*) to build a house. Tony starts to build the house, but discovers that he needs an extra room in the house. He applies to amend the original approval.

In deciding whether to amend the original approval, the territory planning authority must treat the application to amend as if the house has been built in accordance with the original approval, and the application is for approval to add an extra room.

*Note 1* A decision of the territory planning authority to amend a development approval subject to a condition, or refuse to amend a development approval, may be reconsidered (see s 193 (1) (a)). The approval-holder may apply for review of a decision under s 194 (1) (b) (ii) to confirm the original decision (see sch 6, pt 6.2, item 5).

*Note 2* The decision-maker must decide whether to amend the development approval as soon as possible (see Legislation Act, s 151B).

(2) The decision-maker must refuse to amend the development approval if satisfied that—

(a) the changed development proposal would be—

(i) inconsistent with an essential design element decided by the ACAT; or

(ii) in breach of a condition on the approval relating to a conditional environmental significance opinion; or

*Note* If a conditional environmental significance opinion has been given for a development, the development approval must include a condition that the development comply with the condition in the environmental significance opinion (see s 182 (1) (d)).

(b) if the original development approval included an offset condition—the offset condition on the approval as amended would not provide an offset at least equivalent to the offset provided by the original approval.

(3) Also, the decision-maker must refuse to amend a development approval unless satisfied that, after the amendment, the development approved will be substantially the same as the development for which approval was originally given.

## 202 Exception to s 201 (1) (b)—referral requirements

- (1) This section applies if—
  - (a) a development application was referred under section 166 to the conservator of flora and fauna or the Commonwealth Minister responsible for administering the EPBC Act; and
  - (b) an application (the *amendment application*) is made under section 200 to amend the development approval to which the application relates.
- (2) Despite section 201 (1) (b), the decision-maker need not refer the amendment application to an entity under section 166 if the decision-maker is satisfied that the amendment application—
  - (a) does not affect any part of the development approval in relation to which the entity gave advice; or
  - (b) is not reasonably expected to contain matters upon which the entity would wish to comment.

*Note* Under s 201 (1) (b), an amendment to amend a development approval is subject to the same requirements as an application for development approval, which would ordinarily require the amendment application to be referred to relevant entities under s 166.

## 203 Exception to s 201 (1) (b)—waiver of notification requirement

Despite section 201 (1) (b), the decision-maker may waive the requirement to publicly notify an application to amend a development approval if satisfied that—

- (a) the amendment will not involve any change that would be inconsistent with an essential design element; and
- (b) the amendment will do no more than minimally increase—
  - (i) the adverse impact of the development otherwise than on the applicant; and

- (ii) the environmental impact of the development.

## **204 When development approvals do not require amendment**

- (1) This section applies if—
- (a) the decision-maker has given development approval for a development proposal; and
  - (b) the development proposal changes (the *changed development proposal*) so that it is not covered by the development approval; and
  - (c) a circumstance prescribed by regulation under subsection (3) applies.
- (2) The changed development proposal is taken to be in accordance with the development approval.
- (3) A regulation may prescribe circumstances for subsection (1) (c).

*Note 1* The development may still need building approval, or further building approval, under the *Building Act 2004*.

*Note 2* The development must also comply with the lease for the land on which it is carried out.

## **Division 7.6.5 Effect and duration of development approvals**

### **205 When development approvals take effect**

- (1) This section applies if a decision-maker approves a development application under section 180 (Deciding development applications).
- (2) If the circumstances mentioned in column 2 of an item in table 205 apply to a development approval, the approval (or an approval as varied or substituted by the ACAT) takes effect on the day mentioned in column 3 of the item.

**Table 205 When development approvals take effect**

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
1	(a) no third party may make an application for ACAT review of the approval decision or there are no representations about the development application; and (b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and (c) the approval is not subject to a condition that something must happen before the approval takes effect	the day after the day the approval decision is made
2	(a) 1 or more representations are made about the development application; and (b) no application for ACAT review of the approval decision was made within 20 working days after the day that every person who made a representation was given the notice of the decision under section 191; and (c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and	21 working days after the day notice of the approval decision is given under s 191

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
	<ul style="list-style-type: none"> <li>(d) the approval is not subject to a condition that something must happen before the approval takes effect; and</li> <li>(e) no reconsideration application has been made in relation to the approval</li> </ul>	
3	<ul style="list-style-type: none"> <li>(a) an application for ACAT review of the approval decision has been made; and</li> <li>(b) the ACAT has—                             <ul style="list-style-type: none"> <li>(i) confirmed or varied the approval decision; or made a substitute approval decision; or</li> <li>(ii) the application was dismissed or struck out; and</li> </ul> </li> <li>(c) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and</li> <li>(d) the approval is not subject to a condition that something must happen before the approval takes effect</li> </ul>	<ul style="list-style-type: none"> <li>(a) if the ACAT makes an order confirming, varying or substituting the approval decision—the day the order takes effect under the <i>ACT Civil and Administrative Tribunal Act 2008</i>, section 69; or</li> <li>(b) in any other case—the day the application is dismissed or struck out</li> </ul>

**Chapter 7** Development assessment and approvals  
**Part 7.6** Development approval  
**Division 7.6.5** Effect and duration of development approvals

Section 205

<b>column 1 item</b>	<b>column 2 circumstances applying to approval</b>	<b>column 3 day approval takes effect</b>
4	<ul style="list-style-type: none"> <li>(a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and</li> <li>(b) the approval is not subject to a condition that something must happen before the approval takes effect; and</li> <li>(c) no reconsideration application has been made in relation to the approval</li> </ul>	<p>the latest of the following days:</p> <ul style="list-style-type: none"> <li>(a) the day the approval would take effect if the development did not include an activity not allowed under the lease;</li> <li>(b) the day the lease variation to allow the activity takes effect;</li> <li>(c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3</li> </ul>
5	<ul style="list-style-type: none"> <li>(a) the approval is subject to a condition that something must happen before the approval takes effect; and</li> <li>(b) the development does not include an activity not allowed under the lease for the land on which the development is proposed to take place; and</li> <li>(c) no reconsideration application has been made in relation to the approval</li> </ul>	<p>the latest of the following days:</p> <ul style="list-style-type: none"> <li>(a) the day the approval would take effect if it were not subject to the condition;</li> <li>(b) the day the condition is complied with;</li> <li>(c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3</li> </ul>

column 1 item	column 2 circumstances applying to approval	column 3 day approval takes effect
6	<ul style="list-style-type: none"> <li>(a) the development includes an activity not allowed under the lease for the land on which the development is proposed to take place; and</li> <li>(b) the approval is subject to a condition that something must happen before the approval takes effect; and</li> <li>(c) no reconsideration application has been made in relation to the approval</li> </ul>	the latest of the following days: <ul style="list-style-type: none"> <li>(a) the day the approval would take effect under item 4, column 3 if the development did not include an activity not allowed under the lease;</li> <li>(b) the day the approval would take effect under item 5, column 3 if it were not subject to the condition;</li> <li>(c) if an application for ACAT review of the approval decision has been made—the day mentioned in item 3, column 3</li> </ul>
7	<ul style="list-style-type: none"> <li>(a) a reconsideration application has been made in relation to the approval; and</li> <li>(b) the territory planning authority—                             <ul style="list-style-type: none"> <li>(i) has made a reconsideration decision; and</li> <li>(ii) did not substitute the approval with a decision to refuse the development application under section 180 (1) (c)</li> </ul> </li> </ul>	the latest of the following days: <ul style="list-style-type: none"> <li>(a) the day the approval would take effect if the reconsideration decision were the original decision;</li> <li>(b) the day after the reconsideration decision is made;</li> <li>(c) if an application for ACAT review of the reconsideration decision has been made—the day mentioned in item 3, column 3</li> </ul>

(3) In this section:

***application for ACAT review***, of a decision, means an application for ACAT review under section 508.

***approval decision***, in relation to a development application, means a decision to approve the application under section 180.

*Note* ***Approve*** for s 180 includes a partial approval. Also, an application may be approved subject to conditions (see s 180 (1) (b)).

***reconsideration application***—see section 193 (3).

***reconsideration decision*** means a decision under section 194 in relation to a reconsideration application.

***representation***, in relation to a development application, means a representation made under section 175 about the application.

***third party*** means an entity other than the applicant for the development approval or the territory planning authority.

## 206 End of development approvals generally

- (1) This section applies to a development approval other than—
- (a) a development approval that consists only of a variation of a lease; or
  - (b) a part of a development approval that consists of a variation of a lease; or
  - (c) a development approval, or part of a development approval, that relates only to the use of land, or to a building or structure on land.
- (2) The development approval ends—
- (a) 5 years after the day the approval takes effect (the ***5-year period***); or
  - (b) if an extension of the 5-year period is granted under this section—at the end of the extended period; or

- (c) if the approval is revoked under section 199.
- (3) On application made within 6 months after the end of the 5-year period, the territory planning authority may extend the period if the development to which the approval relates—
  - (a) has started and is substantially progressed; and
  - (b) would be approved if it were the subject of a development application submitted on the same day as the application for the extension.
- (4) The territory planning authority may also extend the 5-year period on application under subsection (3) if—
  - (a) an appeal is made to a court in relation to the development approval; and
  - (b) having regard to when the appeal is likely to end, more time is needed to start or complete the development to which the approval relates.
- (5) The 5-year period may be extended—
  - (a) more than once; and
  - (b) for a cumulative period of up to 2 years.

*Note* A development approval to which this section applies continues unless the approval ends under this section, s 207 or s 208.

## **207 End of development approvals for lease variations**

- (1) This section applies to—
  - (a) a development approval that consists only of a variation of a lease; or
  - (b) a part of a development approval that consists of a variation of a lease.

- (2) The development approval, or part of the approval, ends—
- (a) if—
    - (i) the lease is varied in accordance with the approval; or
    - (ii) the lease is terminated; or
    - (iii) the approval is revoked under section 199; or
    - (iv) the lease expires and no application is made under section 280 (Grant of further leases) for a further lease; or
- Note* A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease.
- (v) the lease is subject to a condition that a charge be paid to the Territory in relation to the lease variation under section 303 (Working out amount payable to remove concessional status) or section 320 (Lease variation charge payable for chargeable variation)—2 years after the day the charge is determined; or
- (b) at the end of—
- (i) 2 years starting on the day after the day the approval takes effect; or
  - (ii) if an appeal is made to a court in relation to the approval—2 years starting on the day after the day the appeal ends; or
  - (iii) if, in relation to a decision about a payout amount under section 303 or a charge under section 320, an application for review to the ACAT is made—2 years starting on the day the application is decided, withdrawn, dismissed or struck out.
- (3) The territory planning authority may extend the development approval, or part of the approval, for up to 2 years.

*Note* A development approval to which this section applies continues unless the approval ends under s 206, this section or s 208.

## **208 End of development approvals for use**

- (1) This section applies to the following:
- (a) a development approval, or part of a development approval, that—
    - (i) relates only to the use of land, or a building or structure on the land, under a lease or declared unit title lease (the *affected lease*); and
    - (ii) does not involve a lease variation;
  - (b) a development approval, or part of a development approval, that relates only to the use of land under a licence or permit.
- (2) The development approval ends if—
- (a) the affected lease expires and no application is made under section 280 (Grant of further leases) for a further lease; or
  - (b) the approval is revoked under section 199; or
  - (c) if the approval states a period for the end of the approval—the period ends; or
  - (d) the approval is surrendered, other than for a lease variation or renewal; or
  - (e) the affected lease is surrendered (other than under section 280 (Grant of further leases)) or terminated; or
  - (f) for a declared unit title lease—a further lease is not granted under the *Unit Titles Act 2001*, section 167AA; or
  - (g) if the approval relates to the use of land under a licence or permit—the licence or permit ends.

*Note* A development approval to which this section applies continues unless the approval ends under s 206, s 207 or this section.

- (3) To remove any doubt, a development approval relating to use does not end only because 1 or more of the following apply to the development or lease:
- (a) the use is not continuous;
  - (b) someone deals with the affected lease;
  - (c) a further lease is granted for the affected lease on application under section 280 (Grant of further leases), whether the grant happens immediately after the expiry of the affected lease or otherwise;
  - (d) for a declared unit title lease—a further lease is granted under the *Unit Titles Act 2001*, section 167AA.

*Note* **Deal**, with a lease—see the dictionary.

**Examples—par (a)**

- 1 the use is interrupted
- 2 the use is intermittent

- (4) The territory planning authority must tell the registrar-general about the ending of a development approval to which this section applies if—
- (a) the authority gave the registrar-general notice of the approval; and
  - (b) the approval is surrendered to the authority.
- (5) In this section:

***declared unit title lease*** means a lease of a unit or common property in a units plan that subdivides land under a declared land sublease.

**209 Development approval continues unless ended**

A development approval, including a development approval that has been extended, continues unless ended under this part.

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## Chapter 8 Territory priority projects

### 210 Meaning of *territory priority project*

In this Act:

*territory priority project* means—

- (a) a development proposal declared to be a territory priority project under section 212; or
- (b) a development proposal related to light rail.

### 211 Meaning of *related to light rail*

For this Act, a development proposal is *related to light rail* if the development to which the proposal relates may facilitate the construction, ongoing operation and maintenance, repairs, refurbishment, relocation or replacement of—

- (a) light rail track; or
- (b) infrastructure within, or partly within, 1km from—
  - (i) existing light rail track; or
  - (ii) light rail track identified in a development proposal in a development application that includes the construction, extension, refurbishment, relocation or replacement of light rail track; or
  - (iii) light rail track identified in a development approval that authorises the construction, extension, refurbishment, relocation or replacement of light rail track.

**Examples—par (b)**

- 1 access roads, footpaths and bicycle lanes
- 2 depot facilities
- 3 electricity supply infrastructure including substations, overhead lines and supports

- 4 entry and access points and safety barriers
- 5 signalling and other control facilities
- 6 stops, stations, terminus and associated shelters, seating and toilet amenities, ticketing infrastructure, parking, set-down areas and bicycle storage
- 7 temporary infrastructure for construction of light rail such as safety fencing, scaffolding, access roads and parking

## 212 Declaration of territory priority projects

- (1) The Minister may declare that a development proposal is a territory priority project (a *territory priority project declaration*) if the Minister is satisfied that—
  - (a) the proposal is of significant benefit to the people of the ACT; and
  - (b) the proposal is for critical public infrastructure or facilities; and
  - (c) the proposal is for development that is time critical; and
  - (d) there has been sufficient community consultation about the proposal.
- (2) A territory priority project declaration is a notifiable instrument.
- (3) A territory priority project declaration for a development proposal must be made before the development application for the proposal is made under section 162.
- (4) Before making a territory priority project declaration, the Minister must—
  - (a) publish a notice on the authority website—
    - (i) stating that copies of the proposed declaration are available on the website; and
    - (ii) inviting people to give written comments about the proposed declaration to the authority at a stated address during a stated period of at least 15 working days (the *consultation period*); and

- (iii) if the development proposal requires a major plan amendment to proceed—
  - (A) including a description of the proposed major plan amendment; and
  - (B) inviting the national capital authority to give written comments about the proposed declaration to the authority during the consultation period; and
  - (C) including the supporting report for the major plan amendment; and
- (b) consider any comments received during the consultation period.
- (5) In this section:

*development proposal* includes a proposal involving 2 or more stages, sites or development applications.

*supporting report*—see section 52.

### **213 Time limits on proceedings—territory priority projects**

- (1) A person may not start a proceeding in a court in relation to a decision to make a territory priority project declaration more than 2 months after the day the declaration is made.
- (2) Despite section 80 (Limitations on challenge to validity of territory plan provisions), the validity of a provision of the territory plan must not be questioned in a legal proceeding if—
  - (a) the provision was inserted or amended by a major plan amendment approved for a territory priority project; and
  - (b) the proceeding started more than 2 months after the day the provision, or amendment of the provision, commenced.

**Chapter 8** Territory priority projects

Section 213

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- (3) A person may not start a proceeding in a court in relation to a decision under part 6.3 (Environmental impact assessment), chapter 7 (Development assessment and approvals) or chapter 10 (Leases and licences) more than 2 months after the day the decision is made if the decision relates to a territory priority project.

## Chapter 9            Offsets

### Part 9.1            Important concepts

#### 214            Meaning of *protected matter*

(1) In this Act:

*protected matter* means—

- (a) matter protected by the Commonwealth; or
  - (b) a declared protected matter.
- (2) The Minister may declare a matter to be a protected matter (a *declared protected matter*).
- (3) A declaration is a disallowable instrument.

#### 215            Meaning of *matter protected by the Commonwealth*

(1) In this Act:

*matter protected by the Commonwealth* means a matter protected by a provision of the EPBC Act, chapter 2 (Protecting the environment), part 3 (Requirements for environmental approvals).

(2) In this section:

*matter protected* by a provision of the EPBC Act, chapter 2, part 3— see the EPBC Act, section 34 (What is matter protected by a provision of Part 3?).

*Note*        The EPBC Act, ch 2, pt 3 deals with taking action that would have a significant impact on a matter of national environmental significance. Matters of national environmental significance include the following:

- world heritage properties
- national heritage places
- wetlands of international importance (Ramsar wetlands)
- threatened species and threatened ecological communities

- migratory species protected under international agreements
- nuclear actions
- water resources in relation to coal seam gas development and large coal mining development.

**216 Meaning of *offset***

In this Act:

*offset*, for a development that is likely to have a significant adverse environmental impact on a protected matter, means environmental compensation for the likely impact.

**217 Meaning of *offsets policy***

In this Act:

*offsets policy* means a statement—

- (a) describing—
  - (i) how environmental compensation may be made to offset the impact of development that has a significant adverse environmental impact on protected matters; and
  - (ii) suitable forms for offsets; and
- (b) notified under—
  - (i) for an initial offsets policy—section 219; or
  - (ii) for a revised offsets policy—section 224 (Draft revised offsets policy—final version and notification).

## Part 9.2 Offsets policy

### Division 9.2.1 Definitions

#### 218 Meaning of *Minister*—pt 9.2

In this part:

*Minister* means the Minister responsible for administering the *Nature Conservation Act 2014*.

### Division 9.2.2 Initial offsets policy

#### 219 Initial offsets policy

- (1) The Minister may make an initial offsets policy.
- (2) The initial offsets policy is a notifiable instrument.
- (3) The Minister may amend the initial offsets policy only by—
  - (a) reviewing and revising the offsets policy under section 220 (Offsets policy—monitoring and review) to section 224 (Draft revised offsets policy—final version and notification); or
  - (b) making minor amendments to the policy under section 225 (Offsets policy—minor amendments).

### Division 9.2.3 Revised offsets policy

#### 220 Offsets policy—monitoring and review

- (1) The Minister must monitor the effectiveness of the offsets policy.
- (2) The Minister must consider, at least once every 5 years, whether the offsets policy needs to be reviewed.
- (3) In considering whether the offsets policy needs to be reviewed, the Minister must consult—
  - (a) the territory planning authority; and

- (b) the conservator of flora and fauna.
- (4) If the Minister decides that the offsets policy needs to be reviewed, the Minister must review the offsets policy.
- (5) In reviewing the offsets policy, the Minister must consult—
  - (a) the territory planning authority; and
  - (b) the conservator of flora and fauna.

**221       Draft revised offsets policy—Minister to prepare**

- (1) This section applies if the Minister—
  - (a) reviews the offsets policy under section 220; and
  - (b) considers that revisions of the offsets policy are appropriate.
- (2) The Minister must prepare a draft offsets policy (a *draft revised offsets policy*) incorporating the revisions.
- (3) In preparing a draft revised offsets policy, the Minister must consult—
  - (a) the territory planning authority; and
  - (b) the conservator of flora and fauna.

**222       Draft revised offsets policy—public consultation**

- (1) If the Minister prepares a draft revised offsets policy, the Minister must also prepare a notice about the draft revised offsets policy (a *consultation notice*).
- (2) If the Minister publishes a consultation notice about a draft revised offsets policy—
  - (a) anyone may give a written submission to the Minister about the draft policy; and

- (b) submissions may be given to the Minister within 6 weeks after the day the consultation notice is published on the authority website (the *consultation period*); and
  - (c) a person making a submission may withdraw a submission at any time in writing.
- (3) A consultation notice must—
- (a) state the matters mentioned in subsection (2) (a) to (c); and
  - (b) include the draft revised offsets policy; and
  - (c) be published on the authority website.

### **223 Draft revised offsets policy—revision**

If the consultation period for a draft revised offsets policy has ended, the Minister must—

- (a) consider any submissions received during the consultation period; and
- (b) make any revisions to the draft revised offsets policy that the Minister considers appropriate; and
- (c) prepare a final version of the draft revised offsets policy.

### **224 Draft revised offsets policy—final version and notification**

- (1) The final version of a draft revised offsets policy prepared under section 223 or section 225 is an offsets policy.
- (2) An offsets policy is a notifiable instrument.

### **225 Offsets policy—minor amendments**

- (1) This section applies if—
  - (a) an offsets policy is in force (the *existing policy*); and
  - (b) the Minister considers that minor amendments to the existing policy are appropriate.

- (2) The Minister—
- (a) may prepare a new draft offsets policy, incorporating the minor amendments into the existing policy; and
  - (b) need not comply with the consultation requirements in section 222; and
  - (c) may prepare a final version of the new draft offsets policy, as amended.

- (3) In this section:

***minor amendment***, of an offsets policy, means an amendment that—

- (a) improves the effectiveness or technical efficiency of the offsets policy without changing the substance of the policy; or
- (b) corrects a formal error.

**Examples**

- minor correction to improve effectiveness
- omission of something redundant
- rewording to clarify language
- technical adjustment to improve efficiency

## **Division 9.2.4 Offsets policy—implementation and guidelines**

### **226 Offsets policy—authority to implement**

The territory planning authority must take reasonable steps to implement the offsets policy.

### **227 Offsets policy—guidelines**

- (1) The Minister may make guidelines about the implementation of the offsets policy (***offsets policy guidelines***).
- (2) The offsets policy guidelines are a notifiable instrument.

**228 Draft offsets policy guidelines**

- (1) If the Minister intends to make offsets policy guidelines, the Minister must prepare a draft version of the guidelines (the *draft offsets policy guidelines*).
- (2) In preparing draft offsets policy guidelines, the Minister must consult the conservator of flora and fauna.

**229 Draft offsets policy guidelines—public consultation**

- (1) If the Minister prepares draft offsets policy guidelines, the Minister must also prepare a notice about the draft guidelines (a *consultation notice*).
- (2) If the Minister publishes a consultation notice about draft offsets policy guidelines—
  - (a) anyone may give a written submission to the Minister about the draft guidelines; and
  - (b) submissions may be given to the Minister within 3 weeks after the day the consultation notice is published on the authority website (the *consultation period*); and
  - (c) a person making a submission may withdraw a submission at any time in writing.
- (3) A consultation notice must—
  - (a) state the matters mentioned in subsection (2) (a) to (c); and
  - (b) include the draft offsets policy guidelines; and
  - (c) be published on the authority website.

**230            Draft offsets policy guidelines—revision**

If the consultation period for the draft offsets policy guidelines has ended, the Minister must—

- (a) consider any submissions received during the consultation period; and
- (b) make any revisions to the draft offsets policy guidelines that the Minister considers appropriate.

**231            Offsets policy guidelines—monitoring and review**

- (1) The Minister must monitor the effectiveness of the offsets policy guidelines.
- (2) The Minister must consider, at least once every 5 years, whether the offsets policy guidelines need to be reviewed.
- (3) In considering whether the offsets policy guidelines need to be reviewed, the Minister must consult the conservator of flora and fauna.

## Part 9.3                      Offsets policy—other provisions

### 232                      Offsets—consistency with offsets policy

An offset must be consistent with the offsets policy.

### 233                      Offsets—calculating value

- (1) The Minister may determine how the value of an offset is to be calculated (an *offset value calculation determination*).
- (2) An offset value calculation determination must be consistent with the offsets policy.
- (3) An offset value calculation determination is a notifiable instrument.

### 234                      Offsets—form

- (1) An offset for a development may be in—
  - (a) a form prescribed by regulation; or
  - (b) any other form the territory planning authority considers appropriate.
- (2) However, an offset for a development must be in a form that is consistent with the offsets policy.

### 235                      Offsets register

- (1) The territory planning authority must keep a register of each offset (the *offsets register*).
- (2) The offsets register must include the following for each offset:
  - (a) the development approval that includes the offset condition requiring the offset;
  - (b) the details of the offset;
  - (c) if the offset requires an offset management plan—the offset management plan;

- (d) details of a lease if—
    - (i) the offset requires another lease to be subject to a condition; and
    - (ii) the condition requires the lessee of the other lease to comply with an offset management plan applying to the lease;
  - (e) anything else prescribed by regulation.
- (3) The offsets register may include anything else the authority considers relevant.

*Note* The authority may give an evidentiary certificate about details kept in the offsets register (see s 516).

## Part 9.4 Offset conditions

### 236 Meaning of *decision-maker*—pt 9.4

In this part:

*decision-maker*, for an offset condition or offset management plan, means the decision-maker for the development approval in relation to which the condition or plan applies.

### 237 Meaning of *offset condition*—Act

(1) In this Act:

*offset condition*, for a development approval, means a condition—

- (a) identifying a protected matter that is likely to suffer a significant adverse environmental impact from the development; and
- (b) requiring an offset to compensate for the likely impact of the development on the protected matter.

(2) An offset condition for a development approval may include a requirement that the proponent of the development have an offset management plan for the offset.

(3) Also, an offset condition for a development approval may include a requirement that—

- (a) if the offset land is not the land to which the approval applies—  
the lease for the offset land be subject to a condition requiring the lessee of the offset land to comply with an offset management plan for the offset; and

*Note* To satisfy an offset condition with this kind of requirement, another development approval may be needed to vary the lease for the offset land to include a condition on the lease for the offset land that the lessee must comply with the offset management plan.

- (b) if the offset will be on public land—
  - (i) a new public land management plan for the land be prepared, including stated matters; or
  - (ii) an existing public land management plan for the land be varied in a stated way; and
- (c) if the offset is to be on land comprised in a rural lease—
  - (i) a new land management agreement for the land be prepared, including stated matters; or
  - (ii) an existing land management agreement for the land be varied in a stated way.

- (4) In this section:

*offset land*, for an offset, means the land on which the offset is to be located.

### **238 Meaning of *offset management plan*—Act**

- (1) In this Act:

*offset management plan*, for an offset, means a plan to achieve the offset that is—

- (a) approved by a decision-maker under section 241 (Draft offset management plan—submission to decision-maker); or
- (b) amended by the decision-maker under—
  - (i) section 244 (Offset management plan—amendment initiated by offset manager); or
  - (ii) section 245 (Offset management plan—amendment initiated by decision-maker).

- (2) An offset management plan must be published on the authority website.

**239 Meaning of *offset manager*—Act**

In this Act:

*offset manager*, for an offset management plan—

- (a) means—
  - (i) if a lease of land includes a condition that requires the lessee of the land to comply with an offset management plan in relation to an offset—the lessee of the land; or
  - (ii) if the offset management plan applies to unleased land or public land—the custodian of the land; or
  - (iii) in any other case—the person identified in the offset management plan as the offset manager; but
- (b) if paragraph (a) (i) does not apply—does not include the lessee of the land.

**240 Draft offset management plan—proponent to prepare**

- (1) If an offset condition for a development approval requires the proponent to have an offset management plan for the offset, the proponent must prepare a draft offset management plan for the offset.
- (2) The draft offset management plan must—
  - (a) identify the land to which it applies; and
  - (b) include a plan describing how the offset may be achieved; and
  - (c) if the offset management plan will not apply to leased land, unleased land or public land—identify the offset manager for the offset management plan; and
  - (d) include provisions about—
    - (i) how the effectiveness of the plan is to be monitored; and
    - (ii) when the plan is to be reviewed; and
  - (e) include the matters prescribed by regulation.

- (3) The draft offset management plan may—
- (a) state the term of the offset management plan; and
    - Note* If no term is stated, the offset management plan expires when the development approval including the offset condition requiring the offset management plan ends (see s 247). Otherwise the offset management plan operates indefinitely.
  - (b) apply, adopt or incorporate an instrument as in force from time to time.
    - Note* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).
- (4) In preparing a draft offset management plan, the proponent must consult the following entities and seek their written agreement to the draft offset management plan:
- (a) the conservator of flora and fauna;
  - (b) if the offset management plan will apply to leased land—the lessee of the land (unless the lessee is the proponent);
  - (c) if the offset management plan will apply to unleased land or public land—the custodian of the land.

**241 Draft offset management plan—submission to decision-maker**

- (1) The proponent must submit the draft offset management plan to the decision-maker for approval.
- (2) The draft offset management plan must be accompanied by the written agreement of the entities mentioned in section 240 (4).
- (3) If the proponent submits the draft offset management plan to the decision-maker for approval, the decision-maker must—
  - (a) approve the draft offset management plan; or

- (b) return the draft offset management plan to the proponent and direct the proponent to take 1 or more of the following actions in relation to it:
    - (i) carry out stated further consultation;
    - (ii) consider a relevant report;
    - (iii) revise the draft offset management plan in a stated way; or
  - (c) reject the draft offset management plan.
- (4) However, the decision-maker may approve the draft offset management plan only if the plan is consistent with—
- (a) the offset condition in the development approval requiring the offset; and
  - (b) the offsets policy.

*Note* This section is subject to s 504 and s 505.

**242 Draft offset management plan—decision-maker’s direction to revise etc**

- (1) This section applies if the decision-maker gives the proponent a direction under section 241 (3) (b).
- (2) The proponent must—
  - (a) give effect to the direction; and
  - (b) if the direction is to revise the draft offset management plan in a stated way—consult the entities mentioned in section 240 (4) and seek their written agreement to the revisions; and
  - (c) resubmit the draft offset management plan to the decision-maker for approval.
- (3) The resubmitted draft offset management plan must be accompanied by the written agreement of the entities mentioned in section 240 (4).

- (4) The decision-maker must decide, under section 241, what to do with the resubmitted draft offset management plan.

**243 Offset management plan—unleased land or public land**

If an offset management plan applies to unleased land or public land, the custodian of the land must take reasonable steps to implement the plan.

*Note* Failure to implement the offset management plan is a controlled activity (see sch 5, item 5).

**244 Offset management plan—amendment initiated by offset manager**

- (1) The offset manager for an offset management plan may apply to the decision-maker to amend the offset management plan.
- (2) The application must—
  - (a) be in writing; and
  - (b) include details of the proposed amendment.
- (3) The decision-maker may amend the offset management plan only if satisfied that the offset for the amended offset management plan is—
  - (a) at least equivalent to the offset for the original offset management plan; and
  - (b) consistent with the offsets policy.

**245 Offset management plan—amendment initiated by decision-maker**

- (1) The decision-maker may, by written notice (an *amendment notice*) given to the offset manager for an offset management plan, amend the offset management plan if satisfied that—
  - (a) the offset for the amended offset management plan is at least equivalent to the offset for the original offset management plan; and

- (b) the offset for the amended offset management plan is consistent with the offsets policy.
- (2) However, the decision-maker may amend the offset management plan only if—
  - (a) the decision-maker has given the offset manager for the offset management plan written notice of the proposed amendment (a *proposal notice*); and
  - (b) the proposal notice states that written submissions about the proposal may be made to the decision-maker before the end of a stated period of at least 14 days after the day the proposal notice is given to the offset manager; and
  - (c) after the end of the stated period, the decision-maker has considered any submissions made in accordance with the proposal notice.
- (3) The amendment takes effect on the day the amendment notice is given to the offset manager for the offset management plan or a later day stated in the amendment notice.

## **246 Offset management plan—reporting**

- (1) The offset manager for an offset management plan must report to the territory planning authority about the offset management plan—
  - (a) at least once every 3 years; and
  - (b) at any other time the authority requests.
- (2) The territory planning authority must report to the Minister about each offset management plan at least once every 3 years.

**247      Offset management plan—expiry if development approval ends**

- (1) This section applies if—
  - (a) a development approval includes an offset condition requiring the proponent of the development have an offset management plan for the offset; and
  - (b) the offset management plan is in force when the development approval ends.
- (2) The offset management plan expires when the development approval ends.

## Chapter 10 Leases and licences

### Part 10.1 Definitions and application— ch 10

#### 248 Definitions—ch 10

In this chapter:

*building and development provision*, in relation to a lease, means a provision of the lease that requires the lessee to carry out stated works on the land described in the lease or on unleased territory land.

*consolidation* means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to the lessee to consolidate the parcels of land described in the surrendered leases.

*lessee* means the person who is the proprietor of a lease, whether or not the person is the registered proprietor of the lease, and regardless of how the person became the proprietor of the lease.

*market value*, of a lease, means the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

*provision*, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

*registered proprietor*, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as proprietor of the lease.

*rental lease* means a lease for rent that is more than a nominal rent.

*residential lease* means a lease that authorises only residential use of the land described in the lease.

*rural lease* means a lease granted for a rural purpose or purposes including a rural purpose.

*single dwelling house lease* means a lease granted under section 258 (1) (f).

*subdivision*—

- (a) means the surrender of 1 or more leases held by the same lessee, and the grant of new leases to the lessee to subdivide the parcels of land in the surrendered leases; but
- (b) does not include the subdivision of land—
  - (i) under the *Unit Titles Act 2001*; or
  - (ii) by the grant of a sublease.

*sublease* means a sublease of—

- (a) a parcel of land, or part of a parcel of land, subject to a lease; or
- (b) a building, or part of a building, on a parcel of land subject to a lease.

## 249 Meaning of *lease*—Act

In this Act:

*lease* means a lease (other than a sublease) of territory land—

- (a) granted under this Act; or
- (b) granted or arising under the *Unit Titles Act 2001*.

*Note* Some leases are taken to have been granted under this Act (see s 456).

**250 When is a lease a *concessional lease*—Act**

(1) In this Act:

*concessional lease*—

(a) means a lease—

- (i) that is stated in the lease, or a memorial to the lease, to be concessional and which has not had its concessional status removed; or
- (ii) granted on a concessional basis and which has not had its concessional status removed; and

(b) includes the following:

- (i) a consolidated or subdivided concessional lease;
- (ii) a further concessional lease;
- (iii) a regranted concessional lease.

**Example—par (a) (i)**

a condition of the lease or a notation or stamp on the lease

(2) For this Act, a lease has had its *concessional status removed* if—

- (a) the lease is varied to remove its concessional status in accordance with division 10.5.3 or the *Planning and Development Act 2007* (repealed), division 9.4.2; or
- (b) for a lease granted before 31 March 2008—in relation to which either of the following amounts has been paid:
  - (i) an amount in relation to the grant of the lease that is equal to the lease’s market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;
  - (ii) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991* (repealed), section 186 (Variation of lease to pay out rent).

- (3) For this Act, a lease—
- (a) is granted on a **concessional basis** if it is granted for a consideration less than the full market value of the lease, whether paid as a lump sum or payable as rent, or for no consideration; but
  - (b) is not granted on a concessional basis only because the lease—
    - (i) was granted under the *Leases (Special Purposes) Act 1925* (repealed); and
    - (ii) was granted before 1 January 1971; and
    - (iii) is a lease to which the *Leases (Special Purposes) Act 1970* (repealed), section 5AB (Rent) applies.

- (4) In this section:

**consolidated or subdivided concessional lease** means a lease—

- (a) granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was granted on a concessional basis; and
- (b) which has not had its concessional status removed.

**further concessional lease** means a further lease—

- (a) if the surrendered lease was granted on a concessional basis; and
- (b) which has not had its concessional status removed.

**made**—a payment has been **made** if the relevant amount—

- (a) was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease; or
- (b) was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid.

*regranted concessional lease* means a regranted lease—

- (a) whether the regrant is on the same or different conditions, if the surrendered lease was granted on a concessional basis; and
- (b) which has not had its concessional status removed.

**251 Meaning of *market value lease*—Act**

In this Act:

*market value lease*—

- (a) means a lease other than a concessional lease or a lease that is possibly concessional; and
- (b) includes a lease mentioned in schedule 3, part 3.2.

*Note* A lease is taken to be a market value lease if, after an application under s 290, the territory planning authority is not satisfied it is a concessional lease (see s 291 (3) (b) and s 292 (4) (b)).

**252 Meaning of *possibly concessional*—Act**

- (1) For this Act, a lease is *possibly concessional* if the lease—
  - (a) was granted before 31 March 2008; and
  - (b) does not include a statement in the lease, or a memorial to the lease that the lease is granted on a concessional basis or otherwise; and
  - (c) is mentioned in schedule 3, part 3.3.
- (2) However, a lease is not *possibly concessional* if the lease is also mentioned in schedule 3, part 3.2.

## **Part 10.2 Grants of leases generally**

### **Division 10.2.1 Grants of leases**

#### **253 Effect subject to pt 10.7**

This part has effect subject to part 10.8 (Rural leases).

#### **254 Authority may grant leases**

The territory planning authority is authorised to grant, on behalf of the Executive, leases that the Executive may grant on behalf of the Commonwealth.

*Note* For power to delegate this function, see s 20 (2).

#### **255 Granting leases**

- (1) The territory planning authority may grant a lease by—
  - (a) auction; or
  - (b) tender; or
  - (c) ballot; or
  - (d) direct sale.
- (2) A lease granted under this section must include—
  - (a) a statement—
    - (i) if the lease is granted on a concessional basis—that the lease is concessional; or
    - (ii) if the lease is not granted on a concessional basis—to the effect that the lease is a market value lease; and
  - (b) for a land rent lease—a statement that the lease is a land rent lease.

*Note* A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

- (3) A lease granted under this section may include provisions—
- (a) requiring the lessee to develop the land described in the lease, or any unleased territory land, in a stated way; or
  - (b) requiring the lessee to give security for the performance of any of the lessee's obligations under the lease.

**256 Lease conditional on approval for stated development**

- (1) This section applies to a lease granted under section 255 if—
- (a) a provision of the lease requires the lessee to obtain the approval of the territory planning authority to undertake development on the land described in the lease; and
  - (b) the development is exempt development.
- (2) The lessee does not require the territory planning authority's approval for the development.

**257 Eligibility for grant of lease**

The territory planning authority may restrict the people eligible for the grant of a lease under section 255 by stating, in the relevant notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale.

**258 Restriction on direct sale by authority**

- (1) The territory planning authority must not grant a lease under section 255 (1) (d) unless—
- (a) for a lease prescribed by regulation for this paragraph—
    - (i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and
    - (ii) the Executive approves the grant; or

- (b) for a lease prescribed by regulation for this paragraph—
    - (i) the grant is in accordance with criteria prescribed by regulation for this paragraph; and
    - (ii) the Minister approves the grant; or
  - (c) the Executive approves the grant under subsection (2); or
  - (d) for a community lease—the grant is approved by the Executive under section 285; or
  - (e) the lease is prescribed by regulation; or
  - (f) the grant is of a residential lease for a single dwelling house; or
  - (g) the grant is to give effect to a lease variation (whether by consolidation, subdivision or otherwise); or
  - (h) the grant is in accordance with—
    - (i) section 259 (Direct sale if single person in restricted class); or
    - (ii) section 281 (Grant of further leases); or
  - (i) for a lease over an encroachment on adjoining territory land under section 156 (Applications for development encroaching on adjoining territory land if development prohibited)—the territory plan has been amended in accordance with section 86 (Rezoning—development encroaching on adjoining territory land).
- (2) The Executive may approve the grant by direct sale of a lease if satisfied that—
- (a) the grant meets 1 or more of the grant objectives; and
  - (b) a grant by a means other than direct sale—
    - (i) is not likely to meet any of the grant objectives; or

- (ii) may meet 1 or more of the grant objectives but is unlikely to meet the objective to the same extent as the grant by direct sale of the lease.
- (3) The validity of a lease granted under section 255 (1) (d) is not taken to be affected by a failure to comply with any criteria or requirement applicable to the grant of the lease.
- (4) In this section:
  - adjoining territory land*—see section 155 (1) (a).
  - encroachment*—see section 155 (1) (b).
  - grant objective*—each of the following is a *grant objective*:
    - (a) to benefit the economy of the ACT or region;
    - (b) to contribute to the environment, or social or cultural features in the ACT;
    - (c) to introduce new skills, technology or services in the ACT;
    - (d) to contribute to the export earnings and import replacement of the ACT or region;
    - (e) to facilitate the achievement of a major policy objective.

*single dwelling house*—see the territory plan.

## **259 Direct sale if single person in restricted class**

- (1) This section applies if—
  - (a) under section 257 (Eligibility for grant of lease), the territory planning authority restricts the people eligible to apply for a lease; and
  - (b) only 1 person is eligible for the grant of the lease.
- (2) The territory planning authority may grant the lease to the person under section 255 (1) (d) without auctioning the lease, calling for tenders or holding a ballot.

**260      Notice of direct sale**

- (1) The territory planning authority must, not later than 10 working days after the end of a quarter, give the Minister—
  - (a) a statement of—
    - (i) the number of single dwelling house leases granted during the quarter; and
    - (ii) any other information prescribed by regulation for single dwelling house leases; and
  - (b) a statement that sets out the prescribed information for each other direct sale lease granted during the quarter; and
  - (c) a copy of each other direct sale lease granted during the quarter.
- (2) The Minister must present the documents given under subsection (1) to the Legislative Assembly not later than 5 sitting days after the day the Minister receives the information.
- (3) To remove any doubt, the validity of a single dwelling house lease or other direct sale lease is not affected by a failure to comply with subsection (1) or (2) in relation to the lease.
- (4) In this section:

*other direct sale lease* means a lease granted by direct sale, other than a single dwelling house lease.

*prescribed information*, for an other direct sale lease, means—

- (a) the amount (if any) paid for the grant of the lease; and
- (b) if the lease was granted with the approval of the Executive under section 258 (2)—the reason for granting the lease with the approval of the Executive.

**261 Direct sale leases subject to certain provisions**

- (1) A lease granted under section 255 (1) (d) must be granted subject to the provisions that are agreed between the territory planning authority and the applicant for the lease.
- (2) A regulation may prescribe a provision or matter that must, or must not, be included in a lease granted under section 255 (1) (d).

**262 Authority need not grant lease**

- (1) The territory land authority need not grant a lease to an applicant, even if applications for the lease have been invited.
- (2) If applications for a lease have been invited subject to conditions, the territory planning authority may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

**263 Planning report before granting leases**

- (1) The territory planning authority may, but need not, prepare a planning report in relation to a proposal to grant a lease.
- (2) The territory planning authority must prepare a planning report in relation to a proposal to grant a lease if directed in writing to do so by the Minister.

**264 Lease must provide for access by road etc**

- (1) The territory planning authority must not grant a lease unless satisfied that, during the term of the lease, the lessee will have—
  - (a) direct access to the leased land from a road or road related area;  
or
  - (b) access to the leased land from a road or road related area by an access road or track, or in another way, that the lessee may use for entry or exit only, without charge and at any time.

- (2) Access provided because of subsection (1) (b)—
- (a) must not interfere with a building, garden or stockyard on the land (the *affected land*) through which the access is provided at the time the access is provided; and
  - (b) must be located in a way that causes as little damage or inconvenience to the lessee of the affected land as possible.
- (3) The validity of a lease granted under this part is not affected by a failure to comply with this section.
- (4) In this section:

*road*—see the Road Transport (General) Act 1999, dictionary.

*road related area*—see the Road Transport (General) Act 1999, dictionary.

## **265 Failure to accept and execute lease**

- (1) This section applies if, not later than the end of the period prescribed by regulation, a person who is entitled to the grant of a lease under this chapter fails to—
- (a) accept and execute the lease; or
  - (b) pay any amount the person is required to pay before being granted the lease.
- (2) The territory planning authority may, by written notice to the person, end the person's right to be granted the lease.
- (3) A notice under subsection (2) must—
- (a) state the ground on which it is given; and
  - (b) state that it takes effect on the day 20 working days after the day it is given.
- (4) If the territory planning authority does not know the home address of the person to whom the notice under subsection (2) is to be given, the authority may give public notice of the notice under subsection (2).

- (5) A notice given under subsection (2) takes effect on the day 20 working days after the day it is given.
- (6) A person whose right to be granted a lease has been ended under this section does not have any claim for compensation in relation to the ending of the right or for the recovery of any money paid to the territory planning authority in relation to the grant of the lease.

## **Division 10.2.2      Payment for leases**

### **266      Payment for leases generally**

- (1) The territory planning authority must not grant a lease other than for payment of an amount that is not less than the market value of the lease.
- (2) However, subsection (1) does not apply in relation to—
  - (a) a rental lease granted for not less than the market rental value of the lease; or
  - (b) a land rent lease; or
  - (c) a lease mentioned in section 267 (Payment for adjoining concessional leases); or
  - (d) the grant of a community lease by—
    - (i) direct sale in accordance with section 285 (Grant of community lease by direct sale); or
    - (ii) tender in accordance with section 287 (Grant of community lease by tender); or
  - (e) a further lease granted under section 281 (Grant of further leases); or
  - (f) the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid; or
  - (g) the grant of a lease of land prescribed by regulation to the University of NSW.

- (3) For subsection (1) and (2) (f), payment for a lease may include monetary and non-monetary components.

**Examples—non-monetary components**

provision of infrastructure, goods, services or other works

- (4) The validity of a lease granted by the territory planning authority is not affected by a failure to comply with this section.

**267 Payment for adjoining concessional leases**

- (1) This section applies to the grant of a lease (a *new lease*) under section 255 (1) (d) if—
- (a) the new lease adjoins another lease (an *adjoining lease*) granted to the person; and
  - (b) the adjoining lease is a concessional lease.
- (2) The territory planning authority may grant the new lease on payment of an amount worked out in the way the amount payable for the adjoining lease was worked out.
- (3) If the amount payable for the adjoining lease was worked out under a repealed Act, the repealed Act applies to working out the amount payable for the new lease as if the repealed Act had not been repealed.
- (4) In this section:
- repealed Act* means—
- (a) the *Land (Planning and Environment) Act 1991* (repealed); or
  - (b) the *Planning and Development Act 2007* (repealed).

## **Division 10.2.3      Use of leased land**

### **268      Use of land for leased purpose**

- (1) Territory land, or a building or structure on the land, in relation to which a lease has been granted, whether before or after the commencement of this part, must not be used for a purpose other than a purpose authorised by the lease or this Act.
- (2) However, if the lease is a residential lease, the land may also be used for home business.

*Note*      While the use of a residential lease for a home business is authorised, beginning to use the land for a home business requires development approval unless the use is an exempt development (see pt 7.2).

- (3) In this section:

*home business*, in relation to a residential lease of land, means a profession, trade or other occupation carried on by a resident of premises on the land.

### **269      Authority may authorise temporary use of land for special circumstances**

- (1) The territory planning authority may authorise the use of territory land subject to a lease, or a building or structure on the land, for a purpose other than a purpose authorised by the lease if satisfied—
  - (a) the land, building or structure is needed urgently for the purpose; and
  - (b) using the land, building or structure for the purpose will achieve a significant public benefit.
- (2) The territory planning authority must not authorise a use under subsection (1) for a period longer than is reasonably necessary for the purpose.

**270 No right to use, flow and control of water**

A lease or further lease granted under this chapter does not give a right to the use, flow and control of water (including water containing impurities) under the land described in the lease.

*Note* This section does not apply in relation to leases or further leases granted before 11 December 1998 (see s 455).

**Division 10.2.4 Dealings with leases**

**271 Leases to which restriction under s 272 applies**

- (1) Section 272 applies in relation to the following leases:
  - (a) a lease that provides that the lessee cannot deal with the land, or part of the land, described in the lease without the prior written approval of the territory planning authority;
  - (b) a lease granted under section 255 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 257;
  - (c) a lease granted under section 255 (1) (d), other than—
    - (i) a lease granted to the Territory; or
    - (ii) a single dwelling house lease, other than a single dwelling house lease prescribed by regulation; or
    - (iii) a lease—
      - (A) that was offered for sale under section 255 (1) (a) or (c) but not sold; and
      - (B) for which not less than the market value was paid for the subsequent direct sale; or

- (iv) a lease—
  - (A) that was sold under section 255 (1) (c) but the contract of sale was rescinded or otherwise ended before the lease was granted under the contract; and
  - (B) for which not less than the market value was paid for the subsequent direct sale;
- (d) a lease prescribed by regulation.
- (2) This section does not apply in relation to the following leases:
  - (a) a concessional lease;
  - (b) a rural lease;
  - (c) a lease granted to the University of NSW of land mentioned in section 266 (2) (g).

*Note* Dealings with concessional leases and rural leases are restricted under s 298 and s 343.

- (3) If this section applies to a lease, the territory planning authority must tell the registrar-general that it applies.

*Note* If the territory planning authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

## **272 Restriction on transfer, assignment and parting with possession**

- (1) This section applies if a memorial in relation to a lease states that this section applies to it.
- (2) The lessee under the lease, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease in either of the following ways without the territory planning authority's written approval of the territory planning authority under section 273:
  - (a) assign or transfer the lease;

- (b) part with possession of the land described in the lease or any part of it.
- (3) However, a regulation may exempt a lease from this section, generally or in relation to a particular dealing.
- (4) A dealing mentioned in subsection (1) in relation to a lease that is made or entered into without the territory planning authority's approval has no effect.
- (5) However, subsection (4) does not apply to a dealing registered under the *Land Titles Act 1925*.

*Note* The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

- (6) In this section:
  - restricted period***, for a lease, means—
    - (a) for a lease that provides that the lessee cannot deal with the land, or part of the land, described in the lease without the territory planning authority's prior written approval—the period stated in the lease or, if no period is stated, the term of the lease; or
    - (b) for a lease granted under section 255 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 257—5 years after the day the lease was granted; or
    - (c) for a lease granted under section 255 (1) (d)—the period ending 5 years after the day the lease was granted; or
    - (d) for a lease prescribed by regulation—
      - (i) the period prescribed by regulation for the lease; or
      - (ii) if no period is prescribed—the term of the lease.

**273 Approval to transfer, assign, or part with possession**

- (1) The territory planning authority must not approve a dealing under this section in relation to a lease unless—
  - (a) satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who satisfies the criteria prescribed under section 258 in relation to the class of leases in which the lease is included; or
  - (b) if the lease was originally granted by restricted auction, tender or ballot—satisfied that the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is a person who could have been granted the original lease.
- (2) The validity of a dealing made or entered into with the territory planning authority's written approval is not affected—
  - (a) by a defect or irregularity in relation to the giving of the approval; or
  - (b) because a ground, or all grounds, for the approval had not arisen.

**274 Restriction on transfer, assignment and parting with possession—certain University of NSW leases**

- (1) This section applies to a lease granted to the University of NSW of land mentioned in section 266 (2) (g).
- (2) The territory planning authority must tell the registrar-general that this section applies to the lease.

*Note* If the territory planning authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

- (3) If a memorial stating that this section applies to the lease is included in the register under the *Land Titles Act 1925*, the University of NSW, or anyone else with an interest in the lease, must not—
- (a) for 20 years after the day the lease was granted—deal with the lease; and
  - (b) after the 20-year period—deal with the lease without the territory planning authority’s approval under section 275.
- (4) A dealing in relation to a lease to which this section applies that is made or entered into in contravention of subsection (3) has no effect.
- (5) However, subsection (4) does not apply to a dealing registered under the *Land Titles Act 1925*.

*Note* The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

- (6) In this section:
- deal***, with a lease—
- (a) means—
    - (i) assign or transfer the lease; or
    - (ii) vary the lease; or
    - (iii) part with possession of the land described in the lease or any part of it; but
  - (b) does not include a subdivision or consolidation of the lease.

**275 Approval to transfer, assign, or part with possession—  
certain University of NSW leases**

- (1) The territory planning authority must not approve a dealing under section 274 (3) (b) in relation to a lease—
- (a) without the Executive’s approval; and

- (b) unless satisfied that—
- (i) for an assignment or transfer of the lease or change in possession of the land under the lease—the person to whom it is proposed that the lease should be assigned or transferred or the person to whom it is proposed that possession of the land should be given, is—
    - (A) a registered training organisation under the *National Vocational Education and Training Regulator Act 2011* (Cwlth); or
    - (B) a registered higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth); or
  - (ii) for a variation of the lease—the variation is consistent with the authorised use of the land under the original lease.
- (2) The validity of a dealing made or entered into with the territory planning authority’s approval is not affected—
- (a) by a defect or irregularity in relation to the giving of the approval; or
  - (b) because a ground, or all grounds, for the approval had not arisen.

## **276 Restriction on subletting of land**

- (1) A lessee must not sublease any land described in a lease without the territory planning authority’s prior written approval.

*Note* A sublessee cannot further sublease the land under the sublease (see *Land Titles Act 1925*, s 88E).

- (2) The territory planning authority must, in writing, approve or refuse to approve a sublease of land not later than 10 working days after the authority is asked, in writing, to approve the sublease.

- (3) The territory planning authority must not approve a sublease of land—
- (a) other than in accordance with criteria prescribed by regulation; and
  - (b) if the sublease—
    - (i) is inconsistent with this Act or the *Land Titles Act 1925*; or
    - (ii) allows—
      - (A) the extension of the initial term of the sublease; or
      - (B) the grant of a further sublease; and
  - (c) unless satisfied that, during the term of the sublease (including a declared land sublease), the sublessee will have—
    - (i) direct access to the subleased land from a road or road related area; or
    - (ii) access to the subleased land from a road or road related area by way of an access road or track, or in another way, that the sublessee may use for entry or exit only, without charge and at any time.
- (4) If the territory planning authority approves a sublease, the lessee must execute and give the executed sublease to the authority.
- (5) The territory planning authority must execute and give the executed sublease to the registrar-general for registration under the *Land Titles Act 1925*.
- (6) Access provided because of subsection (3) (c) (ii)—
- (a) must not interfere with a building, garden or stockyard on the land through which the access is provided at the time the access is provided; and
  - (b) must be located in a way that causes as little damage to the land or inconvenience to the sublessee, other sublessees or the lessee as possible.

- (7) A regulation may prescribe—
- (a) the form of a sublease; and
  - (b) a document that must accompany or be included in a sublease; and
  - (c) a provision that must or must not be included in the sublease.
- (8) A provision of a sublease that—
- (a) is inconsistent with this Act or the *Land Titles Act 1925* is void to the extent of the inconsistency; or
  - (b) allows the extension of the initial term of the sublease is void; or
  - (c) allows the grant of a further sublease is void.
- (9) Nothing in this Act, by itself, creates an obligation on a lessee under a sublease of land to grant the sublessee a further or new sublease.
- Note* The *Unit Titles Act 2001*, s 167AA provides for the grant of further leases of units and common property if a declared land sublease is subdivided by a units plan.
- (10) This section does not apply to a part of land sublet under section 277 and section 278.

## **277 Subletting part of building**

- (1) Any part of a building on land described in a lease may, subject to the lease, any sublease of the land and this Act, be sublet separately from the remainder of the building.
- (2) If a part of a building is sublet separately from the remainder of the building, any part of the parcel of land with the building on it may be sublet with the part of the building separately from the remainder of the parcel of land, as long as the part of the parcel of land sublet adjoins the part of the parcel of land with the building on it.
- (3) To remove any doubt, nothing in this section prevents the subletting of a whole building.

**278 Subletting for siting of mobile homes**

- (1) This section applies if—
  - (a) a lease of territory land authorises the use of the land described in the lease as a mobile home park; and
  - (b) part of the land is being used, or intended to be used, for the siting of a mobile home.
- (2) The part of the land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of the land.
- (3) In this section:

*mobile home* means a dwelling (whether or not on wheels) capable of being transferred from place to place and re-erected.

*mobile home park* means land used for the purpose of accommodating mobile homes or caravans, and includes a caravan park or camping ground.

**279 Land leased to be held as undivided parcel**

- (1) The land described in a lease must at all times be held and occupied by or under the lessee as 1 undivided parcel, unless section 276, section 277 or section 278 provides otherwise.
- (2) The land described in a lease may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged, unless a provision of this chapter provides otherwise.

**280 Leases held by Territory not to be transferred or assigned**

- (1) The Territory must not transfer or assign a lease if the Territory is the registered proprietor of the lease.
- (2) To remove any doubt, subsection (1) does not prevent the Territory from subletting a lease if the Territory is the registered proprietor of the lease.

## Part 10.3 Grants of further leases

### 281 Grant of further leases

- (1) This section applies if—
- (a) a person who is or was the lessee under a lease of land (the *old lease*) applies to the territory planning authority for the grant of another lease of the land (a *further lease*); and
  - (b) neither the Territory nor the Commonwealth needs the land for a public purpose; and
  - (c) either—
    - (i) before the expiry of the old lease, the lessee surrenders the old lease; or
    - (ii) the old lease expired not more than 6 months before the application for the grant of the further lease; and
  - (d) if the old lease is not a residential lease—all rent due under the old lease is paid; and
  - (e) if the further lease is a rural lease—
    - (i) if the further lease is a rental lease—the amount of rent determined under section 339 is payable under the further lease; or
    - (ii) in any other case—
      - (A) the amount determined under section 339 for the grant of the further lease is paid; or
      - (B) if the determination under section 339 for the grant of the further lease provides for the payment of the amount by instalments—any instalment required, under the determination, to be paid before the further lease is granted is paid; and

- (f) any criteria prescribed by regulation are satisfied.
- (2) For subsection (1) (a), a lease granted or arising under the *Unit Titles Act 2001*—
  - (a) the owners corporation for a units plan may apply on behalf of an owner of a unit for the grant of a further lease of the unit; and
  - (b) for a units plan that subdivides land under a declared land sublease—the owners corporation for the units plan may apply for the grant of a further lease under the *Unit Titles Act 2001*, section 167AA.
- (3) The territory planning authority must grant the lessee the further lease of the land for a term not longer than—
  - (a) 99 years; or
  - (b) for a rural lease for which a period shorter than 99 years is determined under section 340—the shorter period.
- (4) A further lease granted under this section must include a statement—
  - (a) if the lease is a concessional lease—that the lease is concessional; or
  - (b) if the lease is not concessional—to the effect that the lease is a market value lease.

**Examples—statement in lease**

a condition of the lease or a notation or stamp on the lease

**Examples—statement to effect that lease is market value lease**

the lease is a market value lease or the lease is not concessional

*Note* A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

- (5) A further lease begins on the day after—
  - (a) the day the old lease is surrendered; or
  - (b) for a further lease granted on application after the expiry of the old lease—the day after the old lease expires.

- (6) If the term of a further lease granted under subsection (3) is not longer than the term of the old lease, any fee payable under subsection (3) for the grant of the further lease must not be more than the cost of granting the further lease.

**282 Grant of further lease includes same authorised use**

- (1) This section applies if a further lease is granted under section 281 on the surrender of an existing lease.
- (2) The further lease must authorise each use of the leased land, and any building or structure on the land, that the surrendered lease authorised.
- (3) However, this section does not apply if a change of use of land, or a building or structure on the land, that involves a lease variation is applied for at the same time as the grant of the further lease is applied for.
- (4) To remove any doubt, a further lease may include provisions that are different from the lease that it is replacing.

**Example**

A further lease includes a restriction on the number of dwellings that may be built on the lease. The lease the further lease is replacing did not include a similar provision.

## Part 10.4 Grants of concessional leases to community organisations

### 283 Meaning of *community lease* and *community lease use*

(1) In this Act:

*community lease* means a concessional lease granted to a community organisation for 1 or more community lease uses.

*community lease use* means each of the following community uses:

- (a) community activity centre;
- (b) community theatre;
- (c) cultural facility;
- (d) educational establishment;
- (e) indoor recreation facility;
- (f) outdoor education establishment;
- (g) outdoor recreation facility;
- (h) place of worship;
- (i) playing field;
- (j) religious associated use;
- (k) a community use prescribed by regulation.

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

(3) In this section:

*community use* includes a minor use incidental to the community use.

**284**      **Meaning of *community lease provisions***

In this Act:

*community lease provisions*, for a community lease, means the following:

- (a) a provision requiring the lease to be held by a sole lessee;
- (b) a provision stating the restrictions applying to the lease under section 299 (Approval of dealings with concessional leases) when the lease is granted;
- (c) if the lease includes a building and development provision—a provision stating that the provisions mentioned in paragraphs (d) to (f) commence on the issue of a certificate of occupancy stating that the building and development provision has been complied with;
- (d) if the community lease use for which the land must be used involves a non-continuous service being provided on the land—a provision stating the minimum requirements for how frequently, and for how long, the service must be provided;
- (e) a provision requiring the lessee to give the territory planning authority prescribed information about the use of the land;
- (f) a provision requiring the lessee to give the territory planning authority reports about the use of the land;
- (g) any other provision prescribed by regulation.

**Example—par (d)**

The lessee must provide a place of worship that is open on weekends, and on 3 working days, for at least 8 months per calendar year.

**285 Grant of community lease by direct sale**

- (1) The Executive may approve the grant by direct sale of a community lease if satisfied that—
  - (a) the grant will achieve the objective of delivering a service that provides ongoing benefits to the community; and
  - (b) a grant by a means other than direct sale is unlikely to meet that objective to the same extent as the grant by direct sale of the lease.
- (2) If the Executive approves the grant of a community lease under subsection (1), the approval must—
  - (a) state the reasons why the grant is not to be made by tender under section 287; and
  - (b) state the community lease use for which the land must be used.
- (3) A statement of reasons under subsection (2) must be published on the authority website.
- (4) If the territory planning authority grants a community lease by direct sale, the lease must include—
  - (a) the community lease use for which the land must be used; and
  - (b) the community lease provisions.

*Note 1* The territory planning authority may only grant a community lease if the Executive approves the grant under s (1) (see s 258 (1) (d)).

*Note 2* The lease must also include a statement that the lease is a concessional lease (see s 255 (2) (a) (i)).

**286 Statement of future community land for stated districts**

- (1) The territory planning authority may, for a stated district, make a statement setting out the government's priorities in relation to community use of land in the district.
- (2) The statement—
  - (a) must identify 1 or more areas of territory land that may be leased for community lease uses; and
  - (b) for each identified area—must propose the community lease use; and
  - (c) may state that the identified land is to be used only for the proposed community lease use.
- (3) The statement is a notifiable instrument.

**287 Grant of community lease by tender**

- (1) The territory planning authority may grant a community lease by tender only if—
  - (a) the land the subject of the lease is in an area of land identified under section 286 (2) (a); and
  - (b) the land is to be used only for the community lease use proposed under section 286 (2) (b); and
  - (c) the authority has given notice—
    - (i) identifying the land by the block, section number and division; and
    - (ii) stating the community lease use for which the land must be used; and
  - (d) the tender process is undertaken in the way prescribed by regulation; and
  - (e) the authority is satisfied that the person to whom the lease is granted meets the criteria prescribed by regulation; and

- (f) the lease includes—
  - (i) the community lease use for which the land must be used; and
  - (ii) the community lease provisions.

*Note* The lease must also include a statement that the lease is a concessional lease (see s 255 (2) (a) (i)).

- (2) A notice under subsection (1) (c) is a notifiable instrument.
- (3) In this section:

**block**—see the *Districts Act 2002*, dictionary.

**section**—see the *Districts Act 2002*, dictionary.

## **288 Community use reports**

- (1) This section applies if the lessee of a community lease is required under the lease to give the territory planning authority reports about the use of the land described in the lease.
- (2) The lessee must, for each financial year, prepare a report about how the lessee's use of the land has benefitted the broader community during the financial year.
- (3) The report must—
  - (a) include any matter prescribed by regulation; and
  - (b) be given to the territory planning authority within—
    - (i) 3 months after the end of the financial year; or
    - (ii) any longer period allowed by the authority.
- (4) The territory planning authority may ask the lessee for additional information for the report.

**289      Audit of use of community lease land**

- (1) The territory planning authority may require the lessee of a community lease to commission an audit of the lessee's use of the land described in the lease.
- (2) The audit must be—
  - (a) paid for by the lessee; and
  - (b) undertaken by—
    - (i) an auditor appointed by the territory planning authority; or
    - (ii) if the authority decides not to appoint an auditor—an auditor that is independent of the lessee; and
  - (c) undertaken in accordance with procedures decided by the authority following consultation with the lessee.
- (3) The lessee must make all records relating to the lessee's use of the land available to the auditor for examination within a reasonable time after the auditor asks for the records.
- (4) The territory planning authority must not require a lessee to commission more than 1 audit in any 6-month period.

## Part 10.5 Concessional leases

### Division 10.5.1 Deciding whether leases concessional

#### 290 Application for decision about whether lease concessional

A lessee may apply to the territory planning authority for a decision about whether a lease is a concessional lease.

#### 291 Decision about whether lease concessional

- (1) On application under section 290, the territory planning authority must decide if the lease is a concessional lease.
- (2) However, if someone (other than the lessee) has a registered interest in the lease, the territory planning authority must not make a decision under subsection (1) unless the authority has—
  - (a) given written notice (the *application notice*) of the application to the person; and
  - (b) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
  - (c) considered any representations made in the time given in the application notice.
- (3) If the territory planning authority is not satisfied that the lease is a concessional lease—
  - (a) the authority must decide that the lease is not concessional; and
  - (b) the lease is taken to be a market value lease.

- (4) However, the territory planning authority is taken to have decided that the lease is a concessional lease if the authority has not made a decision on the application at the end of the period of 15 working days after—
- (a) the day the application is made; or
  - (b) if someone (other than the lessee) has a registered interest in the lease—the day the period for making representations given in the application notice ends.
- (5) Despite subsection (4), the territory planning authority may, within 20 working days after the decision under subsection (4) is taken to have been made, decide that the lease is not a concessional lease.

*Note* Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the territory planning authority will not be able to make a decision under s (5) if the ACAT has decided an application for review of the deemed decision under s (4) (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

- (6) The territory planning authority must give written notice of the decision under subsection (1) to the applicant and anyone else with a registered interest in the lease to which the decision relates.
- (7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

**292 Authority may decide if lease concessional on own initiative**

- (1) The territory planning authority may, on its own initiative decide if a lease is concessional.
- (2) However, the territory planning authority must not make a decision under subsection (1) unless the authority has—
- (a) given written notice of the authority's intention to make the decision to each person with a registered interest in the lease; and

- (b) in the notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
  - (c) considered any representations made in the time given in the notice.
- (3) If the territory planning authority gives a notice under subsection (2), the authority must make a decision under subsection (1) in relation to the lease not later than 15 working days after the day the period for making representations given in the notice ends.
- (4) If the territory planning authority is not satisfied that the lease is a concessional lease—
  - (a) the authority must decide that the lease is not concessional; and
  - (b) the lease is taken to be a market value lease.
- (5) The territory planning authority must give written notice of the decision under subsection (1) to each person with a registered interest in the lease to which the decision relates.

**293 Review of certain decisions about concessional status of lease**

- (1) This section applies to a lease if—
  - (a) the lease was granted before 31 March 2008; and
  - (b) the lease does not state in the lease that the lease is a concessional lease; and
  - (c) the territory planning authority made a decision (the *original decision*) that the lease is concessional, whether before or after 31 March 2008; and
  - (d) the decision is stated in a memorial to the lease.
- (2) The lessee of the lease may apply to the territory planning authority for a review of the original decision.

- (3) The territory planning authority must decide the application if satisfied that—
  - (a) there is additional relevant information about the concessional status of the lease; or
  - (b) there is information to indicate that the authority made a formal error when it made the original decision.
- (4) If subsection (3) applies, the application is taken to be an application under section 290.
- (5) Also, if the territory planning authority is satisfied of the matters mentioned in subsection (3), it may on its own initiative, review the original decision.
- (6) If subsection (5) applies, the territory planning authority may review the original decision in accordance with section 292.

**294 Lodging notice of decision about concessional status of lease**

- (1) This section applies if the territory planning authority decides, or is taken to have decided, under this division that a lease—
  - (a) is not a concessional lease; or
  - (b) is a concessional lease and—
    - (i) no application is made to the ACAT for review of the decision within the time allowed for applications; or
    - (ii) an application for review of the decision is made and the ACAT—
      - (A) confirms the lease is a concessional lease; or
      - (B) remits the matter for reconsideration by the territory planning authority and the authority decides that the lease is a concessional lease.

- (2) The territory planning authority must lodge notice with the registrar-general for registration under the *Land Titles Act 1925* that—
- (a) if the authority decides that the lease is a concessional lease—the lease is concessional; or
  - (b) if the authority decides that the lease is not a concessional lease—the lease is a market value lease.

*Note* The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

## **295 Concessional status of leases**

- (1) This section applies to a lease if—
- (a) the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease; or
  - (b) the territory planning authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.

### **Examples—par (a)**

a condition of the lease or a notation or stamp on the lease

- (2) A person may rely on the statement and deal with the lease as a concessional lease.
- (3) The territory planning authority must not make a decision that would change the lease's status as a concessional lease.
- (4) This section is subject to—
- (a) a review of a decision about the concessional status of a lease under section 293; or
  - (b) a variation of the lease to remove the concessional status of the lease under division 10.5.3; or
  - (c) an order of a court or tribunal.

**296 Non-concessional status of leases**

- (1) This section applies to a lease if—
  - (a) the lease includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease; or
  - (b) the territory planning authority has lodged a notice that the lease is a market value lease with the registrar-general for registration under the *Land Titles Act 1925*.

**Examples—par (a)**

- 1 a condition of the lease or a notation or stamp on the lease that it is a market value lease
  - 2 a statement that the lease is not concessional
- (2) A person may rely on the statement and deal with the lease as a market value lease.
  - (3) The territory planning authority must not make a decision that would change the lease's status as a market value lease.
  - (4) This section is subject to an order of a court or tribunal.

**297 Concessional status guidelines**

- (1) The territory planning authority may make guidelines setting out information to assist people to decide whether a lease is a concessional lease, market value lease or possibly concessional.
- (2) A person who is deciding whether a lease is a concessional lease, market value lease or possibly concessional may have regard to the concessional lease guidelines but is not bound by the guidelines.
- (3) A concessional lease guideline is a notifiable instrument.

## **Division 10.5.2 Restrictions on dealings with concessional leases**

### **298 Restrictions on dealings with concessional leases**

- (1) The lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written approval of the territory planning authority.
- (2) A dealing in relation to a lease to which this section applies that is made or entered into without the territory planning authority's approval has no effect.
- (3) However, subsection (2) does not apply to a dealing—
  - (a) registered under the *Land Titles Act 1925*; or
  - (b) 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 (Adjustment of property interests) adjusting the property interests of parties in a domestic relationship; or
  - (c) that happens by operation of, or under, bankruptcy or insolvency; or
  - (d) in any circumstances prescribed by regulation.

*Note* The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

**299 Approval of dealings with concessional leases**

- (1) The territory planning authority must not approve a dealing under section 298 in relation to a lease unless—
  - (a) satisfied that the person to whom it is proposed that the lease be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given—
    - (i) is a person (an *eligible person*) who could be granted the concessional lease; or
    - (ii) for a dealing with a community lease—
      - (A) is a community organisation; and
      - (B) satisfies the criteria prescribed under section 287 (Grant of community lease by tender); or
  - (b) for a sublease—satisfied that the lessee, or an eligible person, continues to be the main user of the lease.
- (2) In deciding whether the lessee proposing to grant a sublease, or an eligible person, continues to be the main user of the lease, the territory planning authority must consider the following:
  - (a) the proposed area of the sublease;
  - (b) the extent to which the lessee or eligible person continues to provide most of the goods, services or both to be provided from the area leased;
  - (c) the extent to which the use of the area proposed to be subleased will be ancillary to the permitted uses of the area that is not proposed to be subleased;
  - (d) the extent to which the use of the area proposed to be subleased will be complementary to the use of the area that is not proposed to be subleased.

- (3) The validity of a dealing made or entered into with the territory planning authority's approval is not affected—
- (a) by a defect or irregularity in relation to the giving of the approval; or
  - (b) because a ground, or all grounds, for the approval had not arisen.

### **Division 10.5.3 Varying concessional leases to remove concessional status**

#### **300 Removal of concessional status by variation of lease**

- (1) The concessional status of a lease may only be removed by a variation of the lease.
- (2) This section does not apply to a review of a decision about the concessional status of a lease under section 293.

#### **301 Development application to remove concessional status of lease**

- (1) This section applies to a development application to vary a concessional lease to remove its concessional status.
- (2) The territory planning authority must refer the development application to the Minister for decision under section 180 (Deciding development applications).
- (3) In deciding the development application under section 180, the Minister must also consider the following:
  - (a) any information or documents required to accompany the application under section 162 (2) (d);
  - (b) whether the Territory wishes to continue to monitor the use and operation of the concessional lease by requiring approval before the lease is dealt with;

- (c) whether approving the application would cause any disadvantage to the community, taking into account potential uses of the leased land—
    - (i) mentioned in a statement under section 286 (Statement of future community land for stated districts); or
    - (ii) that are consistent with the territory plan, whether or not those uses are authorised by the lease;
  - (d) whether the Territory should buy back, or otherwise acquire, the lease;
  - (e) whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease;
  - (f) whether varying the lease to remove its concessional status would be consistent with any statement under section 286 or notice under section 287 (c) (Grant of community lease by tender) that applies to the lease;
  - (g) any representation about the application received by the territory planning authority and not withdrawn;
  - (h) the availability and leased purpose of any land to which concessional leases or community uses apply in the surrounding area.
- (4) The development application must only be for approval to vary the lease to remove its concessional status.
- (5) The following provisions do not apply to the development application:
- (a) section 166 (When authority must refer development application);
  - (b) section 181 (Considerations when deciding development applications);
  - (c) section 182 (Conditional approvals);

- (d) section 184 (Restrictions on development approval);
  - (e) section 185 (Development approval contrary to entity advice);
  - (f) section 186 (Referral of matter protected by the Commonwealth).
- (6) The Minister must not approve the development application without the approval of the Executive.

**302 Development approval to remove concessional status subject to condition**

- (1) If the Minister approves a development application under section 180 to vary a concessional lease to remove its concessional status, the approval is subject to the condition that the lessee pays the Territory or a territory entity the amount worked out under section 303.

*Note* If the variation of the lease is not solely for the purpose of removing the lease's concessional status, a person may also be required to pay a lease variation charge under div 10.7.3.

- (2) The amount payable is taken to be paid to the Territory or a territory entity if the amount is waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount is waived and the rest of the amount is paid.

**303 Working out amount payable to remove concessional status**

- (1) This section applies if a development application in relation to a lease is subject to a condition under section 302.
- (2) The amount payable is worked out as follows:

$$MV - \left( \frac{AP}{OV} \times MV \right)$$

- (3) In this section:

*AP*, for a lease, means the amount (if any) paid for the lease at grant.

*MV*, for a lease, means the market value of the lease if it were a market value lease.

*OV*, for a lease, means the market value of the lease at grant if it had been a market value lease.

- (4) To remove any doubt, an amount paid as rent under a lease is not an amount paid for the lease.

**304 Uses under leases varied by surrender and regrant to remove concessional status**

- (1) This section applies to a lease varied only to remove the concessional status of the lease by surrender and regrant of the lease.
- (2) The regranted lease authorises each use of the land, and any building or structure on the land, authorised under the lease before the lease was varied to remove its concessional status.
- (3) To remove any doubt—
- (a) this section does not apply if the lease is varied other than to remove the concessional status of the lease; and
- (b) subsection (2) applies despite anything to the contrary in the territory plan.

## **Part 10.6**                      **Rent variations and relief from provisions of leases**

### **305**                      **Application to land rent—pt 10.6**

This part does not apply to a variation of land rent in accordance with the provisions of a land rent lease.

### **306**                      **Variations of rent**

- (1) If the rent payable under a lease is varied in accordance with the provisions of the lease, the territory planning authority must give the lessee written notice of the variation.
- (2) A variation of rent mentioned in the notice comes into operation on—
  - (a) the day 20 working days after the day the notice is given; or
  - (b) if the lease under which the variation is made provides that the variation comes into operation on a later day—the later day.

### **307**                      **Review of variations of rent**

- (1) This section applies if—
  - (a) the rent payable under a lease is varied in accordance with the provisions of the lease; and
  - (b) the lease does not provide for the submission to arbitration of differences between the parties to the lease about variation of the rent.
- (2) The lessee may, not later than 20 working days after receiving the notice under section 306 (1) about the variation, ask the territory planning authority in writing to review the variation.
- (3) The making of the request does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

- (4) If the request is made in relation to a variation, the territory planning authority must review the variation and may—
  - (a) confirm the variation; or
  - (b) set the variation aside and substitute any other variation the authority considers appropriate.

**308 Reduction of rent and relief from provisions of lease**

- (1) The territory planning authority may approve—
  - (a) a reduction of the rent payable under a lease, or of the amount payable, in relation to any occupation of territory land; or
  - (b) the grant of relief, to a lessee or occupier of territory land, from compliance, completely or partly, with any provision to which the person's lease or occupation is subject.
- (2) The reduction or grant of relief may be for a maximum period of 3 years, and may include a period before the approval.
- (3) If the territory planning authority gives an approval under subsection (1), the liability or obligation of the lessee or occupier under the lease, or in relation to the person's occupation, is discharged for the period approved, to the extent of the reduction or grant of relief approved.
- (4) An approval under subsection (1) may be conditional.
- (5) If the territory planning authority approves a grant of relief to a lessee or occupier under subsection (1), the authority must give the lessee or occupier written notice of the reduction of rent or amount payable or other grant of relief approved.

## **Part 10.7 Lease variations**

### **Division 10.7.1 Lease variations—general**

#### **309 Effect subject to pt 10.8**

This part has effect subject to part 10.8 (Rural leases).

### **Division 10.7.2 Variation of rental leases**

#### **310 Variation of rental leases**

- (1) The territory planning authority must not execute a variation of a rental lease unless any rent, including additional rent, payable under the lease up to the day the variation is executed has been paid.
- (2) If the territory planning authority executes a variation of a rental lease—
  - (a) the authority must reassess the rent payable under the lease, following (as far as possible) the method provided by the rental provisions of the lease; and
  - (b) the rent payable under the lease must be adjusted in accordance with the reassessment with effect from the day the variation is executed.
- (3) Subsection (2) does not apply to a variation of—
  - (a) a rental lease—
    - (i) to reduce the rent payable to a nominal rent; or
    - (ii) otherwise affecting the rental provisions of the lease; or
  - (b) a land rent lease.

**311 Advice of rent payable on variation of lease**

- (1) This section applies if—
  - (a) the territory planning authority approves a variation of a lease; and
  - (b) the lease is a lease (other than a land rent lease) under which rent or additional rent is payable.
- (2) The territory planning authority must—
  - (a) work out the amount that would be payable under the lease for rent, including additional rent, up to the day when the authority expects the variation will be executed; and
  - (b) give the lessee written notice of—
    - (i) the amount worked out for rent, including additional rent, under paragraph (a); and
    - (ii) the day up to which the amount payable for rent and additional rent has been worked out; and
    - (iii) the day by which the authority requires payment of the amount stated under subparagraph (i) to allow the variation of the lease to be executed on the day stated under subparagraph (ii).

**312 Application for rent payout lease variation**

- (1) This section applies to the following leases:
  - (a) a land rent lease;
  - (b) a lease that is included in a class of leases prescribed by regulation.
- (2) The lessee may apply to the territory planning authority for a variation of the lease to reduce the rent payable to a nominal rent.

**313      Decision on rent payout lease variation application**

- (1) Within the period prescribed by regulation after the day the territory planning authority receives an application by a lessee under section 312, the authority must—
  - (a) decide to vary the lease to reduce the rent payable to a nominal rent; or
  - (b) if subsection (2) stops the authority from varying the lease—refuse to vary the lease.
- (2) The territory planning authority must not vary the lease to reduce the rent payable to a nominal rent unless—
  - (a) all amounts payable to the Territory up to the day of variation of the lease for tax levied in relation to the land described in the lease have been paid; and
  - (b) for a land rent lease, all rent and other amounts payable to the commissioner for revenue under the *Land Rent Act 2008* up to the day the variation is executed in relation to the land have been paid; and
  - (c) the provisions of the lease requiring the lessee to develop the land have been complied with up to the day the variation is executed; and
  - (d) the lessee has paid the Territory an amount decided by the territory planning authority under any policy direction made under section 314.
- (3) The territory planning authority must give written notice of the decision on the application to the applicant.
- (4) If the amount mentioned in subsection (2) (d) has not been paid within 12 months from the day the notice under subsection (3) is given, the territory planning authority's decision to vary the lease is revoked.

(5) In this section:

*tax* means a tax under the following tax laws:

- (a) division 10.7.3 (Variation of nominal rent leases);
- (b) the *Duties Act 1999*;
- (c) the *Land Tax Act 2004*;
- (d) the *Rates Act 2004*.

**314 Policy directions for paying out rent**

- (1) The Minister may make policy directions for section 313 (2) (d).
- (2) A policy direction is a disallowable instrument.

**315 Power to decide rent payout applications deemed refused**

- (1) This section applies if—
  - (a) an application has been made under section 312; and
  - (b) the time for deciding the application has ended; and
  - (c) the territory planning authority has not decided the application under section 313.
- (2) The territory planning authority is taken to have refused the application.
- (3) However, the territory planning authority may decide to vary the lease to reduce the rent payable to a nominal rent under section 313 despite subsection (2).

*Note* Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the territory planning authority will not be able to make a decision under s (3) if the ACAT has decided an application for review of the deemed decision under s (2) (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

**316      Lease to be varied to pay out rent**

- (1) This section applies if the territory planning authority decides to vary a lease under section 313 to reduce the rent payable to a nominal rent.
- (2) The territory planning authority must vary the lease in accordance with the decision.
- (3) The lease as varied must provide that the lessee is to pay a nominal rent if and when that rent is demanded.

**317      No variations to extend term**

The territory planning authority must not execute a variation of a lease to extend the term of the lease.

**318      No variation of certain leases for 5 years**

- (1) This section applies to the following leases:
  - (a) a lease granted in accordance with section 259 (Direct sale if single person in restricted class);
  - (b) a lease to which section 272 (Restriction on transfer, assignment and parting with possession) applies.
- (2) However, this does not apply to a lease exempted by regulation.
- (3) The territory planning authority must not approve a variation of the lease earlier than 5 years after the day the lease is granted.
- (4) However, the territory planning authority may approve a variation of the lease if it does not limit, add or remove an authorised use of the land.

(5) In this section:

*authorised use*, of land—

- (a) means a use authorised (whether expressly or by implication) by a lease; and
- (b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

### **Division 10.7.3      Variation of nominal rent leases**

*Note*      This division is a tax law under the *Taxation Administration Act 1999*. As a tax law, this division is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

#### **Subdivision 10.7.3.1 Definitions—div 10.7.3**

##### **319      Definitions—div 10.7.3**

In this division:

*chargeable variation*, of a nominal rent lease, means a variation of the lease other than—

- (a) a variation, if—
  - (i) the only effect of the variation is to alter a common boundary between 2 or more adjoining leases; and
  - (ii) the authorised use of the land described in each adjoining lease (however described) is the same; and
  - (iii) none of the adjoining leases is a rural lease; or
- (b) a variation if the only effect of the variation is to remove the lease's concessional status; or
- (c) a variation prescribed by regulation.

*gross floor area*—see the territory plan (13 Definitions).

***non-standard chargeable variation***, of a nominal rent lease, means—

- (a) a chargeable variation that is not a standard chargeable variation; or
- (b) a standard chargeable variation if no lease variation charge is determined for the variation under section 323.

***original decision***—see section 326 (1) (b) (Non-standard chargeable variations—working out statement).

***reconsideration application***—see section 327 (5) (Non-standard chargeable variations—application for reconsideration).

***standard chargeable variation***, of a nominal rent lease, means a chargeable variation prescribed by regulation.

***working out statement***—see section 326 (2) (Non-standard chargeable variations—working out statement).

### **Subdivision 10.7.3.2 Chargeable variations of nominal rent leases**

#### **320 Lease variation charge payable for chargeable variation**

- (1) The territory planning authority must not execute a chargeable variation of a nominal rent lease unless—
  - (a) the total lease variation charge for the variation has been paid to the Territory; or
  - (b) a deferral arrangement in relation to the total lease variation charge has been entered into.

*Note* If the territory planning authority has executed a variation of a nominal rent lease, the authority must lodge a copy of the variation with the registrar-general for registration. A lease variation takes effect on registration (see *Land Titles Act 1925*, s 72A).

- (2) A lease variation charge is taken to be paid to the Territory if—
- (a) the amount of the charge is waived by the Treasurer under the *Financial Management Act 1996*, section 131 (Waiver of debts etc); or
  - (b) part of the amount is waived and the rest of the amount is paid.
- (3) Payment of the lease variation charge, or entering into a deferral arrangement in relation to the lease variation charge, does not affect any right a person may have to apply for reconsideration under section 327.
- (4) In this section:
- total lease variation charge*, in relation to a chargeable variation of a nominal rent lease, means the following:
- (a) the standard or non-standard lease variation charge applying to the variation;
  - (b) less any reduction under section 330;
  - (c) plus any increase under section 331.

### **321 Notice of assessment**

- (1) On approval of a development application for a chargeable variation of a nominal rent lease, the commissioner for revenue must give—
- (a) a notice of assessment of the lease variation charge to the lessee; and
  - (b) if the development application is made by someone other than the lessee—a copy of the notice to the applicant.
- (2) A lease variation charge is taken to be worked out—
- (a) on the day the development approval of the chargeable variation is approved; or
  - (b) if another day is prescribed by regulation—on that day.

- (3) A notice of assessment lapses on the earlier of—
- (a) the day the lease variation charge is paid; or
  - (b) the day the development approval of the chargeable variation lapses.
- (4) For the *Taxation Administration Act 1999*, an assessment of a lease variation charge is a tax liability that only becomes payable if the territory planning authority executes the variation of the lease.

*Note* The territory planning authority must not execute a variation of the lease unless the lessee has paid the assessed lease variation charge or the amount has been deferred (see s 320 (1)).

### **322 More than 1 chargeable variation**

If a development approval relates to more than 1 chargeable variation of a nominal rent lease, the lease variation charge is worked out as follows:

- (a) if all the chargeable variations are standard chargeable variations for which a charge is determined under section 323—in accordance with section 323;
- (b) if all the chargeable variations are non-standard chargeable variations—in accordance with section 324;
- (c) if the chargeable variations are made up of standard and non-standard chargeable variations—as prescribed by regulation.

### **323 Standard chargeable variations**

- (1) The lease variation charge for a standard chargeable variation of a nominal rent lease is the amount determined under this section.
- (2) The Treasurer may, after consulting with the Minister, determine a lease variation charge for a standard chargeable variation of a nominal rent lease.

- (3) In considering whether to determine a lease variation charge under this section, the Treasurer must—
- (a) obtain advice from an accredited valuer at least once every 3 years; and
  - (b) have regard to the advice; and
  - (c) comply with any other requirement prescribed by regulation.
- (4) A determination must—
- (a) as far as is practicable, represent the average market value in relation to the standard chargeable variation; and
  - (b) if a standard chargeable variation increases the number of dwellings permitted on the land under the lease—state an amount for each additional dwelling permitted on the land under the lease; and
  - (c) if a standard chargeable variation 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—state an amount for each additional square metre of gross floor area permitted on the land under the lease.
- (5) The determination must state—
- (a) the reasons for determining the lease variation charge; and
  - (b) how the charge was determined.
- (6) A determination is a disallowable instrument.

### **324 Non-standard chargeable variations**

- (1) The lease variation charge for a non-standard chargeable variation of a nominal rent lease is the amount worked out under this section.

- (2) The commissioner for revenue works out the lease variation charge for a non-standard chargeable variation of a nominal rent lease as follows:

$$LVC = (V_1 - V_2) \times 75\%$$

- (3) In this section:

*LVC* means the lease variation charge payable for the non-standard chargeable variation of the lease.

*V<sub>I</sub>*—

- (a) for a chargeable variation other than a consolidation or subdivision—means the capital sum that the lease might be expected to realise if—
- (i) the lease were varied as proposed; and
  - (ii) the lease were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and
  - (iii) either—
    - (A) the rent payable throughout the term of the lease were a nominal rent; or
    - (B) for a variation that involves the surrender of a lease and issue of a new lease—the rent payable for the term of the new lease were a nominal rent; or
- (b) for a chargeable variation that is a consolidation or subdivision—means the capital sum that the new lease or leases to be granted under the consolidation or subdivision might be expected to realise if—
- (i) the consolidation or subdivision were to take place as proposed; and

- (ii) the new lease or leases were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and
- (iii) the rent payable throughout the term of the new lease or leases were a nominal rent.

**V<sub>2</sub>**—

- (a) for a chargeable variation other than a consolidation or subdivision—means the capital sum that the lease might be expected to realise if—
  - (i) the lease were not varied during the remainder of its term; and
  - (ii) the lease were genuinely offered for sale immediately before the variation on the reasonable terms and conditions that a genuine seller would require; and
  - (iii) the rent payable throughout the term of the lease, or lease to be surrendered, were a nominal rent; or
- (b) for a chargeable variation that is a consolidation or subdivision—means the capital sum that the lease or leases to be surrendered under the consolidation or subdivision might be expected to realise if—
  - (i) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases; and
  - (ii) the lease or leases were genuinely offered for sale immediately before the consolidation or subdivision on the reasonable terms and conditions that a genuine seller would require; and
  - (iii) the rent payable throughout the term of the lease, or leases to be surrendered, were a nominal rent.

- (4) If the amount worked out as  $V_1$  is equal to or less than the amount worked out as  $V_2$ , no lease variation charge is payable.
- (5) If the development approval for the relevant development application relates to 2 or more non-standard chargeable variations,  $V_1$  and  $LVC$  are worked out as if the non-standard chargeable variations were a single non-standard chargeable variation of the lease.

### **325 Non-standard chargeable variations—improvements**

- (1) In working out  $V_1$  and  $V_2$  under section 324, an improvement in relation to the land described in the lease must not be taken into account.
- (2) However, an existing improvement by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

- (3) In this section:

*improvement*, in relation to land, means an existing or proposed improvement and includes any of the following:

- (a) a building or structure on or under the land;
- (b) an alteration or demolition of an existing building or structure on or under the land;
- (c) the remediation of the land;
- (d) earthworks, planting or other work that affects the landscape of the land;
- (e) anything mentioned in paragraphs (a) to (d) that is required—
  - (i) as a condition of a development approval; or
  - (ii) by a statutory approval obtained or required for a development proposal; or

- (iii) under an agreement between the Territory or a territory entity and—
  - (A) the lessee; or
  - (B) if the lessee is not the applicant for the development approval—the applicant;
- (f) anything mentioned in paragraphs (a) to (d) proposed in a development application in relation to a chargeable variation of a nominal rent lease to be carried out on land outside of the land under the lease.

*remediation*—see the *Environment Protection Act 1997*, dictionary.

**326 Non-standard chargeable variations—working out statement**

- (1) This section applies if—
  - (a) a development application in relation to a non-standard chargeable variation of a nominal rent lease is approved; and
  - (b) the lease variation charge in relation to the variation has been worked out in accordance with section 324 (the *original decision*); and
  - (c) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 321 (1); and
  - (d) an application has not previously been made under section 327 for reconsideration of the original decision.
- (2) The applicant for the development application may ask the commissioner for revenue for a statement (a *working out statement*) explaining the commissioner’s working out of the original decision.

- (3) The commissioner for revenue must give the applicant a working out statement within 20 working days after the day the applicant asks for the statement unless—
- (a) the notice of assessment contains the matters that the working out statement would contain; or
  - (b) a document that contains the matters that a working out statement would contain has already been given to the applicant.

**327 Non-standard chargeable variations—application for reconsideration**

- (1) The applicant for a development application in relation to a non-standard chargeable variation of a nominal rent lease may apply for reconsideration of an original decision on the earlier of—
- (a) the day the applicant receives the working out statement; and
  - (b) the end of the 20-working day period mentioned in section 326 (3).

- (2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, this section only applies to the part of the lease variation charge that is worked out for a non-standard chargeable variation.

*Note* The total lease variation charge for a development application that relates to more than 1 chargeable variation is worked out in accordance with s 322.

- (3) This section does not apply to a reassessment of a lease variation charge under section 332.
- (4) If the applicant for the development application is not the lessee, the lessee may apply for reconsideration under this section instead of the applicant.

- (5) An application for reconsideration of the original decision (the *reconsideration application*) must be made not later than—
- (a) the later of—
    - (i) 80 working days after the day the notice of assessment under section 321 (1) is given; and
    - (ii) if a later day is prescribed by regulation—that day; or
  - (b) any longer period allowed by the commissioner for revenue.

**328 Non-standard chargeable variations—requirements for reconsideration application**

- (1) A reconsideration application must be in writing and signed by—
- (a) the lessee; and
  - (b) if the application is made by the applicant for the development application who is not the lessee—the applicant.
- (2) Also, the reconsideration application must—
- (a) set out the grounds on which the reconsideration is sought; and
  - (b) include an independent valuation that works out the amounts represented by  $V_1$  and  $V_2$  in section 324; and
  - (c) if the applicant is given a working out statement in accordance with section 326—include the statement.
- (3) If subsection (2) (c) applies, the applicant for the reconsideration must give the valuer for the independent valuation the commissioner for revenue’s working out statement.
- (4) The independent valuation must be prepared by an accredited valuer who—
- (a) was not involved in working out or advising on the original decision; and

- (b) is—
  - (i) agreed to by the applicant for the reconsideration and the commissioner for revenue; or
  - (ii) if the applicant and the commissioner cannot agree—  
appointed in writing by a person prescribed by regulation;  
and
- (c) satisfies any requirement prescribed by regulation.
- (5) The applicant for the reconsideration is responsible for the cost of the independent valuation.

**329 Non-standard chargeable variations—reconsideration**

- (1) Within 20 working days after receiving a reconsideration application, the commissioner for revenue must—
  - (a) reconsider the original decision; and
  - (b) either—
    - (i) make a decision in substitution for the original decision that the commissioner could have made; or
    - (ii) confirm the original decision.
- (2) The 20-working day period mentioned in subsection (1) may be extended for a stated period by agreement between the commissioner for revenue and the applicant for the reconsideration.
- (3) In reconsidering the original decision, the commissioner for revenue—
  - (a) must consider the independent valuation required under section 328 (2) (b) and any other information given in the reconsideration application; and
  - (b) may consider any other relevant information.

- (4) The commissioner for revenue must ensure that, if the original decision is made by the commissioner or a person on the commissioner's behalf (the *original decision-maker*), someone other than the original decision-maker reconsiders the decision.
- (5) If the commissioner for revenue does not make a substitute decision, or confirm the original decision, by the end of the 20-working day period mentioned in subsection (1), or the period as extended by agreement under subsection (2), the commissioner is taken to have confirmed the original decision.
- (6) The commissioner for revenue must give written notice of the decision on the reconsideration to—
  - (a) the lessee; and
  - (b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

### **330 Reduction of lease variation charges**

- (1) The Minister may determine circumstances in which the amount of lease variation charge applying under this part to a chargeable variation of a nominal rent lease must be reduced.
- (2) For each circumstance determined under subsection (1), the Treasurer must determine the amount by which the lease variation charge must be reduced.
- (3) The amount must be expressed as a percentage of the lease variation charge.
- (4) A determination is a disallowable instrument.

### **331 Increase of lease variation charge**

- (1) The amount of lease variation charge applying under this part to a chargeable variation of a nominal rent lease must be increased in the circumstances, and for the amount, prescribed by regulation.

- (2) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulation commences—
- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—the day after the day the disallowance motion is negated; or
  - (b) the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
  - (c) if the regulation provides for a later date or time of commencement—on that date or at that time.

### **332 Lease variation charge—reassessment**

- (1) This section applies if—
- (a) a development application for approval of a chargeable variation of a nominal rent lease is approved; and
  - (b) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 321 (1); and
  - (c) the territory planning authority executes a variation of the lease to which the lease variation charge relates.
- (2) The commissioner for revenue may reassess the lease variation charge under the *Taxation Administration Act 1999*, section 9 (Reassessment).
- (3) The commissioner for revenue must give—
- (a) a notice of assessment of the lease variation charge to the lessee; and
  - (b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

*Note* The assessment notice must show the amount of the reassessment and the amount by which the assessment has been increased or decreased (see *Taxation Administration Act 1999*, s 14 (3)).

- (4) For this division, the *Taxation Administration Act 1999*, part 10 (Objections and reviews) applies only to a reassessment of a lease variation charge under this section.

### **333 Taxation Administration Act—disclosure of information**

For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a tax officer under that Act may disclose information obtained under or in relation to the administration of this division to the territory planning authority or a person authorised by the authority to receive the information.

### **Subdivision 10.7.3.3 Deferring lease variation charges**

#### **334 Application to defer payment of lease variation charges**

- (1) An applicant for a development application for a chargeable variation of nominal rent lease may apply to the commissioner for revenue to defer the time for payment of the lease variation charge payable under section 320 in relation to the charge.

*Note* Unless payment of the lease variation charge is deferred, it must be paid before the territory planning authority executes the chargeable variation (see s 320).

- (2) The applicant must give the commissioner for revenue any information the commissioner considers necessary to decide the application.
- (3) If the applicant for the development application is not the lessee, the lessee—
- (a) may apply for the deferral instead of the applicant; or
  - (b) must sign the deferral application.

**335 Approval to defer payment of lease variation charges**

- (1) The commissioner for revenue must approve an application to defer payment of a lease variation charge under section 334 if—
  - (a) the total lease variation charge to be deferred is at least the amount determined by the Treasurer; and
  - (b) the applicant satisfies any other criteria determined by the Treasurer; and
  - (c) the applicant enters into an arrangement under the *Taxation Administration Act 1999*, section 52 (Arrangements for payment of tax) about payment of the amount of the deferred lease variation charge (a *deferral arrangement*).

*Note 1* An amount payable under a deferral arrangement is a debt owing to the Territory and is a charge on the land (see *Taxation Administration Act 1999*, s 56H).

*Note 2* A decision to approve an application and a decision to impose conditions under a deferral arrangement under s 336 are reviewable decisions (see *Taxation Administration Act 1999*, sch 1).

- (2) A determination under subsection (1) (b) is a disallowable instrument.
- (3) If the applicant for deferral is not the lessee, the lessee—
  - (a) may enter into the deferral arrangement instead of the applicant; or
  - (b) must sign the deferral arrangement.
- (4) In this section:  
*total lease variation charge*—see section 320.

**336 Conditions of deferral arrangement**

- (1) A deferral arrangement under section 335 must—
  - (a) state the amount of lease variation charge that is being deferred; and
  - (b) state that the deferred amount, and any accrued interest, must be paid to the commissioner for revenue not later than the earlier of—
    - (i) if stated in the deferral arrangement—the date a certificate of occupancy is issued for part of the building work for the development to which the chargeable variation relates; or
    - (ii) the date a certificate of occupancy is issued for all of the building work for the development to which the chargeable variation relates; or
    - (iii) 4 years from the day the chargeable variation is executed; and
  - (c) include any other condition determined under subsection (2).
- (2) The Treasurer may determine other conditions to which a deferral arrangement is subject, including the rate of interest charged on the amount payable under the arrangement.

*Note* There may be additional interest and penalty tax payable under the *Taxation Administration Act 1999*.
- (3) A determination is a disallowable instrument.
- (4) This section does not limit the *Taxation Administration Act 1999*, section 52, but any arrangement under that section about payment of a deferred lease variation charge under this subdivision must not be inconsistent with the conditions under subsection (1).

**337 Lease variation charge changed after reconsideration etc**

- (1) This section applies if—
  - (a) a person enters into a deferral arrangement in relation to a lease variation charge for the chargeable variation; and
  - (b) after the arrangement is entered into, the amount of lease variation charge (the *new amount*) payable for the chargeable variation is different to the amount of lease variation charge (the *deferred amount*) payable at the time the arrangement was entered into because of a reconsideration, reassessment or review under this Act or the *Taxation Administration Act 1999*.
- (2) The deferral arrangement applies to the new amount.
- (3) If the new amount is more than the deferred amount, the commissioner for revenue may, on application by the other party to the deferral arrangement, vary the conditions of the deferral arrangement.
- (4) If the applicant for reconsideration is not the lessee—
  - (a) the lessee—
    - (i) may apply for the variation instead of the applicant; or
    - (ii) must sign the application; and
  - (b) if the application is approved, the lessee must sign the variation.

**338 Certificate of lease variation charge and other amounts**

- (1) This section applies if there is a charge on land under the *Taxation Administration Act 1999*, section 56H (Tax payable is charge on land) in relation to a lease variation charge.

- (2) A relevant person in relation to the land to which the lease variation charge applies may apply to the commissioner for revenue for a certificate that sets out the amount of—
- (a) the amount of lease variation charge that remains unpaid at the date of the certificate; and
  - (b) any interest and penalty tax payable under this division, a deferral arrangement or the *Taxation Administration Act 1999*.
- (3) The commissioner must give the applicant the certificate.
- (4) The certificate is conclusive proof for an honest buyer for value of the matters certified.
- (5) For this section, the lease variation charge and other amounts payable are taken to be payable immediately even though any necessary time after a date or event, or the service of a notice, has not ended.
- (6) In this section:
- relevant person***, in relation to land to which a lease variation charge applies, means—
- (a) the lessee, buyer or mortgagee of the land; or
  - (b) an applicant for a development application in relation to the land, if the applicant is not the lessee.

## **Part 10.8 Rural leases**

### **Division 10.8.1 Further rural leases**

#### **339 Amount payable for further leases—rural land**

- (1) The Minister may make a determination for section 281 (1) (e) (i) or (ii) (Grant of further leases).
- (2) A determination for section 281 (1) (e) (ii) may provide that the amount payable for the grant of the lease is payable in stated instalments.
- (3) If the Minister has not made a determination under subsection (1), the amount that is taken to have been determined for a rural lease is the market value of the lease, payable as a lump sum.
- (4) A determination is a disallowable instrument.

#### **340 Term of further leases—rural land**

- (1) The Minister may make a determination for section 281 (3) (b).
- (2) However, if the national capital authority has set a maximum term for a rural lease of land in a designated area, the Minister must not determine a period under subsection (1) for a further rural lease of the land in a designated area that is longer than the maximum term set by the national capital authority.
- (3) A determination is a disallowable instrument.

## **Division 10.8.2      Exceptions for rural leases**

### **341      Definitions—div 10.8.2**

In this division:

*discharge amount*, for a rural lease, means the discharge amount worked out as prescribed by regulation.

*holding period*, for a rural lease, is a period ending—

- (a) if the discharge amount is paid—when the discharge amount is paid; or
- (b) in relation to a lease for a term of 21 years or longer—10 years after the lease commences; or
- (c) in relation to a lease for a term shorter than 21 years—at the end of  $\frac{1}{3}$  the term of the lease.

### **342      Land management agreements**

- (1) This section applies to the following:
  - (a) the grant of a rural lease;
  - (b) the grant of a further rural lease;
  - (c) the variation of a rural lease;
  - (d) the approval of an assignment or transfer of a rural lease.
- (2) The territory planning authority may only do the things mentioned in subsection (1) if—
  - (a) the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, has entered into an agreement with the Territory about managing the rural land described in the lease (a *land management agreement*); and
  - (b) the agreement is signed by the conservator of flora and fauna and the person mentioned in paragraph (a).

- (3) A land management agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.
- (4) The conservator of flora and fauna may make guidelines setting out the requirements for land management agreements.
- (5) In preparing a guideline, the conservator of flora and fauna must consult the territory planning authority.
- (6) A guideline is a notifiable instrument.

### **343 Dealings with rural leases**

- (1) This section applies to—
  - (a) a rural lease granted under section 255 (Granting leases); and
  - (b) a grant of a further lease of a rural lease.
- (2) A lessee, or anyone else with an interest in the rural lease, must not deal with the lease without the written approval of the territory planning authority.
- (3) A dealing in relation to a rural lease made or entered into without the territory planning authority's approval has no effect.
- (4) The territory planning authority must approve a dealing in relation to a rural lease if—
  - (a) either—
    - (i) the lessee's domestic partner or child is the person to whom—
      - (A) the lease is being assigned or transferred; or
      - (B) the land described in the lease, or part of it, is sublet; or
      - (C) possession of the land described in the lease, or part of it, is being given; or
    - (ii) the holding period for the lease has ended; and

- (b) for an assignment or transfer of the rural lease—the person to whom the lease is to be transferred or assigned has entered into a land management agreement in accordance with section 342.
- (5) The validity of a dealing made or entered into with the consent of the territory planning authority is not affected—
  - (a) by a defect or irregularity in relation to the giving of the consent; or
  - (b) because a ground, or all grounds, for the consent had not arisen.
- (6) To remove any doubt, a person is not required to pay a discharge amount more than once under this section in relation to a rural lease.
- (7) In this section:  
*child*, of a lessee, includes a child of the lessee's domestic partner.

#### **344 Exceptions to s 342 and s 343**

Section 342 and section 343 do not apply to the transfer or assignment of a lease, or an interest in the lease, if—

- (a) the lessee has died; or
- (b) the transfer or assignment is made under any of the following orders:
  - (i) an order of the Family Court;
  - (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (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 or assignment happens by operation of, or under, bankruptcy or insolvency.

**345 Delayed requirement to enter into land management agreement**

- (1) This section applies if a lease, part of the lease or an interest in the lease, to which section 342 or section 343 applies has been transferred or assigned to someone (the *interest holder*) who has not entered into a land management agreement for the rural land described in the lease, or part of the lease, or to which the interest relates.
- (2) The interest holder must enter into a land management agreement for the land not later than 6 months (or any extended period) after the day the lease, part of the lease or interest, is transferred or assigned to the interest holder.
- (3) The territory planning authority may, in writing, extend the period under subsection (2) for entering into a land management agreement.

**346 Certain dealings in holding period**

The territory planning authority—

- (a) must not approve the subdivision of a rural lease to which section 343 applies during the holding period; and
- (b) may approve the consolidation of a lease to which section 343 applies during the holding period.

## Part 10.9 Leases—improvements

### 347 Definitions—pt 10.9

In this part:

*improvement*, in relation to land, means—

- (a) a building or structure on or under the land; or
- (b) for land described in a rural lease—
  - (i) a building or structure on or under the land; or
  - (ii) any earthworks, planting or other work that affects the landscape of the land that is reasonably undertaken for rural purposes.

*lessee*, for a lease that has ended, whether by termination, surrender, end of term or otherwise, means the person who was the lessee under the lease when the lease ended.

*undertaken*, in relation to an improvement that is a building or structure, means the construction of the building or structure.

### 348 Application—pt 10.9

This part applies to an improvement—

- (a) undertaken in a way consistent with territory law, and with any lease over the land; or
- (b) if the improvement was undertaken or acquired by the Territory or Commonwealth—the Territory or Commonwealth has been paid or is entitled to be paid for the improvement.

**349 Renewing lessee not liable to pay for improvements**

- (1) This section applies if—
  - (a) the term of a lease expires; and
  - (b) there are improvements on the land described in the lease; and
  - (c) the lessee is granted a further lease of the land or part of it.
- (2) The lessee is not liable to pay the territory planning authority for the improvements on the land.

**350 Authority must pay for certain improvements**

- (1) This section applies if—
  - (a) the term of a lease expires; and
  - (b) there are improvements on the land described in the lease; and
  - (c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to the improvements; and
  - (d) the lessee is not granted a further lease of the land, or is granted a lease of only part of the land.
- (2) The territory planning authority must pay the lessee—
  - (a) if no further lease of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements on the land; or
  - (b) if a further lease of only part of the land is granted to the lessee—the amount decided by the authority to be the value of the improvements on the part of the land not leased.

**351 Land declared available for further lease**

- (1) This section applies if—
  - (a) the territory planning authority must pay a lessee an amount under section 350; and
  - (b) before the expiry of the term of the lease, the authority declares that the land described in the lease, or part of the land, is available for a further lease; and
  - (c) the lessee does not elect to take a further lease of the declared land within 6 months after the expiry of the term of the lease.
- (2) The amount of any expenditure reasonably incurred by the Territory, the territory planning authority or both, in relation to the grant of a lease of the land, or part of the land, to anyone else must be deducted from the amount payable to the lessee under section 350.

**352 Lease surrendered or terminated**

- (1) This section applies if—
  - (a) a lease is surrendered or terminated; and
  - (b) the lessee has fully complied with any provisions of the lease relating to the construction of a building on the land described in the lease; and
  - (c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to improvements on the land.
- (2) Section 350 and section 351 apply in relation to the lease (so far as applicable) as if the term of the lease had expired on the day the lease was surrendered or terminated.
- (3) However, the amount worked out under subsection (4) must be deducted from any amount payable under section 350 to the lessee of the surrendered or terminated lease.

- (4) The territory planning authority may work out the amount of the expenditure reasonably incurred by the Territory, the authority or both, in relation to the surrender or termination of the lease.

**353 Withdrawal of lease or part before end**

- (1) This section applies if—
- (a) before the end of the term of a lease, the territory planning authority withdraws all or part of the leased land from the lease under a provision of the lease; and
  - (b) the lessee has fully complied with any provisions of the lease relating to the construction of a building on the land; and
  - (c) there is no provision in the lease that excludes or limits the right of the lessee to payment in relation to improvements on the land.
- (2) Section 350 and section 351 apply in relation to the lease for the withdrawn land, as if the term of the lease had ended on the day the land is withdrawn.

**354 Deciding value of improvements**

- (1) If compensation is payable under this part in relation to improvements, the territory planning authority must—
- (a) as soon as practicable after the assessment day decide, in writing, the market value of the improvements on the land as at the assessment day; and
  - (b) in valuing the improvements, assume that—
    - (i) for section 350—a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease the term of which has expired; and
    - (ii) for section 351—the lease of the land had not been terminated or surrendered; and

(iii) for section 352—the leased land had not been withdrawn from the lease.

(2) In this section:

*assessment day* means—

- (a) in relation to land if the term of the lease has expired—the day the term expired; or
- (b) in relation to land a lease of which has been terminated or surrendered—the day the lease was terminated or surrendered; or
- (c) in relation to land that has been withdrawn from a lease—the day the land was withdrawn.

*market value*, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day before the assessment day on the reasonable terms and conditions that a genuine seller might require.

## **Part 10.10**                    **Surrendering and termination of leases**

### **355**            **Lessee may surrender lease**

- (1) A lessee under a lease may, at any time, with the approval of the territory planning authority, surrender the lease or part of the land described in the lease.
- (2) The territory planning authority may accept the surrendered lease or land unconditionally or subject to any condition the authority considers appropriate.
- (3) The surrender of the lease or land, does not entitle the lessee to a refund or reduction of any rent paid or owing.

### **356**            **Refund on lease surrender or termination**

- (1) This section applies if a lease is surrendered or terminated under this Act.
- (2) On application by the person whose lease has been surrendered or terminated, the territory planning authority may pay the person the amount prescribed by regulation.
- (3) A regulation may prescribe when the territory planning authority may make a payment under this section.

## Part 10.11 Declared subleases of land

### 357 Meaning of *declared land sublease*

(1) In this Act:

*declared land sublease*—

- (a) means a land sublease under a declared lease; and
- (b) includes any new land sublease granted by the lessee to the sublessee over the land under a surrendered or expired declared land sublease.

(2) In this section:

*declared lease*—see section 358 (1).

### 358 Declared leases

- (1) The Minister and another Minister may together declare a prescribed lease to be a *declared lease* if satisfied it is in the public interest.
- (2) In deciding whether it is in the public interest to make a declaration, the Ministers must consider the following:
  - (a) whether making the declaration is likely to encourage development of the land under the declared lease that has a substantial benefit to the ACT community;
  - (b) whether making the declaration would cause any disadvantage to the ACT community taking into account potential uses of the land under the declared lease that are consistent with the territory plan, whether or not those uses are authorised by the lease;
  - (c) whether any development of part of the land under the declared lease is likely to be part of a larger development and, if so, what that development will involve;

- (d) whether making the declaration is likely to encourage development of the land under the declared lease that is likely to have a substantial effect on the achievement or development of the object of the territory plan as set out in the planning strategy and any relevant district strategy that applies to the land under the declared lease;
  - (e) whether making the declaration raises a major policy issue.
- (3) A declaration is a notifiable instrument.
- (4) A declaration—
- (a) may only be amended or revoked to correct an error and if a declaration is amended, or revoked and a new declaration made, the amendment or new declaration may commence retrospectively; and
  - (b) continues to apply in relation to the lease that was a prescribed lease when the declaration was made even if the lease stops being a prescribed lease.
- (5) The territory planning authority must give the registrar-general a copy of the declaration.
- (6) In this section:
- prescribed lease* means—
- (a) a perpetual Crown lease held by the University of Canberra; or
  - (b) a perpetual Crown lease held by the Australian National University prescribed by regulation.

## **Part 10.12 Leases—building and development provisions**

### **Division 10.12.1 Definitions**

#### **359 Definitions—pt 10.12**

In this part:

*lease* includes an interest in the lease.

*transfer*, of a lease, means the transfer or assignment of the lease at law or in equity.

### **Division 10.12.2 Certificates of compliance**

#### **360 Certificates of compliance**

- (1) If a building and development provision of a lease has been fully complied with, the territory planning authority must, on application by the lessee, issue a certificate of compliance stating that the provision has been complied with.
- (2) If a building and development provision of a lease has been partly complied with, the territory planning authority may issue a certificate of compliance stating that the provision has been partly complied with.
- (3) A certificate of compliance issued under subsection (2) may be subject to a condition that the lessee provide security in a stated form against failure to complete stated outstanding works.

#### **361 Certificates of compliance—Unit Titles Act leases**

- (1) The territory planning authority must not issue a certificate of compliance under section 360 in relation to a building and development provision that a lease under the *Unit Titles Act 2001* is subject to unless satisfied under subsection (2).

- (2) The territory planning authority must be satisfied—
- (a) for every other lease in relation to the same subdivision under the *Unit Titles Act 2001* that is subject to a building and development provision—that the provision has been complied with, or a certificate of compliance has been issued under section 360 in relation to the provision; or
  - (b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 2001* is subject.
- (3) For subsection (2), an occupier is *substantially inconvenienced* by works being carried out, or that are to be carried out, if the works are being, or are to be, carried out to the common property, or another unit, in the same stage of the development as the occupier's unit.

### **Division 10.12.3 Building and development provisions—transfer of land**

#### **362 Transfer of land subject to building and development provision**

A lease that includes a building and development provision cannot be transferred unless—

- (a) the lessee has died; or
- (b) the transfer is made under—
  - (i) an order of the Family Court; or
  - (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth); or

- (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 happens by operation of, or under, bankruptcy or insolvency; or
- (d) the lessee has a certificate of compliance under section 360; or
- (e) the territory planning authority has approved the transfer under section 363 or section 364.

*Note* Consent under the *City Area Leases Ordinance 1936* may be taken to be consent under this section (see *Land (Planning and Environment) Act 1991*, s 292 (expired)).

**363 Transfer of land subject to building and development provision—approval generally**

- (1) The territory planning authority may, in writing, approve a transfer of a lease that includes a building and development provision if—
  - (a) the authority is satisfied that the proposed transferee intends to comply with the provision; and
  - (b) the proposed transferee has given any security required by the authority for compliance with the provision; and
  - (c) either—
    - (i) the proposed transferee has entered into a contract with the proposed transferor under which the proposed transfer is to build a home on the land described in the lease; or
    - (ii) the authority is satisfied that 1 or more of the matters mentioned in subsection (2) (a *special circumstance*) applies.
- (2) Each of the following is a special circumstance:
  - (a) the lessee cannot, for personal reasons prescribed by regulation, comply with the building and development provision;

- (b) the lessee cannot comply with the building and development provision for financial reasons connected with the lease;
- (c) an unforeseen major event outside the lessee's control happened after the lessee purchased the lease, and the event has had a demonstrable effect on the lessee's ability to develop the land described in the lease;
- (d) the transfer of the lease is—
  - (i) by the Territory, a territory entity, the Commonwealth or a Commonwealth entity (an *entity*); and
  - (ii) within the entity's functions; and
  - (iii) necessary because of a change in a policy of the Territory, the Commonwealth or the entity that affects at least 1 other transfer.

**Examples—unforeseen major events—par (c)**

- 1 a bushfire
- 2 a large increase in interest rates

- (3) For subsection (2) (b), a financial reason is connected with the lease unless—
  - (a) the reason is that the lessee has borrowed an amount, using the land as security, for a purpose other than to purchase or develop the land; and
  - (b) the amount is used for a purpose other than to meet an expense arising from a personal reason prescribed by regulation for subsection (2) (a).

**Examples—financial reasons not connected with lease**

- 1 expenditure on purchase of other land
- 2 purchase of luxury car
- 3 expenditure on extended overseas holiday

**364      Transfer of land subject to building and development provision—approval for first sale**

The territory planning authority may, in writing, approve a transfer of a lease that includes a building and development provision if the proposed transfer is the first sale of the land by the person who provided infrastructure on the land.

**365      Transfer of land subject to building and development provision—considerations for approval**

In deciding whether to approve a transfer under section 363 or section 364, the territory planning authority must take into consideration any matter prescribed by regulation.

**Division 10.12.4      Extension of time to complete works**

**366      Extension of time to complete works**

- (1) This section applies if—
  - (a) a lease includes a building and development provision requiring works to be completed within a stated time; and
  - (b) a certificate of occupancy has not been issued for the works; and
  - (c) the works have not been completed within the stated time.
- (2) The time to complete the works is extended automatically unless the territory planning authority—
  - (a) extends the time to complete the works to another stated time;  
or
  - (b) refuses to extend the time to complete the works.

- (3) The territory planning authority may only extend the time to complete the works to another stated time if—
- (a) if a time limit for completing the works is prescribed by regulation—the other stated time is on or before the prescribed time; or
  - (b) any of the prescribed criteria apply.
- (4) The planning and land authority may refuse to extend the time to complete the works only if—
- (a) if a time limit for completing the works is prescribed by regulation—the time limit has been reached; or
  - (b) any of the prescribed criteria apply.
- (5) An extension of time to complete works—
- (a) starts when the stated time in the building and development provision to complete the works ends; and
  - (b) ends—
    - (i) if the time to complete the works is extended for another stated period of time—on the other stated time.
- (6) In this section:
- prescribed criteria*** means—
- (a) completion of the works is in the public interest; or
  - (b) development of the land subject to the lease is required for residential or commercial purposes; or
  - (c) criteria prescribed by regulation.

**367 Extension of time to complete works—decision to end extension of time**

- (1) This section applies if the time to complete works under a lease is extended automatically under section 366 (2).
- (2) The planning and land authority may, on its own initiative, decide that the extension of time to complete the works will end at a stated time.
- (3) However, the planning and land authority must not make a decision under subsection (2) before a fee is payable in relation to an extension of time.
- (4) The planning and land authority may decide that an extension of time to complete the works will end at a stated time only if—
  - (a) if a time limit for completing the works is prescribed by regulation—the stated time is on or before the prescribed time; or
  - (b) any of the prescribed criteria apply.
- (5) The period of extension ends on the stated time.
- (6) In this section:

*prescribed criteria* means—

- (a) completion of the works is in the public interest; or
- (b) development of the land subject to the lease is required for residential or commercial purposes; or
- (c) criteria prescribed by regulation.

**368 Extension of time to complete works—required fee**

- (1) This section applies if the time to complete works is extended under section 366 or section 367.

- (2) The lessee must pay the territory planning authority the amount (the **required fee**) for each year, or part year, of an extension of time to complete works, worked out as follows:

$$A \times \frac{D}{365} \times B$$

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

- (3) The territory planning authority must, at the end of each year, or part year of the period of extension, give the lessee written notice of the required fee payable for the year or part year.
- (4) The required fee payable for a year or part year must be paid on or before the payment day stated in the notice.
- (5) In this section:

**A** is the figure prescribed by regulation for the relevant year of the extension of time.

**B** is the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land for the year to which the extension of time applies.

**D** is the lesser of—

- (a) 365; and
- (b) the number of days in the year to which the extension of time applies.

**period of extension** means the period of extension under section 366 or section 367.

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**Division 10.12.5      Reduction or waiver of required fee  
for extension of time to complete  
works**

**369      Definitions—div 10.12.5**

In this division:

*required fee*, for an extension of time to complete work—see section 368 (2).

**370      Application for reduction or waiver for hardship**

- (1) A lessee may apply to the territory planning authority to reduce or waive a required fee for an extension of time to complete works if—
  - (a) the lessee is an individual; and
  - (b) any of the following (a *hardship reason*) applies:
    - (i) the lessee, or someone on whom the lessee is financially dependent, has a medical condition that prevents full-time employment;
    - (ii) the lessee, or someone on whom the lessee is financially dependent, is unemployed;
    - (iii) the lessee, or someone on whom the lessee is financially dependent, is bankrupt or personally insolvent;
    - (iv) someone on whom the lessee is financially dependent has died; and
  - (c) the reduction or waiver is necessary because of the hardship reason.
- (2) However, a lessee must not apply for a reduction or waiver of a required fee—
  - (a) in relation to more than 1 extension of time to complete works at a time; or

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- (b) if the lessee has received a reduction or waiver of a required fee for a hardship reason in relation to another lease within 5 years of making the application.
- (3) The application must—
  - (a) be in writing; and
  - (b) be accompanied by evidence of the hardship reason.
- (4) In this section:  
*medical condition* includes a physical or mental illness or disability.

**371 Decision on application for reduction or waiver for hardship**

- (1) On application under section 370, the territory planning authority must—
  - (a) reduce or waive the required fee; or
  - (b) refuse to reduce or waive the required fee.
- (2) In deciding an application, the territory planning authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The territory planning authority may reduce or waive a required fee only if—
  - (a) the authority is satisfied that—
    - (i) a hardship reason applies to the lessee; and
    - (ii) the reduction or waiver is necessary because of the hardship reason; and
  - (b) the lessee has not received a reduction or waiver of a required fee for an extension of time to complete works for a hardship reason in relation to another lease within 5 years of making the application.

- (4) In satisfying itself under subsection (3) (a), the territory planning authority may, in writing, ask the applicant for further evidence or other information in relation to the application.
- (5) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—
  - (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
  - (b) in any other case—within 10 working days.
- (6) In deciding to reduce a required fee for an extension of time to complete the works, the territory planning authority may allow the reduced fee to be paid in instalments.
- (7) In this section:  
*hardship reason*—see section 370 (1) (b).

**372 Application for waiver for lease transferred in special circumstances**

- (1) A lessee, or if the lessee has died, the estate of the lessee, may apply to the territory planning authority to waive a required fee for an extension of time to complete works if the lease was transferred in any of the following circumstances (a *special circumstance*):
  - (a) the lessee has died;
  - (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;

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- (c) the transfer happened by operation of, or under, bankruptcy or insolvency;
  - (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.
- (2) The application must—
- (a) be in writing; and
  - (b) be accompanied by evidence of the special circumstance.

**373 Decision on application for waiver for lease transferred in special circumstances**

- (1) On application under section 372, the territory planning authority must—
- (a) waive the required fee; or
  - (b) refuse to waive the required fee.
- (2) In deciding an application, the territory planning authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The territory planning authority may waive a required fee only if satisfied that the lease to which the application applies was transferred in special circumstances.
- (4) In satisfying itself under subsection (3), the territory planning authority may, in writing, ask for further evidence or other information in relation to the application. (5) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—
- (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
  - (b) in any other case—within 10 working days.

(5) In deciding to waive a required fee, the period for which the waiver is to apply must not be longer than the period for completing the works under the building and development provision when the lease to which the application relates was granted.

(6) In this section:

*special circumstance*—see section 372 (1).

### **374 Application for waiver for external reason**

(1) A lessee may apply to the territory planning authority to waive of a required fee for an extension of time for work if any of the following reasons (an *external reason*) applies to the lessee:

(a) the lessee is unable to complete the work required under the building and development provision for the lease because—

- (i) road or traffic infrastructure to be provided by the Territory is not complete; or
- (ii) a sewerage, electricity, water or gas service to be provided by the Territory is not installed or connected;

(b) the lessee is unable to complete the work required under the building and development provision for the lease because of a delay in obtaining a statutory approval required for the work, other than a delay caused in whole or in part by—

- (i) the lessee; or
- (ii) a decision to refuse, or impose a condition on, a statutory approval required for the work.

**Example—delay not caused by par (b) (i) or (ii)**

an application for review of a decision on a development application is made by a third party

**Example—delay caused by lessee—par (b)**

a development application does not comply with all of the requirements in s 123

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- (2) The application must—
  - (a) be in writing; and
  - (b) state the period of extension of time for which the lessee seeks the waiver; and
  - (c) be accompanied by evidence of the external reason.

**375 Decision on application for waiver for external reason**

- (1) On application under section 374, the territory planning authority must—
  - (a) waive the required fee; or
  - (b) refuse to waive the required fee.
- (2) In deciding an application, the territory planning authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The territory planning authority may waive a required fee only if satisfied that an external reason applies to the lessee.
- (4) In satisfying itself under subsection (3), the territory planning authority may, in writing, ask for further evidence or other information in relation to the application.
- (5) The territory planning authority may refuse an application if the lessee does not give the authority the requested evidence or other information—
  - (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
  - (b) in any other case—within 10 working days.
- (6) In this section:
 

*external reason*—see section 374 (1).

## **Part 10.13 Licences for unleased land**

### **376 Criteria for granting licences for unleased land**

- (1) The Executive may determine criteria for the granting of licences to occupy or use unleased land.
- (2) A determination is a disallowable instrument.

### **377 Applications for licences for unleased land**

- (1) A person may apply to the territory planning authority for a licence to occupy or use an area of unleased territory land.
- (2) An application must—
  - (a) state—
    - (i) the land in relation to which the licence is sought; and
    - (ii) the period for which the licence is sought; and
    - (iii) the purposes for which it is proposed that the land should be used under the licence; and
  - (b) be accompanied by the written approval of the custodian of the land to the grant of the licence.

### **378 Decision on licence applications for unleased land**

- (1) On receiving an application under section 377, the territory planning authority may grant the applicant a licence to occupy or use the land, and any building or structure on the land, stated in the application for the purposes and period stated in the application.
- (2) However, the territory planning authority must not grant the licence unless the conservator of flora and fauna agrees in writing.

**379 Licences—form etc**

A licence granted under section 378—

- (a) must be in writing; and
- (b) must state the period for which it is granted; and
- (c) applies to the person to whom it is granted; and
- (d) is subject to any conditions stated in the licence.

**380 Licences—when not needed**

A person need not hold a licence granted under section 378 to occupy or use an area of unleased territory land if—

- (a) the person holds a sign approval, work approval, or public unleased land permit, to use the area under the *Public Unleased Land Act 2013*; and
- (b) the person uses the area in accordance with the approval or permit; and
- (c) for an occupation or use that requires development approval—
  - (i) the occupation or use has development approval; and
  - (ii) if the occupation or use has development approval subject to a condition—the person is complying with the condition.

## Part 10.14 Leases and licences— miscellaneous

### 381 Reservation of minerals

A reservation of minerals contained in a lease must be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

### 382 How land may be recovered if former lessee or licensee in possession

- (1) This section applies if—
  - (a) a person who has been a lessee remains in possession of the land after—
    - (i) the term of the lease has ended; or
    - (ii) the lease has been surrendered or ended; or
  - (b) a person who has been a licensee remains in possession of the land after—
    - (i) the term of the licence has ended; or
    - (ii) the licence has been surrendered or ended.
- (2) The territory planning authority may, by written notice to the person (the *unlawful occupier*), demand that the unlawful occupier give possession of the land to the authority within the reasonable period stated in the demand.
- (3) If the demand is not complied with—
  - (a) the territory planning authority may apply to the Magistrates Court for an order that possession of the land be given to the authority; and

(b) the court may issue a warrant authorising a police officer, within 20 working days after the day the warrant is issued, to enter the land with any reasonable assistance or force required to give possession of the land to the authority.

(4) In this section:

*licence* means a licence granted by the Territory, the Commonwealth or the territory planning authority.

### **383 Conversion of Commonwealth leases**

(1) This section applies if—

- (a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1), that specified land in the Territory is national land, is amended or repealed; and
- (b) because of the amendment or repeal of the declaration, the land stops being national land; and
- (c) a lease granted under a prescribed law, or over all or part of the land, is in force immediately before the amendment or repeal of the declaration.

(2) The lease is taken to be granted under this Act on the amendment or repeal of the declaration.

(3) In this section:

*prescribed law* means—

- (a) any of the following laws in effect before the law was repealed:
  - (i) the *Leases Ordinance 1918*;
  - (ii) the *City Area Leases Ordinance 1936*; or
  - (iii) a law mentioned in paragraph (a) as in effect under the *National Land Ordinance 1989* (Cwlth).

## Chapter 11 Public land

### Part 11.1 Management of public land

#### 384 Recommendations to authority about public land

- (1) This section applies to an area of unleased territory land.
- (2) The custodian of the area, or the conservator of flora and fauna, may, in writing, recommend to the territory planning authority that the territory plan be amended to—
  - (a) designate the area as public land and reserve it for a purpose mentioned in section 385; or
  - (b) in relation to an area already designated in the plan as public land—
    - (i) vary the boundaries of the area; or
    - (ii) vary the purpose for which the area is reserved; or
    - (iii) provide that the area is no longer public land.

*Note* *Custodian*, in relation to land—see the dictionary.

#### 385 Reserved areas of public land

Public land may be reserved in the territory plan, whether in the map or elsewhere in the plan, for any of the following purposes:

- (a) a wilderness area;
- (b) a national park;
- (c) a nature reserve;
- (d) a special purpose reserve;
- (e) an urban open space;
- (f) a cemetery or burial ground;

- (g) the protection of water supply;
- (h) a lake;
- (i) a sport and recreation reserve;
- (j) a heritage area.

**386 Management of public land**

The custodian of an area of public land must manage the land in accordance with—

- (a) the management objectives applying to the area; and
- (b) the public land management plan for the area.

**387 Management objectives for public land**

- (1) The *management objectives* for an area of public land reserved for a particular purpose are—
  - (a) the management objectives stated in schedule 4, part 4.2 in relation to areas of land reserved for the purpose; and
  - (b) the management objectives determined by the conservator of flora and fauna under subsection (2).
- (2) The conservator of flora and fauna may determine management objectives for an area of public land reserved for a purpose mentioned in schedule 4, part 4.2.
- (3) A determination of management objectives is a disallowable instrument.
- (4) If there is an inconsistency between 2 management objectives stated in schedule 4 in relation to an area of public land, the objective appearing earlier in the schedule prevails to the extent of the inconsistency.

- (5) If there is an inconsistency between a management objective stated in schedule 4 and a management objective determined by the conservator of flora and fauna in relation to an area of public land, the objective in the schedule prevails to the extent of the inconsistency.

## Part 11.2 Management plans for public land

### Division 11.2.1 Public land management plans

#### 388 Meaning of *public land management plan*

- (1) In this Act:

*public land management plan*, for an area of public land, means—

- (a) if the area is a reserve—a reserve management plan for the area;  
or  
(b) if the area is not a reserve—a land management plan for the area.

*Note 1* Reserves include wilderness areas, national parks, nature reserves, catchment areas and other prescribed areas of public land.

*Note 2* Public land that is not a reserve may include special purpose reserves, urban open spaces, cemeteries, lakes, sport and recreation reserves and heritage areas.

- (2) In this section:

*reserve*—see the *Nature Conservation Act 2014*, section 169.

*reserve management plan*, for a reserve—see the *Nature Conservation Act 2014*, section 175.

*Note* Under the *Nature Conservation Act 2014*, s 177, the custodian of a reserve must follow the process in that Act for preparing a reserve management plan for the reserve.

### Division 11.2.2 Land management plans

#### 389 Draft land management plan—custodian to prepare

- (1) The custodian of an area of public land must prepare a document (a *draft land management plan*) for the area that—  
(a) identifies the area; and

- (b) describes how the management objectives for the area are to be implemented or promoted in the area.
- (2) In preparing a draft land management plan, the custodian must consult—
  - (a) the conservator of flora and fauna; and
  - (b) the territory planning authority; and
  - (c) the environment protection authority.

**390 Draft land management plan—public consultation**

- (1) If the custodian of an area of public land prepares a draft land management plan for the area, the custodian must also prepare a notice (a *consultation notice*) about the draft plan.
- (2) If the custodian publishes a consultation notice about the draft plan—
  - (a) anyone may give a written submission to the custodian about the draft plan; and
  - (b) submissions may be given to the custodian within 6 weeks after the day the consultation notice is published on the authority website (the *consultation period*); and
  - (c) a person making a submission may withdraw the submission at any time in writing.
- (3) A consultation notice must—
  - (a) state the matters mentioned in subsection (2) (a) to (c); and
  - (b) include the draft plan; and
  - (c) be published on the authority website.

- (4) If the custodian receives a submission about the draft plan, the custodian must make a copy of the submission available on the authority website until—
- (a) the Minister approves or rejects the draft land management plan; or
  - (b) the draft land management plan is withdrawn.

**391      Draft land management plan—revision and submission to Minister**

- (1) If the consultation period for a draft land management plan has ended, the custodian of the area of public land must—
- (a) consider any submissions received during the consultation period; and
  - (b) make any revisions to the draft plan that the custodian considers appropriate.
- (2) The custodian must then submit the draft plan to the Minister for approval.
- (3) The submission must be accompanied by a report—
- (a) setting out the issues raised in any submissions given to the custodian during the consultation period for the draft plan; and
  - (b) if the conservator of flora and fauna or the territory planning authority made a submission during the consultation period recommending a change to the draft plan and the custodian did not revise the draft plan to incorporate the change—explaining why the custodian did not make the recommended change.

**392      Draft land management plan—referral to Legislative Assembly committee**

- (1) This section applies if the custodian of an area of public land submits a draft land management plan to the Minister for approval.

- (2) The Minister must, not later than 5 working days after the day the Minister receives the draft plan, refer the following to an appropriate committee of the Legislative Assembly:
  - (a) the draft plan;
  - (b) the report mentioned in section 391 (3).
- (3) The committee must consider the draft plan and report and either—
  - (a) recommend that the Minister approves the draft plan; or
  - (b) make another recommendation about the draft plan.
- (4) The committee must tell the Minister about the recommendation and refer the draft plan back to the Minister.

**393 Draft land management plan—committee to report**

- (1) This section applies if the Minister has referred a draft land management plan to a committee of the Legislative Assembly under section 392.
- (2) After the committee refers the draft plan back to the Minister, the Minister must take action under section 394 in relation to the draft plan.
- (3) If the committee has not referred the draft plan back to the Minister within 6 months after the day the draft plan was given to the committee, the Minister may take action under section 394 in relation to the draft plan.

**394 Draft land management plan—Minister to approve, return or reject**

- (1) This section applies if—
  - (a) a committee of the Legislative Assembly refers a draft land management plan back to the Minister under section 392 (4); or
  - (b) the Minister decides, under section 393 (3), to take action under this section.

- (2) If the committee has made a recommendation about the draft plan, the Minister must consider the recommendation.
- (3) The Minister must, not later than the required time—
  - (a) approve the draft plan; or
  - (b) return the draft plan to the custodian and direct the custodian to take 1 or more of the following actions in relation to it:
    - (i) if the committee has made a recommendation about the draft plan—consider the recommendation;
    - (ii) carry out stated further consultation;
    - (iii) consider a revision suggested by the Minister;
    - (iv) revise the draft plan in a stated way; or
  - (c) reject the draft plan.
- (4) In this section:

***required time*** means 45 working days after—

  - (a) if subsection (1) (a) applies—the day the committee tells the Minister about the recommendation under section 392 (4); or
  - (b) if subsection (1) (b) applies—the end of the 6 month period mentioned in section 393 (3); or
  - (c) if section 396 applies—the day the custodian resubmits the plan to the Minister.

**395 Land management plan—effect of Minister’s approval**

- (1) A draft land management plan approved by the Minister under section 394 (3) (a) or section 398 (3) (a) is a *land management plan*.
- (2) A land management plan is a disallowable instrument.

**396 Draft land management plan—return to custodian**

- (1) This section applies if the Minister returns a draft plan to a custodian with a direction under section 394 (3) (b).
- (2) The custodian must—
  - (a) give effect to the direction; and
  - (b) resubmit the draft plan to the Minister for approval.
- (3) The Minister must make a decision about the draft plan in accordance with section 394 (3).

**397 Draft land management plan—rejection by Minister**

- (1) If the Minister rejects a draft land management plan under section 394 (3) (c), the Minister must prepare a notice (a *rejection notice*) stating that the draft plan is rejected.
- (2) A rejection notice must be published on the authority website.

**398 Land management plan—minor amendments**

- (1) This section applies if—
  - (a) a land management plan for an area of public land is in force (the *existing plan*); and
  - (b) the custodian of the land considers that minor amendments to the existing plan are appropriate.

- (2) The custodian—
- (a) may prepare a new draft land management plan for the area, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the requirements in this part; and
  - (c) may submit the new draft plan to the Minister for approval.
- (3) If the custodian submits a new draft land management plan to the Minister for approval, the Minister must—
- (a) approve the new draft plan; or
  - (b) reject the new draft plan.

*Note* An amended land management plan is a land management plan for the purposes of s 394.

- (4) In this section:

***minor amendment***, of a land management plan for an area of public land, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

**Examples**

- 1 minor correction to improve effectiveness
- 2 omission of something redundant
- 3 technical adjustment to improve efficiency

**399 Land management plan—custodian to implement**

If a land management plan is in force for an area of public land, the custodian of the land must take reasonable steps to implement the plan.

**400 Land management plan—review**

- (1) This section applies if a land management plan is in force for an area of public land.
- (2) The custodian of the land must report to the Minister about the implementation of the plan at least once every 5 years.
- (3) The custodian of the land must review the plan—
  - (a) every 10 years after the plan commences; and
  - (b) at any other time requested by the Minister.
- (4) However, the Minister may extend the time for conducting a review under subsection (3) (a).
- (5) In carrying out a review, the custodian must consult the conservator of flora and fauna.

## Part 11.3                      Public land—leases and miners' rights

### 401                      Leases of public land

- (1) This section applies to—
  - (a) public land; and
  - (b) future public land during the defined period.
- (2) The territory planning authority may grant a lease of an area of public land only if—
  - (a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and
  - (b) the area is not reserved under the plan as a wilderness area.
- (3) The territory planning authority may, during the defined period, grant a lease of an area of future public land only if—
  - (a) the lease is recommended, in writing, by the conservator of flora and fauna and the custodian of the land; and
  - (b) the area is not proposed to be reserved as a wilderness area in the draft major plan amendment designating the land to become public land.

- (4) In this section:

*defined period*, in relation to future public land, means the period of interim effect under section 61 of the draft major plan amendment designating the land to become public land.

*future public land* means land designated to become public land in a draft major plan amendment publicly notified under section 60.

### 402                      Miners' rights in relation to public land

A miner's right must not be granted in relation to public land.



- (c) the person is negligent about whether the development requires development approval.

Maximum penalty: 500 penalty units.

- (4) A person commits an offence if—
  - (a) the person undertakes development without development approval; and
  - (b) the development requires development approval.

Maximum penalty: 60 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant proves—
  - (a) that before undertaking the development the defendant took reasonable steps to find out whether the development required development approval; or
  - (b) that—
    - (i) an exemption assessment D notice was issued before, but not more than 3 months before, the day the defendant started to undertake the development, stating that the development was an exempt development under section 141; and
    - (ii) the defendant was not aware, and could not reasonably have been aware, that the notice was incorrect; or
  - (c) that—
    - (i) before the day the defendant started to undertake the development, a building approval or approval of amended building work plans under the *Building Act 2004* for which development approval was required was issued; and

- (ii) the building work was carried out when the building approval, or the approval for the amended plans, was in force; and
- (iii) the defendant was not aware, and could not reasonably have been aware, that the building approval, or the approval of the amended plans, should not have been issued without development approval.

*Note* See the *Building Act 2004*, s 28 (for issuing of building approvals) and s 32 (for amendment of approved plans).

- (7) To remove any doubt, this section does not apply to development that is lawful because of section 407 or section 408.

*Note* A person also commits an offence if the person occupies or uses, or allows someone else to occupy or use, a building, or part of a building, if a certificate of occupancy has not been issued for the building or part of the building (see *Building Act 2004*, s 76 (1)).

#### **404 Offence to undertake prohibited development**

- (1) A person commits an offence if—
- (a) the person undertakes development; and
  - (b) the development is prohibited; and
  - (c) the person knows that the development is prohibited.

Maximum penalty:

- (a) for an individual—2 000 penalty units; or
  - (b) for a corporation—2 500 penalty units.
- (2) A person commits an offence if—
- (a) the person undertakes development; and
  - (b) the development is prohibited; and

- (c) the person is reckless about whether the development is prohibited.

Maximum penalty: 1 000 penalty units.

- (3) A person commits an offence if—
  - (a) the person undertakes development; and
  - (b) the development is prohibited; and
  - (c) the person is negligent about whether the development is prohibited.

Maximum penalty: 500 penalty units.

- (4) A person commits an offence if—
  - (a) the person undertakes development; and
  - (b) the development is prohibited.

Maximum penalty: 60 penalty units.

*Note* Section 153 and s 405 disapply s (1) to (4) in certain cases.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) To remove any doubt, this section does not apply to development that is lawful—
  - (a) because of section 405, section 407 or section 408; or
  - (b) because it is in accordance with a development approval granted on an application mentioned in section 153 (2).

#### **405 Development authorised by approval before prohibition**

- (1) This section applies if—
  - (a) a person undertakes development; and
  - (b) the development is in accordance with a development approval given in relation to the development; and

(c) the development becomes prohibited.

- (2) Section 404 (1) to (4) does not apply to the development if it is undertaken in accordance with the development approval, despite any other provision of this Act.

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

**406 Offence to develop other than in accordance with approval**

- (1) A person commits an offence if—
- (a) the person undertakes development; and
  - (b) the development contravenes the development approval for the development.

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.

*Note* A person contravenes an approval if the person contravenes a condition of the approval.

**407 Development previously exempt—non-use**

- (1) This section applies if—
- (a) a development, other than a development that is a use, is exempt from requiring development approval under a regulation; and
  - (b) a person undertakes, or begins, the development; and
  - (c) after the person undertakes or begins the development, the development stops being exempt because of an amendment of this Act.
- (2) The development is lawful despite any other provision of this Act.

**408 Development previously exempt—use**

- (1) This section applies to a use of land, or of a building or structure on land, if the use—
- (a) was an exempt development when it began; and
  - (b) is authorised by—
    - (i) a lease (the *affected lease*) for the land; or
    - (ii) a licence under this Act; or
    - (iii) a public unleased land permit under the *Public Unleased Land Act 2013*; or
    - (iv) a sign approval or work approval under the *Public Unleased Land Act 2013*; or
    - (v) section 268 (Use of land for leased purposes); and
  - (c) stops being exempt because of an amendment of this Act.
- (2) Also, this section applies in relation to a use of land, or of a building or structure on land, even if 1 or more of the following apply in relation to the use:
- (a) the use is not continuous;
  - (b) someone deals with the affected lease;
  - (c) a further lease is granted for the affected lease on application under section 280 (Grant of further leases), whether the grant happens immediately after the expiry of the affected lease or otherwise.
- Note Deal*, with a lease—see the dictionary.
- (3) However, this section does not apply in relation to the use of land, or of a building or structure on land, if—
- (a) the affected lease is surrendered (other than under section 280) or terminated; or

- (b) the use is authorised by a relevant authorisation and the relevant authorisation ends—
  - (i) whether on expiry or otherwise; and
  - (ii) even if renewed; or
- (c) the affected lease expires and no application is made under section 280 for a further lease.

*Note* A person may apply for the grant of a further lease not later than 6 months after the expiry of the affected lease (see s 280 (1) (c)).

- (4) The use of the land, building or structure is lawful while authorised by the lease, licence, permit, approval or section 268, despite any other provision of this Act.

- (5) In this section:

*relevant authorisation* means—

- (a) a licence under this Act; or
- (b) a public unleased land permit under the *Public Unleased Land Act 2013*; or
- (c) a sign approval or work approval under the *Public Unleased Land Act 2013*.

#### **409 Development applications for development undertaken without approval**

- (1) This section applies if—
  - (a) a development has been undertaken; and
  - (b) development approval was required for the development; and
  - (c) there was no development approval for the development.
- (2) If the development becomes an exempt development, the development is taken to have been an exempt development since the development started.

- (3) The lessee of the land (or for land under a land sublease, the sublessee) where the development was carried out may apply for development approval for the development.
- (4) The territory planning authority must treat the application for development approval as if the development was not undertaken, subject to schedule 2, item 7 (Information and documents for certain development applications).
- (5) A proceeding under this part is not affected by the following:
  - (a) subsection (2), whether or not the proceeding starts before the development becomes exempt;
  - (b) the making of an application under subsection (3), or the approval of the application, whether or not the proceeding starts before the application is made or approved.

#### **410 Victimization**

- (1) A person (the *first person*) commits an offence if the first person causes or threatens to cause a detriment to someone else (the *other person*) because—
  - (a) the other person has made a complaint under part 12.2 (Complaints about controlled activities); or
  - (b) the first person believes that the other person intends to make a complaint under part 12.2 .

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person threatens or intimidates someone else with the intention of causing the other person—
  - (a) not to make a complaint under part 12.2; or
  - (b) to withdraw a complaint made under part 12.2 .

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Part 12.2                      Complaints about controlled activities

### 411                      Definitions—pt 12.2

In this part:

*complainant*—see section 414 (1) (b).

### 412                      Meaning of *controlled activity*

In this Act:

*controlled activity* means—

- (a) an activity mentioned in Schedule 5; or
- (b) an activity, including an activity under another Act, prescribed by regulation.

### 413                      Complaints about controlled activities

- (1) Anyone who believes a person is carrying out, or has carried out, a controlled activity may complain to the territory planning authority.
- (2) The following are taken to be complaints made under this section:
  - (a) notice of a contravention given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work);
  - (b) a complaint referred to the territory planning authority under the *Construction Occupations (Licensing) Act 2004*, section 123 (Action after investigating complaint).

**414 Form of complaints**

- (1) A complaint must—
  - (a) be in writing; and
  - (b) include the name and address of the person making the complaint (the *complainant*); and
  - (c) identify the conduct complained about.
- (2) However, the territory planning authority—
  - (a) may accept a complaint for consideration even if it does not comply with subsection (1); and
  - (b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).
- (3) If the territory planning authority accepts a complaint that is not in writing, the authority must ask the complainant to put the complaint in writing unless there is a good reason for not doing so.

**415 Withdrawal of complaints**

- (1) A complainant may withdraw their complaint at any time by written notice to the territory planning authority.
- (2) If the complainant withdraws the complaint, the territory planning authority—
  - (a) need take no additional action on the complaint; but
  - (b) may continue to act on the complaint if the authority considers it appropriate to do so.
- (3) Also, if the complainant withdraws the complaint, the territory planning authority need not report to the complainant under section 419 (Action after investigating complaints).

#### **416 Additional information about complaints**

- (1) The territory planning authority may require a complainant to give the authority additional information about the complaint at any time.

##### **Examples**

- 1 whether a complaint is about controlled activity that was, or is being, carried out
  - 2 the grounds on which the complainant alleges a controlled activity has happened or is happening
- (2) The territory planning authority must give the complainant a reasonable period of time within which the requirement is to be satisfied and may extend that period.
- (3) If the complainant does not comply with the requirement, the territory planning authority may, but need not, take additional action in relation to the complaint.
- (4) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

#### **417 Investigation of complaints**

The territory planning authority must take reasonable steps to investigate each complaint made in accordance with section 414 (Form of complaints).

*Note* A person may be required to give information to the authority for the administration or enforcement of this Act (see s 476).

#### **418 Use of information relating to complaints**

The territory planning authority may use information in a complaint, or information found during the investigation of a complaint, in deciding whether to take any action under this chapter.

*Note* The territory planning authority must notify a complainant about the action it decides to take (see s 419 (2) (b)).

**419 Action after investigating complaints**

- (1) After investigating a complaint made under this part, the territory planning authority must do 1 or more of the following:
- (a) if satisfied that no further action is necessary in relation to the complaint—give the complainant notice under subsection (2) (b) and take no further action in relation to the complaint;
  - (b) if satisfied that the complaint can be more appropriately dealt with by another entity—refer the complaint to the other entity under section 422;

**Examples**

- 1 the complaint is about a potential fire hazard and would be better dealt with by the emergency service
  - 2 the complaint is about a leasehold that is unclean because leftover chemicals are stored on it and would be better dealt with by the environment protection authority
- (c) if satisfied that the complaint contains evidence that suggests that a disciplinary ground exists in relation to a construction occupations licensee—refer the complaint to the construction occupations registrar;
  - (d) if the authority requires information under section 476—give someone an information requirement;
  - (e) take action under part 12.3 (Controlled activity orders) in relation to the conduct complained about;
  - (f) if grounds exist under a regulation to issue an infringement notice in relation to the conduct complained about—issue an infringement notice in relation to the conduct;
  - (g) if satisfied that it would be appropriate for rectification work to be done—direct a person to carry out rectification work under part 12.4 (Rectification work) in relation to the conduct complained about;

- (h) if satisfied that it would be appropriate to give a prohibition notice in relation to the conduct complained about—give a prohibition notice under part 12.5 (Prohibition notices) in relation to the conduct;
  - (i) if satisfied that there are grounds for issuing an injunction in relation to the conduct complained about—apply to the Supreme Court for an injunction under part 12.6 (Injunctions and termination of leases and licences) in relation to the conduct;
  - (j) take action under part 12.6 to terminate a lease or licence;
  - (k) take any other action the authority considers appropriate.
- (2) The territory planning authority must—
- (a) consider any guidelines under section 420 when taking action under this section; and
  - (b) give the complainant written notice about what the authority proposes to do under subsection (1).
- (3) The territory planning authority may take action under subsection (1) (c) to (j) even if—
- (a) the authority is not acting on a complaint; or
  - (b) the complaint is withdrawn.
- (4) In this section:
- construction occupations licensee***—
- (a) means a person licensed under the *Construction Occupations (Licensing) Act 2004*; and
  - (b) in relation to conduct, includes a person licensed under that Act when the conduct happened.
- disciplinary ground***, in relation to a construction occupations licensee—see the *Construction Occupations (Licensing) Act 2004*, section 54.

*rectification work*—see section 436.

**420 Guidelines for taking action on complaints**

The territory planning authority may make guidelines about the action that may be taken in relation to complaints under this part and the circumstances in which the action may be taken.

**421 No additional action on complaints under s 419 (1) (a)**

- (1) In considering whether no additional action is necessary in relation to a complaint, the territory planning authority must consider whether the complaint—
- (a) lacks substance; or
  - (b) is frivolous, vexatious or dishonest; or
  - (c) has been adequately dealt with.

**Examples—par (a)**

- 1 the conduct complained about is not a controlled activity
- 2 the conduct complained about has development approval
- 3 the conduct complained about did not happen

*Note* The authority may take no further action on a complaint for other reasons, eg if the complainant has not complied with a requirement made under s 416 (see s 416 (3)) or if the authority considers it is appropriate after considering the guidelines under s 420.

- (2) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

**422 Referral of complaints under s 419 (1) (b)**

The territory planning authority refers a complaint to another entity by giving the other entity—

- (a) a copy of the complaint or a summary of the information provided in the complaint; and
- (b) any information relating to the complaint that the authority considers may be helpful to the entity; and
- (c) a statement about why the authority considers that the entity is more appropriate to deal with the complaint than the authority.

## Part 12.3                      Controlled activity orders

### 423                      Definitions—pt 12.3

In this part:

*ongoing controlled activity order*—see section 428 (1).

*show cause notice*—see section 425 (1).

### 424                      Controlled activity orders [old 350 (1)]

The territory planning authority may make an order (a *controlled activity order*) directed to 1 or more of the following:

- (a) the lessee or occupier of premises where a controlled activity was, is being, or will be, carried out;
- (b) anyone by whom or on whose behalf a controlled activity was, is being, or will be, carried out.

### 425                      Notice of intention to make controlled activity order

- (1) If the territory planning authority proposes to make a controlled activity order, the authority must give written notice (a *show cause notice*) of the authority's intention to make the order to—
  - (a) each person to whom the order will be directed; and
  - (b) if the order will not be directed to the lessee or occupier of the premises in relation to which the order applies—the lessee or occupier of the premises.
- (2) The show cause notice must—
  - (a) describe the controlled activity to which the notice relates; and
  - (b) name each person to whom the order will be directed; and
  - (c) if the controlled activity is the subject of a complaint made under part 12.2—attach a copy of the complaint.

- (3) Also, the show cause notice—
  - (a) must state that a recipient of the notice may, not later than 10 working days after the day the territory planning authority gives the notice, give the authority written reasons explaining why the order should not be made; and
  - (b) may include any other information that the authority considers appropriate.
- (4) A recipient of a show cause notice may apply to the territory planning authority for an extension of the time mentioned in subsection (3) (a).
- (5) The territory planning authority may extend the time mentioned in subsection (3) (a) if satisfied that it would be appropriate having regard to the reasons given in the application.

#### **426 Inaction after show cause notice**

- (1) This section applies if—
  - (a) the territory planning authority gives a show cause notice under section 425; and
  - (b) the authority has not made a decision under section 427 in relation to the controlled activity mentioned in the notice within the time prescribed by regulation.
- (2) The territory planning authority is taken to have decided not to make a controlled activity order.
- (3) If the territory planning authority decides to make a controlled activity order after the time prescribed by regulation, the authority must give a new show cause notice for the controlled activity.

**427 Decision on proposed controlled activity order**

- (1) Before deciding whether to make a controlled activity order, the territory planning authority must—
  - (a) give each recipient of the show cause notice the opportunity to respond to the substance of the order; and
  - (b) consider any reasons given in accordance with the show cause notice for the controlled activity.
- (2) A controlled activity order may be directed to either or both of the following:
  - (a) a person named in the show cause notice as a person to whom the order would be directed;
  - (b) if the territory planning authority considers that the order would be more appropriately directed to someone else mentioned in section 425 (1) (b)—that person.

**428 Ongoing controlled activity orders**

- (1) The territory planning authority may make a controlled activity order (an *ongoing controlled activity order*) that—
  - (a) remains in force for a stated period of 2 or more years, but not longer than 5 years; and
  - (b) cannot be revoked on application by the person to whom the order is directed.
- (2) However the territory planning authority must not make an ongoing controlled activity order unless—
  - (a) the controlled activity to which the order relates is failing to keep a leasehold clean; and
  - (b) the order is directed to a named person; and

- (c) each person to whom the order is directed has contravened 2 or more controlled activity orders relating to failing to keep the leasehold clean; and
- (d) at least 2 of the contraventions by each person happened in the period of 5 years ending on the day the ongoing controlled activity order is made.

**Example—order not directed to named person**

an order directed to the occupier of the premises at 123 Licorice Street

**429 Content of controlled activity orders**

- (1) A controlled activity order must state the following:
  - (a) that it is a controlled activity order under this Act made by the territory planning authority;
  - (b) the name of each person to whom the order is directed;
  - (c) the terms of the order and the address of the premises in relation to which the order applies;
  - (d) the grounds on which the order is made;
  - (e) when the order takes effect;
  - (f) for an order other than an ongoing controlled activity order—if appropriate—
    - (i) the period for compliance with the order; and
    - (ii) when the order ends (including, for example, on the happening of an event stated in the order);
  - (g) for an ongoing controlled activity order—
    - (i) when the order ends; and
    - (ii) that the order cannot be revoked on application.
- (2) A controlled activity order must also state that the order operates until it is revoked or ends in accordance with the order.

- (3) A controlled activity order may direct anyone to whom it is directed to do 1 or more of the following:
- (a) not begin a development without development approval;
  - (b) not carry out a development without development approval;
  - (c) comply with a lease provision or development agreement;
  - (d) restore any land, or a building or structure on the land, that has been altered, damaged or fallen into disrepair in breach of a lease provision or development agreement;
  - (e) comply with the terms of a development approval to undertake a development;
  - (f) carry out a development in accordance with a condition under the development approval for the development;
  - (g) demolish a building or structure, or a part of a building or structure, that has been constructed without development approval or permission required under a territory law;
  - (h) demolish a building or structure, or a part of a building or structure, that encroaches onto, over or under unleased territory land without approval granted under a territory law;
  - (i) restore any land, building or structure that has been altered without development approval or permission required under a territory law;
  - (j) replace with an identical building or structure any building or structure that has been demolished without development approval or permission required under a territory law;
  - (k) apply for development approval for a building or structure, or part of a building or structure, that has been constructed without development approval;
  - (l) clean up a leasehold and keep it clean;

- (m) if the person to whom the order is directed is bound by a land management agreement—comply with the land management agreement;
- (n) keep from doing anything that is a controlled activity whether or not a controlled activity order has been, or could be, made under paragraphs (a) to (m).

#### **430 Notice of making of controlled activity orders**

- (1) If the territory planning authority makes a controlled activity order, the authority must give notice of the making of the order to the following:
  - (a) each person to whom the order is directed;
  - (b) if the order is made in response to a complaint under section 414—the complainant;
  - (c) the lessee or occupier of the premises in relation to which the order applies;
  - (d) the registrar-general;
  - (e) if the order relates to the pruning of a protected tree—the conservator of flora and fauna;
- (2) If a person is given a notice under section 507 (Reviewable decision notices) in relation to the making of a controlled activity order, the person need not be given a separate notice under this section in relation to the making of the order.
- (3) In this section:

*Note* For restrictions on pruning etc of protected trees, see the *Tree Protection Act 2005*.

- (f) anyone else whose interests the authority believes are adversely affected by the order.

***protected tree***—see the *Tree Protection Act 2005*, section 8.

**431 Who is bound by a controlled activity order**

- (1) A controlled activity order binds each person to whom it is directed.
- (2) If a controlled activity order binds the lessee of the premises to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes the lessee of the premises after the order is made to the same extent as if the order had been directed to that person.
- (3) If a controlled activity order binds the occupier of the premises to which the order applies, unless the order otherwise provides, the order also binds anyone who becomes an occupier of the premises after the order is made to the same extent as if the order had been directed to that person.

**432 Contravention of controlled activity orders**

- (1) A person commits an offence if—
  - (a) the territory planning authority makes a controlled activity order directed to the person; and
  - (b) the order requires the person to do, or not do, something stated in the order; and
  - (c) the person is given notice of the making of the order (whether by being given a copy of the order or otherwise); and
  - (d) the person contravenes the order.

Maximum penalty: the amount stated in Schedule 5, column 3 in relation to the activity for which the order was made.

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

**433 Notice of appeal against controlled activity orders**

- (1) This section applies if—
  - (a) a person complains about conduct under Part 12.2; and
  - (b) because of the complaint, or investigations arising from the complaint, the territory planning authority makes a controlled activity order directed to a person (the *directed person*); and
  - (c) the directed person appeals to the ACAT for review of the decision to make the order.
- (2) The territory planning authority must tell the complainant in writing about the appeal.

**434 Ending controlled activity orders**

- (1) A controlled activity order operates until it is revoked or ends in accordance with the order.
- (2) A person bound by a controlled activity order (other than an ongoing controlled activity order) may apply in writing to the territory planning authority for the revocation of the order.
- (3) The application must state the grounds on which the revocation of the controlled activity order is sought.
- (4) The territory planning authority may revoke the controlled activity order if satisfied on reasonable grounds that the order is no longer necessary or appropriate.

**435 Notice ending controlled activity orders**

- (1) If a controlled activity order ends other than by being revoked, the territory planning authority must give written notice of the ending of the order to the registrar-general.
- (2) If the territory planning authority revokes a controlled activity order, the authority must give written notice of the revocation to each person given notice of the making of the order under section 430.

## Part 12.4 Rectification work

### Division 12.4.1 Preliminary

#### 436 Meaning of *rectification work*

In this Act:

*rectification work*—

- (a) means—
  - (i) work in relation to premises where a controlled activity is being carried out to ensure compliance with the development approval for the activity; or
  - (ii) the carrying out of an activity required under a controlled activity order that was not carried out within the period stated in the order; and
- (b) in relation to an authorised person—means the rectification work the authorised person is authorised to carry out.

### Division 12.4.2 Directions for rectification work

#### 437 Direction to carry out rectification work

- (1) The territory planning authority may direct 1 or more of the following to carry out rectification work in relation to a controlled activity:
  - (a) the lessee or occupier of premises where the activity was or is being carried out;
  - (b) anyone by whom or on whose behalf the activity was or is being carried out.
- (2) The territory planning authority must give notice of the direction to—
  - (a) the person required to comply with the direction; and

- (b) if different from the person mentioned in paragraph (a)—the lessee or occupier of the premises to which the direction applies.
- (3) The notice must state the following:
- (a) that it is a direction under this Act made by the territory planning authority;
  - (b) the name of the person required to comply with the direction;
  - (c) the address of the premises in relation to which the direction applies;
  - (d) the rectification work required;
  - (e) the grounds on which the direction is given;
  - (f) that the rectification work must be completed not later than 5 working days after the day the notice is given to the person or any longer period stated in the notice.
- (4) The notice must also state that, if the rectification work is not completed by the end of the period required by the notice—
- (a) the territory planning authority may authorise someone else to carry out the work; and
  - (b) the reasonable cost of carrying out the work is a debt to the Territory by the person required to comply with the direction.
- (5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

**438      Contravention of direction to carry out rectification work**

- (1) A person commits an offence if—
- (a) the territory planning authority directs the person to carry out rectification work in relation to a controlled activity; and
  - (b) the person is given notice of the direction; and

(c) the person contravenes the direction.

Maximum penalty: 60 penalty units.

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

### **Division 12.4.3 Authorisations for rectification work**

#### **439 Authorisation to carry out rectification work**

- (1) The territory planning authority may authorise a person (an *authorised person*) to enter the premises to which a direction under section 437 (Direction to carry out rectification work) applies to carry out the rectification work required by the notice under that section if the work is not completed by the end of the period stated in the notice.
- (2) However, the territory planning authority must not give the authorisation—
  - (a) until the end of the period for making an application to the ACAT for the review of the decision to make the controlled activity order to which the rectification work relates (the *relevant order*); or
  - (b) if an application is made to the ACAT for review of the decision to make the relevant order—unless the decision is upheld or the application is withdrawn.

#### **440 Obligation and powers of authorised people**

- (1) An authorised person must carry out rectification work in accordance with the directions of an inspector.
- (2) The authorised person may do anything required to carry out the rectification work including, for example, the following:
  - (a) construction work;
  - (b) alteration;

- (c) demolition;
  - (d) remove earth, fixtures and construction material;
  - (e) remove car bodies, vegetation, machinery or anything else that has to be removed to clean up a leasehold.
- (3) Anything removed from premises to carry out rectification work is not required to be returned and may be disposed of.

#### **441 Entry to premises by authorised people**

- (1) An authorised person may enter premises to carry out rectification work at the premises—
- (a) during business hours with the consent of an occupier; or
  - (b) in accordance with a rectification work order.

*Note* An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 469.

- (2) An authorised person who enters premises may remain at, and re-enter, the premises to carry out the rectification work during business hours, or at another time authorised by a rectification work order, whether or not the inspector remains at the premises.

*Note* If entry is made under a rectification work order, see s 446 for re-entry to the premises.

- (3) However—
- (a) an authorised person must not enter premises for the first time unless accompanied by an inspector; and
  - (b) if the authorised person enters or re-enters the premises with consent under subsection (1) (a), the person must leave the premises if an occupier withdraws consent to the person being on the premises.

## Division 12.4.4      Rectification work orders

### 442      Definitions—div 12.4.4

In this division:

*remote application* means an application for a rectification work order made other than in person.

*remote order* means a rectification work order made on a remote application.

### 443      Application for rectification work order

- (1) An inspector may apply to a magistrate for an order (a *rectification work order*) authorising entry to premises to carry out rectification work if—
  - (a) the territory planning authority gives a direction for rectification work to be done at the premises; and
  - (b) notice of the direction is given under section 437; and
  - (c) the rectification work is not carried out in accordance with the notice; and
  - (d) a person is authorised to carry out the rectification work; and
  - (e) 1 or more of the following circumstances apply in relation to the premises:
    - (i) the proposed rectification work cannot reasonably be carried out, or consent to entry cannot be obtained, during business hours;
    - (ii) an inspector, or an accompanying authorised person, is refused entry in accordance with an intention to enter notice given under section 469;
    - (iii) consent to the entry of an inspector or an accompanying authorised person to carry out the rectification work is withdrawn;

- (iv) consent to the entry or re-entry of an authorised person to carry out or complete the rectification work is withdrawn.
- (2) An application for a rectification work order must be sworn and state the following:
- (a) the grounds for making the application;
  - (b) why the order is sought;
  - (c) if the order sought is for carrying out rectification work at stated times outside business hours—why the work needs to be carried out at the stated times;
  - (d) whether police assistance, or any other assistance, is likely to be needed to execute the order;
  - (e) if the application is made remotely under section 447—why the application is being made remotely.

**444 Decision on application for rectification work order**

- (1) A magistrate may refuse to consider an application for a rectification work order until the inspector gives the magistrate any additional information the magistrate requires for subsection (2).
- (2) The magistrate must not make the rectification work order unless satisfied that—
  - (a) there are grounds for making the application; and
  - (b) if the order is for carrying out rectification work at stated times outside business hours—it is reasonably necessary to carry out the work at the stated times; and
  - (c) if the application states that assistance is likely to be necessary to execute the order—the assistance mentioned in the application is reasonably necessary to execute the order; and
  - (d) if the application is made remotely under section 447—the application has been made in accordance with that section.

- (3) A rectification work order may not be made in relation to an inspector other than the applicant.
- (4) However, a rectification work order may authorise another inspector to accompany the applicant to execute the order.

#### **445 Content of rectification work order**

A rectification work order must state the following:

- (a) the address of the premises to which the order relates;
- (b) the name of the inspector authorised to enter the premises;
- (c) the name of the authorised person authorised to enter the premises with the inspector;
- (d) that the inspector and authorised person may use reasonable force to enter the premises;
- (e) if the order authorises using assistance in executing the order—the assistance that may be used in executing the order;
- (f) that entry is authorised during business hours or, if authorised outside business hours, at stated times outside business hours;
- (g) the date, not later than 4 working days after the day the order is made, when the rectification work must begin.

#### **446 Authorisation by rectification work order**

A rectification work order authorises the following:

- (a) the carrying out of the rectification work to which the order applies;
- (b) the stated inspector to enter premises in accordance with the order;
- (c) the stated authorised person to enter premises in accordance with the order if accompanied by the inspector;

- (d) if the order authorises assistance—the inspector and authorised person to enter with assistance in accordance with the order;
- (e) the inspector to remain on the premises, or to re-enter the premises, to give directions to the authorised person;
- (f) the authorised person—
  - (i) to remain on the premises to carry out the rectification work, whether or not the inspector remains on the premises; and
  - (ii) to re-enter the premises to complete the rectification work.

*Note* Also, an inspector may require a person's name and address for a believed contravention of this Act (see s 475).

#### **447 Remote application for rectification work order**

- (1) An inspector may apply for a rectification work order in relation to premises by phone, email or other form of communication (a ***remote application***) if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.
- (2) Before applying for the rectification work order, the inspector must prepare an application in accordance with section 443.
- (3) However, the inspector may apply for the rectification work order before the application is sworn.

#### **448 Documents given after remote order made**

- (1) After making a rectification work order on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.

- (2) If it is not practicable to provide a written copy of the rectification work order to the inspector—
  - (a) the magistrate must tell the inspector—
    - (i) the order’s terms; and
    - (ii) the date and time the order was issued; and
  - (b) the inspector must complete a form of order (the ***rectification work order form***) and write on it—
    - (i) the magistrate’s name; and
    - (ii) the date and time the magistrate issued the order; and
    - (iii) the order’s terms.
- (3) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a rectification work order form—the completed rectification work order form.
- (4) On receiving the documents, the magistrate must attach them to the rectification work order.
- (5) A court must find that a power exercised by the inspector was not authorised by a rectification work order made on a remote application if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a rectification work order; and
  - (b) the order is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a remote order.

**449 Entry under rectification work order—no occupier present**

- (1) This section applies if—
  - (a) an inspector proposes to enter premises as authorised by a rectification work order; and
  - (b) the inspector believes on reasonable grounds that no occupier is present at the premises.
- (2) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

**450 Entry under rectification work order—occupier present**

- (1) This section applies if—
  - (a) an inspector proposes to enter premises as authorised by a rectification work order; and
  - (b) an occupier is present at the premises.
- (2) The inspector must—
  - (a) produce the inspector’s identity card to the occupier; and
  - (b) give the occupier a copy of the rectification work order; and
  - (c) tell the occupier that, under the order—
    - (i) the authorised person accompanying the inspector is authorised to carry out rectification work under the order; and
    - (ii) the inspector may, but need not, remain on the premises to give directions to the authorised person; and
  - (d) tell the occupier that—
    - (i) hindering the inspector or authorised person may be an offence; and

- (ii) the inspector and anyone authorised under the order to provide assistance may use reasonable force to enter if entry is refused.
- (3) The inspector, and anyone authorised under the order to provide assistance, may enter the premises using reasonable force in accordance with the order.

## **Division 12.4.5 Liability for rectification work**

### **451 Liability for cost of rectification work**

A person required to comply with a direction under section 437 (Direction to carry out rectification work) must pay to the Territory the reasonable cost of any rectification work carried out by an authorised person to which the direction related.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

### **452 Protection of authorised people from liability**

- (1) An authorised person does not incur civil liability for rectification work carried out in accordance with the directions of an inspector.
- (2) A civil liability that would, apart from this section, attach to the authorised person attaches instead to the Territory.

## Part 12.5 Prohibition notices

### 453 Giving prohibition notices

- (1) This section applies if the territory planning authority believes on reasonable grounds that the giving of a notice under this section (a *prohibition notice*) is necessary—
  - (a) to prevent an entity starting, or continuing, to undertake prohibited development; or
  - (b) to prevent an entity from continuing to undertake development if—
    - (i) the entity has started to undertake the development; and
    - (ii) the development requires development approval; and
    - (iii) there is no development approval for the development; or
  - (c) to prevent an entity from continuing to undertake development other than in accordance with the conditions of a development approval if—
    - (i) the entity has started to undertake a development; and
    - (ii) there is development approval for the development; and
    - (iii) the development undertaken is not in accordance with the conditions of the development approval.
- Note* **Development** includes use (see s 12) and some uses do not require development approval (see s 143).
- (2) Also, this section applies to an activity under subsection (1) whether or not—
  - (a) a controlled activity order is made, or is proposed to be made, in relation to the activity; or
  - (b) a proceeding for an offence against this chapter in relation to the activity has begun or is about to begin.

- (3) The territory planning authority may give a prohibition notice to either or both of the following:
- (a) the lessee or occupier of premises to which the activity mentioned in subsection (1) relates;
  - (b) an entity by which or on behalf of which the activity—
    - (i) was, is, or will be, carried out; or
    - (ii) is likely to be carried out.
- (4) The prohibition notice must state the following:
- (a) that it is a prohibition notice under this Act;
  - (b) the name of each entity to which it is directed;
  - (c) that the notice takes effect when it is given to an entity to which it is directed;
  - (d) the grounds on which the notice is given;
  - (e) the activity, and the address of the premises, in relation to which the notice applies;
  - (f) that the activity—
    - (i) must not be carried on by the entity; or
    - (ii) must not be carried on by the entity except in accordance with the notice;
  - (g) when the notice ends.

**Example—par (g)**

on the happening of an event stated in the notice

- (5) A prohibition notice takes effect when it is given to an entity to which it is directed.
- (6) To remove any doubt, 2 or more prohibition notices may be given in relation to the same activity.

**454      Contravention of prohibition notices**

- (1) A person commits an offence if—
- (a) the territory planning authority gives a prohibition notice to the person; and
  - (b) the notice is directed to the person; and
  - (c) the notice states that an activity must not be carried on by the person in relation to premises; and
  - (d) the person carries on the activity in relation to the premises.

Maximum penalty: 60 penalty units.

- (2) A person commits an offence if—
- (a) the territory planning authority gives a prohibition notice to the person; and
  - (b) the notice is directed to the person; and
  - (c) the notice states that an activity must not be carried on by the person in relation to premises except in accordance with the notice; and
  - (d) the person carries on the activity in relation to the premises otherwise than in accordance with the notice.

Maximum penalty: 60 penalty units.

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

**455      Ending prohibition notices**

A prohibition notice remains in force until the earlier of the following:

- (a) the date the notice ends in accordance with the notice;
- (b) the date the notice is revoked.

**456 Application for revocation of prohibition notices**

- (1) A person to whom a prohibition notice is directed may, in writing, apply to the territory planning authority for the revocation of the notice.
- (2) The application must state the grounds on which the revocation is sought.
- (3) The territory planning authority may revoke the prohibition notice if satisfied on reasonable grounds that the notice is no longer necessary or appropriate.

## Part 12.6                      Injunctions and termination of leases and licences

### 457                      Injunctions to restrain contravention of controlled activity orders and prohibition notices

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct contravening a controlled activity order or prohibition notice.
- (2) The territory planning authority or anyone else may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
  - (a) restraining the relevant person from engaging in the conduct; and
  - (b) if satisfied that it is desirable to do so—requiring the relevant person to do anything.
- (4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—
  - (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

## 458 Termination of leases

- (1) This section applies if—
  - (a) a lessee—
    - (i) contravenes this chapter or the lease; or
    - (ii) fails to pay a required fee in relation to an extension of time to complete works under section 368; or
    - (iii) receives a compliance reminder notice and fails to comply with the notice; and
  - (b) the territory planning authority has complied with section 460 (Notice of termination) in relation to the lessee.
- (2) The territory planning authority may, by written notice (a **termination notice**) given to the lessee, terminate the lease.
- (3) A termination notice takes effect 10 working days after the day the notice is given.
- (4) At the same time as, or as soon as practicable after, the termination notice is given to the lessee, the territory planning authority must give a copy of the termination notice to—
  - (a) the registrar-general; and
  - (b) any person having an interest in the land described in the lease that is registered under the *Land Titles Act 1925*.
- (5) The validity of the termination of a lease is not affected by a failure to comply with subsection (4).

(6) In this section:

***compliance reminder notice*** means a notice by the territory planning authority to the lessee of a community lease stating that—

- (a) the lessee must, within 15 days after the day the lessee receives the notice—
  - (i) if the lessee has failed to give the authority a community use report for a financial year—give the authority the community use report; or
  - (ii) if the lessee has failed to give the authority additional information requested under section 288 (4) in relation to a community use report—give the authority the additional information; or
  - (iii) if the lessee has failed to commission an audit as required by the authority under section 289 (1) (Audit of use of community lease land)—commission the audit; and
- (b) if the lessee fails to comply with the notice within the stated time, the lessee’s lease may be terminated.

#### **459 Termination of licences**

- (1) This section applies if—
  - (a) a person who occupies territory land under a licence from the Commonwealth or the Territory contravenes this chapter or the licence; and
  - (b) the territory planning authority has complied with section 460 (Notice of termination) in relation to the licensee.
- (2) The territory planning authority may terminate the licence by written notice given to the licensee.
- (3) A notice under subsection (2) takes effect 5 working days after the day the notice is given to the licensee.

**460 Notice of termination**

The territory planning authority must not terminate a lease or a licence under this part unless it has—

- (a) by written notice given to the lessee or licensee—
  - (i) told the lessee or licensee that it is considering terminating the lease or licence; and
  - (ii) stated the grounds on which it is considering taking that action; and
  - (iii) invited the lessee or licensee to tell the authority in writing not later than 15 working days after the day the lessee or licensee receives the notice why the lessee or licensee considers that the lease or licence should not be terminated; and
- (b) for the termination of a lease—given a copy of the notice under paragraph (a) to each person with a registered interest in the lease; and
- (c) taken into account any reasons for not terminating the lease or licence given to the authority by the lessee or licensee in accordance with the notice served on the lessee or licensee under paragraph (a).

## Chapter 13 Enforcement

### Part 13.1 Preliminary

#### 461 Definitions—ch 13

In this chapter:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

*offence* includes an offence for which there are reasonable grounds for believing has been, is being, or will be, committed.

*premises* includes land.

## Part 13.2 Inspectors

### 462 Appointment of inspectors

The territory planning authority may appoint a public servant as an inspector for this Act.

*Note* For laws about appointments, see the Legislation Act, pt 19.3.

### 463 Identity cards

- (1) The territory planning authority must give a person appointed as an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
  - (a) a recent photograph of the person; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
  - (a) the person stops being an inspector; and
  - (b) the person does not return the person's identity card to the territory planning authority as soon as practicable, but not later than 5 working days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

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

## **Part 13.3 Powers of inspectors**

### **464 Inspector must show identity card on exercising power**

- (1) If an inspector exercises a power under this Act that affects an individual, the inspector must first show their identity card to the individual.
- (2) If an inspector exercises a power under this Act that affects a person other than an individual, the inspector must first show their identity card to an individual the inspector believes on reasonable grounds is an employee, officer or agent of the person.

### **465 Entry to premises**

- (1) For this Act, an inspector may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or
  - (b) for entry without an authorised person—at any time, enter premises with the occupier’s consent; or
  - (c) for entry with an authorised person—enter the premises during business hours with the occupier’s consent; or

*Note* An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 469.

- (d) enter premises with an authorised person in accordance with a rectification work order; or
  - (e) enter premises in accordance with a search warrant or monitoring warrant.
- (2) However, subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes.

- (3) An inspector may, without the consent of the occupier of premises, enter land around the premises to—
  - (a) ask for consent to enter the premises; or
  - (b) give notice under section 469.
- (4) To remove any doubt—
  - (a) an inspector may enter premises under subsection (1) without payment of an entry fee or other charge; and
  - (b) for subsection (3), it does not matter whether someone is on the premises or not when the inspector enters.

**466 Remaining at premises**

An inspector must not remain at premises entered under this part if the inspector does not show their identity card when asked by the occupier.

**467 Consent to entry without authorised person**

- (1) This section applies if an inspector intends to ask the occupier of the premises to consent to the inspector entering the premises under section 465 (1) (b).
- (2) Before asking for consent, the inspector must—
  - (a) show their identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that the occupier may refuse consent to enter the premises; and
    - (iii) that the occupier may withdraw consent to remain at the premises.

- (3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*) stating the following:
  - (a) the matters mentioned in subsection (2) (b);
  - (b) that the occupier was told of those matters;
  - (c) that the occupier consented to the entry;
  - (d) the date and time that consent was given.
- (4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (5) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented.

**468 Consent to entry with authorised person**

- (1) This section applies if an inspector intends to ask the occupier of the premises to consent to the inspector and authorised person entering the premises under section 465 (1) (c).
- (2) The inspector must, during business hours—
  - (a) produce the inspector’s identity card; and
  - (b) tell the occupier that—
    - (i) the territory planning authority gave a direction for rectification work to be done at the premises; and
    - (ii) notice of the direction was given under section 437; and
    - (iii) the rectification work was not carried out in accordance with the notice; and

- (iv) a person has been authorised to carry out the rectification work; and
  - (v) entry is sought to allow the authorised person to carry out the rectification work; and
  - (vi) the authorised person is accompanying the inspector; and
  - (vii) the inspector may, but need not, remain at the premises to give directions to the authorised person; and
  - (viii) the authorised person may return during business hours as required to complete the work; and
  - (ix) the occupier may refuse consent to enter the premises; and
  - (x) the occupier may withdraw consent to remain at the premises.
- (3) If the occupier consents, the inspector must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*) stating the following:
- (a) the matters mentioned in subsection (2) (b);
  - (b) that the occupier was told of those matters;
  - (c) that the occupier consented to the entry;
  - (d) the date and time that consent was given.
- (4) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.
- (5) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented.

**469 Entry on notice for rectification work and monitoring**

- (1) This section applies to an inspector proposing to enter premises—
  - (a) under section 465 (1) (b) to check whether a controlled activity has happened, or is happening, in relation to the premises; or
  - (b) under section 465 (1) (b) to check whether 1 or more of the following in relation to the premises is being complied with:
    - (i) a controlled activity order;
    - (ii) a direction under section 437 to carry out rectification work;
    - (iii) a prohibition notice;
    - (iv) an injunction under section 457; or
  - (c) with an authorised person under section 465 (1) (c).
- (2) The territory planning authority may give an occupier of the premises written notice of the inspector's intention to enter the premises (an *intention to enter notice*).
- (3) An intention to enter notice—
  - (a) must be given to the occupier at least 2 working days before the proposed entry; and
  - (b) may be given to the occupier without first asking for the occupier's consent to enter the premises.
- (4) For a proposed entry mentioned in subsection (1) (a) or (b), an intention to enter notice must state—
  - (a) the reason for the proposed entry; and
  - (b) when the inspector proposes to enter the premises; and
  - (c) that the occupier may refuse consent for the inspector or authorised person to enter the premises; and

- (d) that the occupier may withdraw consent for the inspector or authorised person to remain at the premises.
- (5) For a proposed entry mentioned in subsection (1) (c), an intention to enter notice must state—
  - (a) that—
    - (i) the territory planning authority gave a direction for rectification work to be done at the premises; and
    - (ii) notice of the direction was given under section 437; and
    - (iii) the rectification work was not carried out in accordance with the notice; and
    - (iv) a person has been authorised to carry out the rectification work; and
    - (v) the inspector proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work; and
    - (vi) the inspector may, but need not, remain at the premises to give directions to the authorised person; and
    - (vii) the occupier may refuse consent for the inspector or authorised person to enter the premises; and
    - (viii) the occupier may withdraw consent for the inspector or authorised person to remain at the premises; and
  - (b) when, during business hours, the work is proposed to be carried out.
- (6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—
  - (a) tell the occupier that—
    - (i) the inspector proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work to which the notice relates; or

- (ii) the inspector proposes to enter the premises to check whether a controlled activity has happened, or is happening; or
    - (iii) the inspector intends to enter the premises to check compliance in accordance with the notice; and
  - (b) tell the occupier that, if the occupier does not consent to the inspector or authorised person entering, or remaining at, the premises, an application may be made to a court for a rectification work order or a monitoring warrant; and
  - (c) give the occupier a copy of the notice.
- (7) If an inspector gives the occupier an intention to enter notice, the inspector must ask the occupier to sign a written acknowledgment that the occupier was told that—
  - (a) the inspector—
    - (i) proposes to enter the premises with an authorised person to allow the authorised person to carry out the rectification work to which the notice relates; or
    - (ii) proposes to enter the premises to check whether a controlled activity has happened, or is happening; or
    - (iii) intends to enter the premises to check compliance in accordance with the notice; and
  - (b) if the occupier does not consent to the inspector or authorised person entering or remaining at the premises—an application may be made to a court for a rectification work order or a monitoring warrant.
- (8) If the occupier signs an acknowledgment under subsection (7), the inspector must immediately give a copy to the occupier.

**470 General powers on entry to premises**

- (1) For this Act, an inspector who enters premises under this chapter may do 1 or more of the following in relation to the premises, or anything at the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take photographs or audio, video or other recordings, or make sketches;
  - (d) ask the occupier, or anyone at the premises—
    - (i) to give the inspector information; or
    - (ii) to produce documents to the inspector; or
    - (iii) to give the inspector reasonable help to exercise a power under this chapter.

*Note* An inspector who enters premises under a search warrant may also exercise power under s 472, s 473 and s 474. An inspector who enters premises under a monitoring warrant may also exercise powers under s 472 and s 474. See also s (3) in relation to the exercise of power under warrants.

- (2) However, an inspector must not exercise a power under subsection (1) unless the inspector believes on reasonable grounds that the exercise relates to 1 or more of the following:
- (a) a controlled activity or possible controlled activity;
  - (b) a prohibition notice;
  - (c) a direction under section 437 to carry out rectification work;
  - (d) an injunction under section 457;
  - (e) an offence or possible offence, or a thing or activity connected with an offence or possible offence, against this Act.

- (3) However, if the inspector enters the premises under a search warrant or monitoring warrant, the inspector may only exercise a power under subsection (1) in relation to a matter mentioned in subsection (2) if the warrant relates to the matter.
- (4) This section does not apply to an inspector who enters premises under section 465 (1) (c) or (d).

**471 Power on entry for rectification work**

For this Act, an inspector who enters premises under section 465 (1) (c) or (d) may give directions to the authorised person carrying out rectification work about how the work is to be carried out.

**472 Power to require help on entry under warrant**

- (1) An inspector who enters premises under a search warrant or monitoring warrant may require the occupier, or anyone at the premises, to give the inspector reasonable help to exercise a power under this chapter.
- (2) A person commits an offence if the person fails to take all reasonable steps to comply with a requirement made of the person under subsection (1).

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

**473 Power to take samples on entry under warrant**

- (1) An inspector who enters premises under a search warrant or monitoring warrant may take samples of anything the inspector believes on reasonable grounds is connected with the matter to which the warrant relates.

- (2) The inspector must—
- (a) give a receipt for the sample to the occupier of the place from where the sample was taken; and
  - (b) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other; and
  - (c) ensure that each part is suitable for the purpose of analysis; and
  - (d) place each part in a separate container and seal the containers; and
  - (e) attach to each container a label that is signed by the inspector and states the date and time when, and the place where, the sample was taken; and
  - (f) give 1 of the containers to the occupier.

**474 Power to seize things on entry under search warrant**

An inspector who enters premises under a search warrant may seize anything at the premises that the inspector is authorised to seize under the warrant.

**475 Power to require name and address**

- (1) An inspector may require a person to state the person's name and home address if the inspector believes on reasonable grounds that the person is committing or has just committed an offence against this Act.
- (2) The inspector must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the inspector to produce their identity card for inspection by the person.

- (4) A person must comply with a requirement made of the person under subsection (1) if the inspector—
- (a) tells the person the reason for the requirement; and
  - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

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

## Part 13.4 Information requirements

### 476 Information requirements

- (1) This section applies if the territory planning authority suspects on reasonable grounds that a person—
  - (a) has information reasonably required by the authority for the administration or enforcement of this Act; or
  - (b) has possession or control of a document containing that information.
- (2) The territory planning authority may give the person a written notice requiring the person to give the information or produce the document to the authority.
- (3) The notice must include details of the following:
  - (a) the identity of the person to whom it is given;
  - (b) why the information is required;
  - (c) the time by which the notice must be complied with;
  - (d) the operation of subsection (4).
- (4) A person commits an offence if the person intentionally contravenes a requirement of a notice under subsection (2).

Maximum penalty: 100 penalty units.
- (5) A person does not incur any civil or criminal liability only because the person gives information or a document to the territory planning authority in accordance with a notice under subsection (2).

### 477 Treatment of documents provided under information requirement

- (1) The territory planning authority must return a document produced in accordance with a notice under section 476 to the person who produced the document as soon as practicable.

- (2) The territory planning authority may make copies of, or take extracts from, the document.

**478 When authority may ask for information from commissioner for revenue [old 395A]**

- (1) This section applies if the territory planning authority may or must notify, or intends to take action under this Act in relation to, an uncontactable person or a person the authority reasonably believes is an uncontactable person.

**Examples**

- 1 giving a person notice of the making of a development application under div 7.5.4 (Public notification of development applications)
  - 2 giving a person who made a representation about a development application notice of the approval of the application
  - 3 action under s 312 (How land may be recovered if former lessee or licensee in possession) or this chapter.
- (2) The territory planning authority may, in writing, ask the commissioner for revenue to provide the person's name or the person's home address or other contact address.
- (3) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (2).

*Note* See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

- (4) In this section:

***uncontactable person***—a person is an ***uncontactable person*** if the territory planning authority does not have complete or up-to-date information about the person's name or the person's contact address.

**479 When authority may ask for information about leases from commissioner for revenue**

(1) The territory planning authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

- (a) the lessee's name;
- (b) the lessee's home address or other contact address.

(2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

*Note* See also the *Taxation Administration Act 1999*, s 97 (1) (d) for power to disclose the information.

(3) The territory planning authority must not make a request under subsection (1) in relation to a lease more often than—

- (a) once every month; or
- (b) if a regulation prescribes a longer period—once each period.

(4) Nothing in this section prevents the territory planning authority from asking for information under section 478.

## **Part 13.5**                      **Search warrants**

### **480**            **Warrants generally**

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must state the following:
  - (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this chapter;
  - (b) the offence for which the warrant is issued;
  - (c) the things that may be seized under the warrant;
  - (d) the hours when the premises may be entered;
  - (e) the date, within 14 days after the day of the warrant's issue, the warrant ends.

**481 Warrants—application made other than in person**

- (1) An inspector may apply for a warrant by phone, email or other form of communication if the inspector considers it necessary because of urgent or other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately provide a written copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to provide a written copy to the inspector—
  - (a) the magistrate must tell the inspector the terms of the warrant and the date and time the warrant was issued; and
  - (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the inspector's powers under this chapter.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.

- (9) A court must find that a power exercised by the inspector was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**482 Search warrants—announcement before entry**

- (1) Before anyone enters premises under a search warrant, an inspector must—
- (a) announce that the inspector is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify themselves to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the inspector or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**483 Details of search warrant must be given to occupier**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**484 Occupier may be present during search**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## Part 13.6 Monitoring warrants

### 485 Definitions—pt 13.6

In this part:

*remote application* means an application for a monitoring warrant made other than in person.

*remote warrant* means a monitoring warrant made on remote application.

### 486 Application for monitoring warrant

- (1) An inspector may apply for a warrant (a *monitoring warrant*) in relation to premises if—
  - (a) any of the following apply:
    - (i) the inspector believes on reasonable grounds that a controlled activity has happened, or is happening, at the premises;
    - (ii) there is a controlled activity order in relation to a controlled activity at the premises;
    - (iii) there is a prohibition notice in relation to the premises;
    - (iv) a direction was given under section 437 to carry out rectification work at the premises;
    - (v) an injunction under section 457 is in force in relation to the premises; and
  - (b) any of the following apply:
    - (i) an inspector has been refused entry in accordance with an intention to enter notice given under section 469;

- (ii) the occupier—
  - (A) is given an intention to enter notice under section 469; and
  - (B) consents to the entry of an inspector in accordance with the notice; and
  - (C) withdraws the consent.
- (2) An application for a monitoring warrant must be sworn and state—
  - (a) the grounds on which the applicant relies to make the application; and
  - (b) why the warrant is sought; and
  - (c) whether police assistance, or any other assistance, is likely to be needed to execute the warrant; and
  - (d) if the application is made other than in person—why the application is being made other than in person.

#### **487 Decision on application for monitoring warrant**

- (1) A magistrate may refuse to consider an application for a monitoring warrant until the inspector gives the magistrate any additional information the magistrate requires for subsection (2).
- (2) The magistrate must not issue the monitoring warrant unless satisfied that—
  - (a) there are grounds for making the application; and
  - (b) if the application states that assistance is likely to be necessary to execute the warrant—that the assistance mentioned in the application is reasonably necessary to execute the warrant; and
  - (c) if the application is made other than in person—that the application has been made in accordance with section 490 (Remote application for monitoring warrant).

- (3) A monitoring warrant may not be issued in relation to an inspector other than the applicant.
- (4) However, a monitoring warrant may authorise another inspector to accompany the applicant to execute the warrant.

**488 Content of monitoring warrant**

A monitoring warrant must state the following:

- (a) the address of the premises to which the warrant relates;
- (b) the name of the inspector authorised to enter the premises;
- (c) that the inspector may use reasonable force to enter the premises;
- (d) if the warrant authorises using assistance in executing the warrant—the assistance that may be used in executing the warrant;
- (e) that the warrant ends—
  - (i) if the ground for applying for the warrant is a circumstance mentioned in section 486 (1) (a) (i)—5 working days after the day the warrant is issued; or
  - (ii) if the ground for applying for the warrant is a circumstance mentioned in section 486 (1) (a) (ii) to (v)—on the earlier of—
    - (A) when the circumstance no longer applies; and
    - (B) 3 months after the day the warrant is issued.

**489 Authorisation by monitoring warrant**

The monitoring warrant authorises the stated inspector, and anyone authorised by the warrant to provide assistance, to enter premises in accordance with the warrant.

*Note 1* While on the premises, the inspector may exercise power under s 470.

*Note 2* For when an inspector may require a person to state the person's name and address, see s 475.

**490 Remote application for monitoring warrant**

- (1) An inspector may apply for a monitoring warrant in relation to premises by phone, email or other form of communication if the inspector considers it necessary because consent to the inspector's entry to the premises has been withdrawn while the inspector was on the premises.
- (2) Before applying for the monitoring warrant, the inspector must prepare an application in accordance with section 486.
- (3) However, the inspector may apply for the remote warrant before the application is sworn.

**491 Documents given after remote warrant made**

- (1) After making a monitoring warrant on a remote application, the magistrate must immediately give a written copy to the inspector who made the application if it is practicable to do so.
- (2) If it is not practicable to provide a written copy of the monitoring warrant to the inspector—
  - (a) the magistrate must tell the inspector—
    - (i) the warrant's terms; and
    - (ii) the date and time the warrant was issued; and

- (b) the inspector must complete a form of warrant (the *warrant form*) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the warrant’s terms.
- (3) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (4) On receiving the documents, the magistrate must attach them to the monitoring warrant.
- (5) A court must find that a power exercised by the inspector was not authorised by a monitoring warrant made on a remote application if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a monitoring warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a remote warrant.

**492 Entry under monitoring warrant—no occupier present**

- (1) This section applies if—
  - (a) an inspector proposes to enter premises as authorised by a monitoring warrant; and
  - (b) the inspector believes on reasonable grounds that no occupier is present at the premises.

- (2) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

**493 Entry under monitoring warrant—occupier present**

- (1) This section applies if—
- (a) an inspector proposes to enter premises as authorised by a monitoring warrant; and
  - (b) an occupier is present at the premises.
- (2) The inspector must—
- (a) produce the inspector’s identity card to the occupier; and
  - (b) give the occupier a copy of the monitoring warrant; and
  - (c) tell the occupier that—
    - (i) hindering the inspector may be an offence; and
    - (ii) the inspector may use reasonable force to enter if entry is refused.
- (3) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

## **Part 13.7**                      **Return and forfeiture of things seized**

### **494**            **Receipt for thing seized**

- (1) As soon as practicable after an inspector seizes a thing under this chapter, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 474 (Power to seize things on entry under search warrant).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the inspector's name, and how to contact the inspector;
  - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

### **495**            **Moving thing to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is, or contains, something to which the warrant relates;
    - (ii) it is significantly more practicable to move the thing having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or

- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The inspector must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

**496      Action in relation to seized thing**

- (1) An inspector who seizes a thing under section 474 (Power to seize things on entry under search warrant) may—
  - (a) remove the thing from the premises where it was seized to another place; or
  - (b) leave the thing at the premises but restrict access to it.
- (2) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and

- (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**497 Access to thing seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

**498 Return of thing seized**

- (1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid by the Territory to the owner for the loss of the thing if—
  - (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day of the seizure and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence relating to the thing is begun within the 1-year period but the court does not find the offence proved; or
  - (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
    - (i) a prosecution for an offence relating to the thing is not begun within the 1-year period; or
    - (ii) a prosecution for an offence relating to the thing is so begun but the court does not find the offence proved; or

- (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 and—
  - (i) an information is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under that section that liability is disputed; or
  - (ii) an information is laid in the Magistrates Court against the person for the offence within the 60-day period, but the Magistrates Court does not find the offence proved.
- (2) If anything seized under this chapter is not required to be returned or reasonable compensation is not required to be paid under subsection (1), the thing—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the chief planner directs.

## **Chapter 14      Access to information**

### **Part 14.1      Public register**

#### **499      Authority to keep public register**

- (1) The territory planning authority must keep a register (the *public register*).
- (2) The territory planning authority may keep the public register in any form the authority considers appropriate.

#### **500      Contents of public register**

- (1) The public register must contain the following:
  - (a) if a person applies for a declaration under section 155 (Declaration for development encroaching on adjoining territory land if development prohibited)—the decision on the declaration;
  - (b) for each development application (unless withdrawn)—
    - (i) the date the application was submitted; and
    - (ii) the lessee's name and, if a person is authorised to act on their behalf, that person's name; and
    - (iii) the location of the proposed development; and
    - (iv) a summary by the territory planning authority of the proposed development; and
    - (v) if the application was, or is being, publicly notified under Division 7.5.4; and
    - (vi) whether the application was amended under section 164; and

- (vii) if representations under section 175 (other than representations that are withdrawn) have been made on the application; and

*Note* A person who makes a representation may apply to have the representation excluded from the public register (see s 504).

- (viii) whether the Minister has decided to establish an inquiry panel to inquire about an EIS for the development proposal to which the application relates;
- (c) if a development application is decided under section 180—
    - (i) the date the application was decided; and
    - (ii) whether the application was approved, approved subject to a condition or refused; and
    - (iii) whether the decision on the application was reconsidered under section 194; and
    - (iv) for an approved application—whether the approval was corrected under section 198 or amended under section 201; and
    - (iii) for a decision reviewed by the ACAT—whether the ACAT confirmed or varied the decision;
  - (d) the offsets register;
  - (e) for each lease variation charge for a non-standard chargeable variation—the amounts represented by **V1** and **V2** in section 254 for the charge;
  - (f) for each reduction of an amount of a lease variation charge for a chargeable variation of a nominal rent lease under section 262 (Reduction of lease variation charges)—
    - (i) a description of the chargeable variation; and
    - (ii) the lease variation charge; and
    - (iii) the amount of the lease variation charge reduced;

- (g) for each deferral arrangement under section 335 (Approval to defer payment of lease variation charges)—
    - (i) the date the arrangement was entered into; and
    - (ii) the amount of the lease variation charge deferred under the arrangement at the date the arrangement was entered into;
  - (h) for each controlled activity order while the order is in force—
    - (i) the premises to which the order relates; and
    - (ii) the directions in the order (see s 429 (3)); and
    - (iii) the person to whom the order is directed;
  - (i) for each direction under section 437 to carry out rectification work while the direction is in force—
    - (i) the premises where the work is to be carried out; and
    - (ii) the person directed to carry out the work;
  - (j) for each prohibition notice given under section 453 while the notice is in force—
    - (i) the premises to which the notice relates; and
    - (ii) the person to whom the notice is given.
- (2) The public register may contain any other information that the territory planning authority considers appropriate.
- (3) However, the public register must not contain—
- (a) associated documents for development applications, development approvals or leases; or
  - (b) the name of a complainant under section 414.

*Note* Part of a document otherwise required to be included in the register may be excluded under pt 14.2 (Restrictions on availability of information). A note about the exclusion is included in the register (see s 504 (6) or s 505 (3)).

**501 Inspection of public register and associated documents**

- (1) The territory planning authority must ensure that the public register and associated documents are available for public inspection during business hours.
- (2) The territory planning authority must allow people inspecting the public register and associated documents to make copies of, or take extracts from, the register and associated documents.

**502 Contents of public register on authority website**

The territory planning authority must publish the following on the authority website:

- (a) the information mentioned in section 500 (1) (a) to (d)—indefinitely;
- (b) the associated documents for a development application mentioned in section 503 (1) (a) and (l) (i)—for 5 years after the day a development application is publicly notified under division 7.5.4;
- (c) the associated documents for a development application mentioned in section 503 (1) (i), (k) and (l) (ii)—for 5 years after the day notice of a decision on a development application is given under section 191.

**503 Meaning of *associated document*—pt 14.1**

- (1) For this part, each of the following is an *associated document* for a development application (other than an application that is withdrawn):
  - (a) information and documents required to accompany an application under the following provisions:
    - (i) section 162 (2) (c);
    - (ii) schedule 2, part 2.2, item 1;

- (iii) schedule 2, part 2.2, item 2;
- (iv) schedule 2, part 2.2, item 3;
- (v) schedule 2, part 2.2, item 4;
- (vi) schedule 2, part 2.2, item 5;
- (b) if the territory planning authority asks for more information under section 163—the information given to the authority;
- (c) if the territory planning authority amends an application under section 164—the information and documents submitted under section 162 (2);
- (d) if the territory planning authority corrects an application under section 165—the written notice of the correction;
- (e) an agreement mentioned in section 166 (2) (b);
- (f) if the territory planning authority refers an application to the conservator of flora and fauna under section 166 (1) (c)—the advice of the conservator given under section 168;
- (g) if a representation is made under section 175 about an application—the representation (other than a representation that is withdrawn);  
*Note* A person who makes a representation may apply to have the representation excluded from the public register (see s 504).
- (h) the notice of the decision on an application given under section 191;
- (i) if the applicant for an application that was refused makes a reconsideration application under section 193—any information given in the reconsideration application;
- (j) if the territory planning authority reconsiders a decision to refuse to approve an application under section 194—the notice of the decision on the reconsideration given under section 196;

- (k) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification—
    - (i) is part of the application (whether as originally made or as amended); or
    - (ii) is approved as part of the approval of the application under section 180; or
    - (iii) is required to be prepared by the applicant under a condition of an approval before the development, or a stated part of it, starts;
  - (l) if an inquiry panel inquires about an EIS for the development proposal to which the application relates—the inquiry panel report given to the Minister under section 131;
  - (m) if the decision on the application is reviewed by the ACAT—the ACAT decision.
- (2) For this part, each of the following is an *associated document* for a development approval:
- (a) if the approval-holder applies under section 193 for reconsideration of the decision to approve the development subject to a condition—any information included in the application;
  - (b) if the territory planning authority reconsiders the decision to approve the development subject to conditions—the notice of the decision on the reconsideration given under section 196;
  - (c) if the territory planning authority corrects the approval under section 198—the notice about the correction;
  - (d) if the approval-holder applies to amend the approval under section 200—any information included in the application;

- (e) a plan, drawing or specification of a proposed building, structure or earthworks if the plan, drawing or specification is required to be prepared by the applicant under a condition of an approval before the development, or a stated part of it, starts.
- (3) However, for this part, an *associated document* does not include—
- (a) a plan, drawing or specification of any residential part of a building or proposed building, other than a plan, drawing or specification that shows only the height and external configuration of the building or proposed building; or
  - (j) information in relation to which an exclusion application has been approved under section 504 (Restrictions on information for commercial or safety reasons); or
  - (b) information that must not be made available to the public under section 505 (Restrictions on information for security reasons).

## Part 14.2                      Restrictions on availability of information

### 504                      Restrictions on information for commercial or safety reasons

- (1) This section applies to a document given to the territory planning authority under this Act.

**Examples**

a development application, a representation about a development application, a draft EIS

- (2) The person giving the document may apply in writing to the territory planning authority for part of the document to be excluded from being made available to the public.
- (3) The territory planning authority may approve or refuse to approve the application.
- (4) However, the territory planning authority may approve the application only if satisfied that the part of the document to which the application relates contains information—
- (a) the publication of which would disclose a trade secret; or
  - (b) the publication of which would, or could reasonably be expected to—
    - (i) endanger the life or physical safety of any person; or
    - (ii) lead to damage to, or theft of, property.
- (5) If the territory planning authority approves an application in relation to part of the document, the part must not be made available to the public.
- (6) If part of the document is excluded from the copy of the document made available to the public, the copy must include a statement to the effect that an unmentioned part of the document has been excluded to protect the confidentiality of information included in the part.

**505 Restrictions on information for security reasons**

- (1) This section applies if the Minister responsible for the administration of justice, or the Commonwealth Attorney-General, certifies in writing to the territory planning authority that the publication of part of a document (the *relevant part*) might—
  - (a) jeopardise national security, including by jeopardising the operations of a security organisation; or
  - (b) expose staff of a security organisation to risk of injury; or
  - (c) expose the public to risk of injury; or
  - (d) expose property to risk of damage.

- (2) The relevant part of the document must not be made available to the public.

- (3) Each copy of the document made public must include a statement to the effect that an unmentioned part of the document has been excluded under this section.

- (4) In this section:

*security organisation* means any of the following:

- (a) the Australian Federal Police;
- (b) the Australian Security Intelligence Organisation;
- (c) the Australian Secret Intelligence Service;
- (d) the police force or service of a State;

*Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

- (e) an entity established under a law of a State to conduct criminal investigations or inquiries;
- (f) any other entity prescribed by regulation.

## Chapter 15 Notification and review of decisions

### 506 Definitions—ch 15

In this chapter:

***decision-maker***, for a reviewable decision, means—

- (a) for a decision of an entity that is required, as a condition of a development approval, to be satisfied in relation to the carrying out of the development or a stated stage of the development—the entity whose satisfaction is required; or
- (b) for a decision under section 329 (1) (b) (i) or (ii) (Non-standard chargeable variation—reconsideration)—the commissioner for revenue; or
- (c) in any other case—the territory planning authority.

*Note* Decisions of the Minister are not reviewable in the ACAT.

***eligible entity***, for a reviewable decision—

- (a) means an entity mentioned in schedule 6, column 3 for the decision; and
- (b) in relation to a development application or development approval—
  - (i) includes the lessee if the applicant is not the lessee; and
  - (ii) includes the sublessee if the applicant is not the sublessee; but
- (c) in relation to a matter mentioned in schedule 7, part 7.2 (Matters exempt from third party ACAT review)—means the applicant for development approval for the matter.

***interested entity***, for a reviewable decision, means an entity mentioned in schedule 6, column 4 for the decision.

**reviewable decision** means a decision mentioned in schedule 6, column 2 made by a decision-maker.

### **507 Reviewable decision notices**

If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice to:

- (a) each eligible entity for the decision; and
- (b) each interested entity for the decision.

*Note* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### **508 Applications for review**

An eligible entity for a reviewable decision may apply to the ACAT for review of the decision.

### **509 Applications for review by third parties**

- (1) This section applies to a reviewable decision in relation to a development application if the eligible entity for the decision is not the applicant for the development application.
- (2) Despite the *ACT Civil and Administrative Tribunal Act 2008*, section 10 (Making an application), an application for review must be made not later than 20 working days after the day the entity was given notice of the decision.
- (3) The *ACT Civil and Administrative Tribunal Act 2008*, section 10 (3) (b), does not apply to the application for review.
- (4) The period for making the application for review may not be extended under the *ACT Civil and Administrative Tribunal Act 2008*.

**510 ACAT review—time for making application for deemed decisions**

- (1) This section applies to a reviewable decision under section 291 (Decision about whether lease concessional).
- (2) The application for review must be made not later than 20 working days after the 20 working-day period mentioned in section 291 (5).

## Chapter 16      Miscellaneous

### 511      Declaration of authority website

- (1) The Minister may declare a website to be the territory planning authority website (the *authority website*).
- (2) A declaration is a notifiable instrument.

### 512      Custodianship map

- (1) The territory planning authority must create and maintain a map (the *custodianship map*) that identifies, and reflects who has administrative responsibility for, land in the ACT that is unleased land, public land or both.
- (2) The custodianship map may include anything else the territory planning authority considers appropriate.

### 513      Damage etc to be minimised

- (1) In the exercise, or purported exercise, by an official of a function, the official must take all reasonable steps to ensure that the official, and any person assisting the official, causes as little inconvenience, detriment and damage as practicable.
- (2) If an official, or person assisting an official, damages anything in the exercise or purported exercise of a function, the official must give written notice of the particulars of the damage to the person the official believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under chapter 13 (Enforcement) in the absence of the occupier, the notice may be given by leaving it secured conspicuously at the premises.

(4) In this section:

*function* means—

- (a) for an authorised person—a function under chapter 12 (Development offences and controlled activities); or
- (b) for an inspector—a function under division 12.4.4 (Rectification work orders) or chapter 13.

*official* means an authorised person or an inspector.

#### **514 Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function by an official or person assisting an official.
- (2) Compensation may be claimed and ordered—
  - (a) in a proceeding for compensation brought in a court of competent jurisdiction; or
  - (b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

##### **Examples—what may be prescribed**

- 1 compensation is not payable for actions of authorised people that are unavoidable, like demolishing an unlawful structure if the rectification notice requires the demolition
- 2 compensation is payable if the damage is reasonably avoidable, like the accidental breaking of a window

- (5) In this section:

*function*—see section 513 (4).

*official*—see section 513 (4).

**515 Enforcement actions unaffected by other approvals etc**

- (1) To remove any doubt, the territory planning authority or an official is not prevented from exercising a function in relation to a matter only because any of the following have been issued in relation to the matter:

- (a) a development approval;
- (b) a certificate of compliance;
- (c) a certificate of occupancy.

- (2) In this section:

*function*—see section 513 (4).

*official*—see section 513 (4).

**516 Evidentiary certificates—offsets register**

- (1) The territory planning authority may give a signed certificate—
- (a) stating that on a stated date or during a stated period a stated area of land was or was not the subject of an offset; and
  - (b) if the land was the subject of an offset—including the details kept in the offsets register about the land.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

**517 Evidence of ending of lease**

- (1) The territory planning authority may certify in writing that a lease mentioned in the certificate has ended.
- (2) The certificate is evidence of the matter it states.

**518 Basic fences between leased and unleased land**

- (1) This section applies in relation to an open space boundary of a block of land if, whether before or after the commencement of this section, a development requirement in relation to the block requires the erection of a basic paling fence for the boundary.
- (2) The development requirement is taken to have been complied with for the open space boundary if, instead of a basic paling fence, either of the following is erected:
  - (a) a fence that is exempt from requiring development approval;
  - (b) a fence in accordance with a notice under the *Common Boundaries Act 1981*, section 23 (Boundary between leased and unleased land).
- (3) In this section:

***basic paling fence*** means a fence that consists of not more than—

  - (a) a support structure; and
  - (b) timber palings only as the fence's panelling; and
  - (c) a capping rail.

**Examples—fences that are not basic paling fences**

- 1 a paling fence with a lattice extension or panelling
- 2 a fence with brick piers separating paling panels

***development requirement***, in relation to a block of land, means—

- (a) a condition in a lease for the block of land; or
- (b) a requirement of a development approval or a corresponding approval under a repealed territory law.

***open space boundary*** means a boundary between leased and unleased territory land.

### **519 Rights to extract minerals**

- (1) The territory planning authority may, by a lease or licence, grant a person the right to extract minerals from stated territory land.
- (2) The provisions of the lease or licence are the provisions agreed between the parties.
- (3) For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of ***personal property***, a right granted by licence under subsection (1) is not personal property.

### **520 Protected information**

- (1) This section applies to a person who—
  - (a) is or has been—
    - (i) the chief planner; or
    - (i) a member of staff of the territory planning authority; or
    - (ii) a member of the staff of the commission; or
  - (b) exercises or exercised a function under this Act.
- (2) A person to whom this section applies commits an offence if—
  - (a) the person—
    - (i) makes a record of protected information about someone else; and

- (ii) is reckless about whether the information is protected information about someone else; or
- (b) the person—
  - (i) does something that divulges protected information about someone else; and
  - (ii) is reckless about whether—
    - (A) the information is protected information about someone else; and
    - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if—
  - (a) the record is made, or the information is divulged—
    - (i) under this Act or another territory law; or
    - (ii) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
    - (iii) in a court proceeding; or
  - (k) the information about a person is divulged with the person's consent.

- (4) In this section:

***court*** includes a tribunal, authority or person having power to require—

- (a) production of, or access to, documents; or
- (b) the answering of questions.

***divulge*** includes communicate.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

### **521 Ministerial guidelines**

- (1) The Minister may approve guidelines for the exercise of any power by the Minister under this Act.
- (2) The Minister may, but need not, consider advice from the territory planning authority before approving guidelines.
- (3) Guidelines are a notifiable instrument.

### **522 Construction of outdated references**

- (1) In any Act, instrument made under an Act or document, a reference to the old Act is, in relation to anything to which this Act applies, a reference to this Act.
- (2) In any Act, instrument made under an Act or document, a reference to a provision of the old Act is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.
- (3) In any Act, instrument made under an Act or document, a reference to anything that is no longer applicable because of the repeal of the old Act, and for which there is a corresponding thing under this Act, is taken to be a reference to the thing under this Act, if the context allows and if otherwise appropriate.
- (4) In this section:

*old Act* means the *Land (Planning and Environment) Act 1991* or the *Planning and Development Act 2007*.

**523 Expiry of University of NSW lease provisions**

- (1) This section applies if a lease of land mentioned in section 266 (2) (g) 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 266 (2) (g) (Payment for leases generally);
  - (b) section 272 (2) (b) (Restrictions on transfer, assignment and parting with possession);
  - (c) section 274 (Restrictions on transfer, assignment and parting with possession—certain University of NSW leases);
  - (d) section 275 (Approval to transfer, assignment or part with possession—certain University of NSW leases);
  - (e) schedule 3, part 3.2, item 15;
  - (f) schedule 5, item 10, column 2, everything after “direct sale”;
  - (g) dictionary, definition of *University of NSW*.

**524 Determination of fees**

- (1) The Minister may determine fees for this Act
- (2) A determination is a disallowable instrument.

**525 Regulation-making power**

- (1) The Executive may make regulations for this Act.
- (2) A regulation may make provision about a matter by applying, adopting or incorporating (with or without change) an instrument, or a provision of an instrument, as in force from time to time.
- (3) The Legislation Act, section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under a regulation.

(4) A regulation may create offences and fix maximum penalties of not more than 60 penalty units for the offences.

(5) In this section:

*instrument* includes an Australian Standard or an Australian/New Zealand Standard.

## Chapter 17 Repeals

### 526 Legislation repealed

- (1) The following legislation is repealed:
  - *Planning and Development Act 2007* (A2007-24)
  - *Planning and Development Regulation 2008* (SL2008-2).
- (2) All other legislative instruments under the *Planning and Development Act 2007* are repealed.

## **Schedule 1      Preserved leases**

(see dict, def *preserved lease*)

### **Part 1.1                      Interpretation**

#### **1.1              Meaning of *preserved lease use*—sch 1**

(1) In this schedule:

*preserved lease use*, in relation to land described in a preserved lease—

(a) means the use of the land for the purpose of any of the following:

- (i) “an industry” or “industries”;
- (ii) “light industrial and commercial businesses”;
- (iii) conducting “industries” in buildings on the land; and

(b) includes the use of the land, or a building or structure on the land, for the retail sale of any of the following:

- (i) goods (other than food-stuffs, non-alcoholic beverages or new clothing) that have been manufactured or processed on the land or in the building or structure;
- (ii) building materials, building equipment, building supplies or general hardware;
- (iii) other goods ordinarily sold by sellers of goods mentioned in subparagraph (ii);
- (iv) agricultural, garden or farm equipment or supplies;
- (v) petrol, oil or other petroleum products;
- (vi) motor vehicles, trailers, caravans, boats or machinery;
- (vii) parts or accessories for goods mentioned in subparagraph (vi);

- (viii) if the floor area of the building, or the part of the building where the goods are sold or displayed for sale, does not exceed 46.5 m<sup>2</sup>—
  - (A) food-stuffs or non-alcoholic beverages of a kind commonly known as confectionery or refreshments; and
  - (B) any other kind of food-stuffs or non-alcoholic beverages that have been manufactured or processed on the land or in the building; and
  - (C) goods (other than food-stuffs, non-alcoholic beverages, new clothing or goods mentioned in paragraph (b) (i) to (vii)) that have been stored in bulk in the building pending their sale and distribution to persons engaged in retail trade elsewhere than on that land; but
- (c) unless otherwise authorised by the lease (whether expressly or by implication), does not include the use of the land, or a building or structure on the land—
  - (i) for the retail sale of any other goods; or
  - (ii) as a boarding-house, guest-house, hostel, hotel or motel; or
  - (iii) as residential accommodation.

## **Part 1.2**                      **Preserved leases**

<b>column 1 item</b>	<b>column 2 lease</b>
1	a lease granted or continued, or purported to have been granted or continued, under the <i>City Area Leases Act 1936</i> (repealed)
2	a lease to which the <i>Planning and Development Act 2007</i> , s 456 (Transitional—status of leases and licences), as in force on 25 February 2010, applied
3	a lease in which provision is made for a preserved lease use of the land, or a building or structure on the land

## Schedule 2 Information and documents for certain development applications

(see s 162 (2) (d))

### Part 2.1 Definitions—sch 2

#### 2.1 Definitions—sch 2

(2) In this schedule:

*expected greenhouse gas emissions statement*, for a development, means written information stating the annual amount of expected greenhouse gas emissions from operating the development.

*greenhouse gas emissions*—see the *Climate Change and Greenhouse Gas Reduction Act 2010*, dictionary.

*project development deed* means a deed or contract that—

- (a) was entered into as a condition of the grant of a lease by the lessee and the Territory or a territory entity; and
- (b) sets out obligations with which the lessee must comply in relation to development of the land described in the lease.

## Part 2.2 Information and documents for certain development applications

<b>column 1 item</b>	<b>column 2 type of development application</b>	<b>column 3 required information or documents</b>
1	application for a development proposal requiring design review	the design review advice and the proponent's response to the design review advice
2	application for a development proposal in relation to which an environmental significance opinion has been granted	the environmental significance opinion for the proposal
3	application for a development proposal in relation to which an EIS is required	the finalised EIS for the proposal
4	application made under s 154 (Application in anticipation of major plan amendment)	the draft major plan amendment
5	application made under s 156 (Applications for development encroaching on adjoining territory land if development prohibited)	the declaration under s 155 (4) and the proposed technical amendment
6	application for a development proposal in relation to which a guideline requires survey information	the information required by the guideline
7	application for development to which s 409 (Development applications for development undertaken without approval) applies	a plan of the development prepared by a registered surveyor that sets out the dimensions of the development
8	application for the subdivision of a units plan under the <i>Unit Titles Act 2001</i> , s 165B (Subdivision of units plan—application)	the resolution of the owners corporation under the <i>Unit Titles Act 2001</i> , s 160 (3) to cancel the units plan

**Schedule 2**  
**Part 2.2**

Information and documents for certain development applications  
Information and documents for certain development applications

<b>column 1 item</b>	<b>column 2 type of development application</b>	<b>column 3 required information or documents</b>
9	application to which s 301 (Application to remove concessional status of lease) applies	an assessment of the social, cultural and economic impacts of the proposed variation and a statement about any other proposed development (including any further proposed lease variation and design and siting elements)
10	application for approval of a non-standard chargeable variation of a nominal rent lease	a valuation by an accredited valuer that works out the amounts represented by $V_1$ and $V_2$ in s 254
11	application for the development of an estate	an estate development plan for the estate
12	application for a proposed development if the annual amount of the expected greenhouse gas emissions from operating the proposed development is more than the amount prescribed by regulation	an expected greenhouse gas emissions statement for the development
13	application for a proposed development in relation to which a project development deed or contract applies	written endorsement from the Territory or a government entity that the proposal is consistent with the lessee's obligations under the deed

## **Schedule 3      Market value leases and leases that are possibly concessional**

(see s 251 (b) and s 252 (1) (c))

### **Part 3.1              Interpretation**

#### **3.1              Definitions—sch 3**

In this schedule:

*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.

*rental lease*—see section 248.

*residential lease*—see section 248.

*rural lease*—see section 248.

## Part 3.2 Market value leases

column 1 item	column 2 lease
1	a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in section 250 (1)
2	a rural lease
3	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the <i>Housing Assistance Act 2007</i>
4	a lease granted to the Territory or a territory entity
5	a residential lease
6	<p>a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out—</p> <ul style="list-style-type: none"><li>(a) in accordance with a law in force in the Territory; or</li><li>(b) by agreement between the Commonwealth or the Territory and the lessee</li></ul> <p><b>Examples—commercial purposes</b></p> <ul style="list-style-type: none"><li>1 industrial</li><li>2 business</li></ul>
7	<p>a lease (the <i>individual lease</i>) granted for no consideration if—</p> <ul style="list-style-type: none"><li>(a) the individual lease is granted following the subdivision of a lease (the <i>head lease</i>) held by the person to whom the individual lease is granted; and</li><li>(b) the person has provided infrastructure on the land leased under the head lease</li></ul>

column 1 item	column 2 lease
8	a lease granted under the <i>City Area Leases Act 1936</i> — <ul style="list-style-type: none"> <li>(a) before 1 January 1971; and</li> <li>(b) to which that Act, s 18 (Rent) applies; and</li> <li>(c) that does not state, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease</li> </ul>
9	a lease that includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease
10	a lease granted to an entity, other than the Territory or a territory entity, if— <ul style="list-style-type: none"> <li>(a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and</li> <li>(b) the land described in the lease was occupied by the Territory or a territory entity on the lease commencement day</li> </ul>
11	a lease granted to the Commonwealth or a Commonwealth entity
12	a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if— <ul style="list-style-type: none"> <li>(a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and</li> <li>(b) the land described in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day</li> </ul>

column 1 item	column 2 lease
13	<p>a lease granted under the <i>City Area Leases Act 1936</i> if, on 1 July 2009—</p> <ul style="list-style-type: none"> <li>(a) the lessee of the lease is the holder of a club licence under the <i>Liquor Act 1975</i>; and</li> <li>(b) at least 75% of the area of the land comprising the lease is located in 1 or both of the following: <ul style="list-style-type: none"> <li>(i) a commercial zone under the territory plan;</li> <li>(ii) a designated area under the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cwlth); and</li> </ul> </li> </ul> <p><b>Example</b></p> <p>30% of land comprised in a lease is located in a commercial zone and 50% of land is located in a designated area</p> <ul style="list-style-type: none"> <li>(c) the lease does not state that there is a restriction on dealing with the lease; and</li> <li>(d) the lease authorises the land comprised in the lease to be used for both— <ul style="list-style-type: none"> <li>(i) a licensed club under the <i>Liquor Act 1975</i>; and</li> <li>(ii) a commercial purpose unrelated to the club</li> </ul> </li> </ul> <p><b>Examples—commercial purpose</b></p> <ul style="list-style-type: none"> <li>1 a shop under the territory plan</li> <li>2 a non-retail commercial use under the territory plan</li> <li>3 a commercial accommodation use under the territory plan</li> </ul>
14	a lease granted to the Australian National University established under the <i>Australian National University Act 1991</i> (Cwlth)
15	a lease granted to the University of NSW
16	a lease granted under the <i>Land (Planning and Environment) Act 1991</i> , s 164 (Special leases)
17	a lease granted under the <i>City Area Leases Act 1936</i> for commercial purposes

column 1 item	column 2 lease
18	<p>a lease granted after 30 March 2008 other than a lease—</p> <ul style="list-style-type: none"> <li>(a) that states, in the lease or a memorial to the lease, that the lease is a concessional lease; or</li> <li>(b) that satisfies the requirements under section 235C (1)</li> </ul> <p><i>Note</i> Certain leases granted after 30 March 2008 under the <i>Land (Planning and Environment) Act 1991</i> are possibly concessional (see s 235C).</p>
19	<p>a lease granted before 31 March 2008 if—</p> <ul style="list-style-type: none"> <li>(a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but</li> <li>(b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease: <ul style="list-style-type: none"> <li>(i) an amount in relation to the grant of the lease that was equal to the lease’s market value at the time of payment or, if the amount was paid in parts, at the time of the last payment;</li> <li>(ii) an amount to reduce the rent payable under the lease to a nominal rent under the <i>Land (Planning and Environment) Act 1991</i>, s 186 (Variation of lease to pay out rent)</li> </ul> </li> </ul>
20	<p>a lease granted before 1 July 2007 if—</p> <ul style="list-style-type: none"> <li>(a) the lessee applied in writing to the territory planning authority or the Minister to remove the concessional status of the lease; and</li> <li>(b) the territory planning authority or the Minister— <ul style="list-style-type: none"> <li>(i) approved the application in writing before 31 March 2008, subject to payment of an amount (the <b><i>application amount</i></b>), decided by the territory planning authority or the Minister, equal to the lease’s market value; and</li> <li>(ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and</li> </ul> </li> <li>(c) the lessee did not pay the application amount before 31 March 2008; and</li> <li>(d) the lessee pays the application amount within 6 months after the commencement of this schedule</li> </ul>
21	a lease prescribed by regulation

## Part 3.3 Possibly concessional leases

*Note* A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in part 3.2 (see s 252).

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease granted under the <i>Leases (Special Purposes) Act 1925</i>
3	a lease that states, in the lease or a memorial to the lease, that the <i>Land (Planning and Environment) Act 1991</i> , s 167 applies to the lease
4	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease
5	a lease that was granted under the <i>Leases Act 1918</i>
6	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a requirement that 1 or more stated uses of the land may only be exercised by the lessee
7	a lease granted to an incorporated association if— (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land
8	a lease— (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land described in the lease to be used for a club
9	a lease granted to a community organisation that states that the lease was granted under the <i>Land (Planning and Environment) Act 1991</i> , s 163, whether or not the community organisation is still the lessee

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column 1 item	column 2 lease
10	<p>a lease granted to an incorporated association or community organisation over a unit in a units plan under the <i>Unit Titles Act 2001</i> if—</p> <ul style="list-style-type: none"><li data-bbox="523 667 1310 763">(a) the lease (the <i>original lease</i>) that ended on registration of the units plan was granted to the incorporated association or community organisation; and</li><li data-bbox="523 775 1331 913">(b) the incorporated association or community organisation occupies the unit—<ul style="list-style-type: none"><li data-bbox="619 846 959 875">(i) for its own purposes; and</li><li data-bbox="619 887 1230 913">(ii) in accordance with a condition in the original lease</li></ul></li></ul> <p><i>Note</i> On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see <i>Unit Titles Act 2001</i>, s 33).</p>

## Schedule 4      Management objectives for public land

(see s 387 (1))

### Part 4.1      Interpretation

#### 4.1      Definitions—sch 4

In this schedule:

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

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

*natural environment* means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

## **Part 4.2**                      **Management objectives for areas of public land**

<b>column 1 item</b>	<b>column 2 reserve</b>	<b>column 3 management objectives</b>
1	wilderness area	(a) to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal  (b) to provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided
2	national park	(a) to conserve the natural environment  (b) to provide for public use of the area for recreation, education and research
3	nature reserve	(a) to conserve the natural environment  (b) to provide for public use of the area for recreation, education and research
4	special purpose reserve	to provide for public and community use of the area for recreation and education
5	urban open space	(a) to provide for public and community use of the area  (b) to develop the area for public and community use
6	cemetery or burial ground	to provide for the interment or cremation of human remains and the interment of the ashes of human remains

**Schedule 4**  
**Part 4.2**

Management objectives for public land  
Management objectives for areas of public land

<b>column 1 item</b>	<b>column 2 reserve</b>	<b>column 3 management objectives</b>
7	protection of water supply	<ul style="list-style-type: none"> <li>(a) to protect existing and future domestic water supply</li> <li>(b) to conserve the natural environment</li> <li>(c) to provide for public use of the area for education, research and low-impact recreation</li> </ul>
8	lake	<ul style="list-style-type: none"> <li>(a) to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs</li> <li>(b) to prevent and control pollution of waterways</li> <li>(c) to provide for public use of the lake for recreation</li> <li>(d) to provide a habitat for fauna and flora</li> </ul>
9	sport and recreation reserve	to provide for public and community use of the area for sport and recreation
10	heritage area	<ul style="list-style-type: none"> <li>(a) to conserve natural and cultural heritage places and objects, including Aboriginal places and objects</li> <li>(b) to provide for public use of the area for recreation, education and research as appropriate, and having proper regard to natural and cultural values</li> </ul>

## Schedule 5      Controlled activities

(see s 412 and s 432)

column 1 item	column 2 controlled activities	column 3 penalty
1	failing to comply with— <ul style="list-style-type: none"> <li>(a) a provision of a lease, other than—               <ul style="list-style-type: none"> <li>(i) a building and development provision requiring the commencement of works to take place within a stated time; or</li> <li>(ii) a building and development provision requiring the completion of works to take place within a stated time if—                   <ul style="list-style-type: none"> <li>(A) the stated time has been extended under div 10.12.4; and</li> <li>(B) the required fee for the extended time has been paid; and</li> <li>(C) the extended time has not ended; or</li> </ul> </li> </ul> </li> <li>(b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement</li> </ul>	60 penalty units
2	failing to keep a leasehold clean	60 penalty units
3	undertaking a development for which development approval is required— <ul style="list-style-type: none"> <li>(a) without development approval; or</li> <li>(b) other than in accordance with the development approval</li> </ul>	60 penalty units
4	having a building or structure constructed without development approval required by this Act	60 penalty units
5	failing to take reasonable steps to implement an offset management plan as required under s 243	60 penalty units

column 1 item	column 2 controlled activities	column 3 penalty
6	using unleased territory land in a way that is not authorised by— <ul style="list-style-type: none"> <li>(a) a licence under this Act; or</li> <li>(b) a sign approval or work approval under the <i>Public Unleased Land Act 2013</i>; or</li> <li>(c) a public unleased land permit under the <i>Public Unleased Land Act 2013</i></li> </ul>	60 penalty units
7	managing land held under a rural lease other than in accordance with— <ul style="list-style-type: none"> <li>(a) if an offset management plan is in force for the land—               <ul style="list-style-type: none"> <li>(i) the offset management plan; and</li> <li>(ii) to the extent that the land management agreement for the land is not inconsistent with the offset management plan—the land management agreement; or</li> </ul> </li> <li>(b) in any other case—the land management agreement for the land</li> </ul>	60 penalty units
8	failing to enter into a land management agreement as required under s 286	60 penalty units
9	undertaking prohibited development, other than— <ul style="list-style-type: none"> <li>(a) in accordance with a development approval allowed under div 7.4.1; or</li> <li>(b) as authorised by a lease if development approval is not required</li> </ul>	60 penalty units
10	failing to use land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted	60 penalty units

## **Schedule 6      Reviewable decisions, eligible entities and interested entities**

(see s 506)

### **Part 6.1                      Interpretation**

#### **6.1                      Meaning of *material detriment*—sch 6**

(3) In this schedule:

*material detriment*—

- (a) means detriment suffered by an entity because of a decision if—
  - (i) the decision has, or is likely to have, an adverse impact on the entity's use or enjoyment of land; or
  - (ii) for an entity that has objects or purposes—the decision relates to a matter included in the entity's objects or purposes; but
- (b) does not include detriment suffered by an entity only because of a decision that increases, or is likely to increase, direct or indirect competition with the entity's business, business partner, close friend or family member.

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

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**Part 6.2**                      **Reviewable decisions, eligible entities and interested entities**

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
1	decision under s 180 to approve (with or without conditions) or refuse a development application	applicant for development approval	entity that made representation under s 175 about the application

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
2	decision under s 180 to approve (with or without conditions) a development application to which s 171 (1) (d) applies	an entity if— <ul style="list-style-type: none"> <li>(a) the entity made a representation under s 175 about the application or had a reasonable excuse for not making a representation; and</li> <li>(b) the approval of the application may cause the entity to suffer material detriment</li> </ul>	applicant for development approval
3	decision of entity mentioned in s 182 (2) (a) that is required to be satisfied in relation to carrying out of development or stage of development	approval-holder	territory planning authority

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

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<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
4	decision to refuse to endorse a plan, drawing, specification or other document mentioned s 182 (2) (o), or decision under s 182 (4) to refuse to endorse a change to an endorsed plan, drawing, specification or other document	approval-holder	entity that made representation under s 175 about the application for development approval
5	decision under s 194 (1) (b) on reconsideration	applicant for reconsideration	entity that made representation under s 175 about the original application

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
6	decision under s 194 (1) (b) to approve (with or without conditions) a development application on reconsideration to which s 171 (1) (d) applies	an entity if— <ul style="list-style-type: none"> <li>(a) the entity made a representation under s 175 about the original application or had a reasonable excuse for not making a representation; and</li> <li>(b) the approval of the original application may cause the entity to suffer material detriment</li> </ul>	applicant for reconsideration
7	decision under s 201 to refuse to amend a development approval	approval-holder	entity that made representation under s 175 about the original application

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
8	decision under s 201 to amend (with or without conditions) a development approval in relation to which s 171 (1) (d) applies	an entity if— <ul style="list-style-type: none"> <li>(a) the entity made a representation under s 175 about the original application or had a reasonable excuse for not making a representation; and</li> <li>(b) the amendment of the approval may cause the entity to suffer material detriment</li> </ul>	approval-holder
9	decision under s 206 (3) to refuse to extend period for finishing development or stage of development	approval-holder	entity that made representation under s 175 about the application for development approval

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
10	decision under s 199 to revoke development approval	holder of revoked approval	entity that made representation under s 175 about the application for development approval
11	decision under s 255 to refuse to grant a lease to a person by direct sale (other than a refusal to grant a lease to the University of NSW of land mentioned in s 266 (2) (g))	applicant for grant of lease	
12	decision under s 265 (2) to end person's right to be granted a lease	person whose right is ended	
13	decision under s 273 to refuse to approve a transfer, assignment or parting of possession of lease	lessee	
14	decision under s 276 (2) to refuse to approve a sublease of land	applicant for approval of sublease	
15	decision under s 281 to refuse to grant a further lease	applicant for grant of further lease	

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

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<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
16	decision under s 291 that lease is a concessional lease	lessee	
17	decision under s 293 that lease is a concessional lease	lessee	
18	decision under s 299 to refuse to consent to a dealing with a lease	lessee	
19	decision under s 303 about the payout amount for a concessional lease	lessee	
20	decision under s 307 to confirm variation of rent after review	lessee	
21	decision under s 307 to set aside variation and substitute another variation of rent after review	lessee	
22	decision under s 310 adjusting rent after reappraisal	lessee	

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
23	decision under s 313 (2) (d) about amount payable for variation to reduce rent payable under lease to a nominal rent	lessee	
24	decision under s 329 (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
25	decision under s 329 (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
26	decision under s 335 not to approve an application to defer payment of a lease variation charge	applicant for the deferral	
27	decision under s 354 (2) about market value of improvements on land	lessee	

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
28	decision under s 355 (2) to refuse to accept the surrender of a lease, or part of land described in lease	person surrendering lease or part of land described in lease	
29	decision under s 355 (2) to accept the surrender of a lease, or part of land described in lease, subject to a condition	person surrendering lease or part of land described in lease	
30	decision under s 356 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	person surrendering lease or whose lease is terminated	
31	decision under s 360 (1) to refuse to issue a certificate of compliance	lessee	
32	decision under s 360 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	lessee	

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
33	decision under s 360 (2) to issue a certificate of compliance subject to condition that lessee provide security	lessee	
34	decision under s 360 (2) to refuse to issue a certificate of compliance	lessee	
35	decision under s 363 or s 364 to refuse to approve the assignment or transfer of a lease or interest in a lease	lessee	
36	decision under s 366 to approve an extension of a stated time for a shorter period than that sought	lessee	
37	decision under s 366 to refuse an extension of a stated time	lessee	
38	decision under s 425 (5) to refuse to extend the time allowed to respond to show cause notice	applicant for extension	

**Schedule 6**  
**Part 6.2**

Reviewable decisions, eligible entities and interested entities  
Reviewable decisions, eligible entities and interested entities

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<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
39	decision under s 427 to make a controlled activity order	person against whom order directed lessee of land to which order relates occupier of land to which order relates	
40	decision under s 434 (4) to refuse to revoke a controlled activity order	applicant for revocation lessee of land to which order relates occupier of land to which order relates	

<b>column 1 item</b>	<b>column 2 reviewable decision</b>	<b>column 3 eligible entities</b>	<b>column 4 interested entities</b>
41	decision under s 453 (3) to give a prohibition notice	person against whom notice directed lessee of land to which notice relates occupier of land to which notice relates	
42	decision under s 456 (3) to refuse to revoke a prohibition notice	applicant for revocation lessee of land to which notice relates occupier of land to which notice relates	
43	decision under s 458 to terminate a lease	person whose lease is terminated	
44	decision under s 459 to terminate a licence	person whose licence is terminated	

## Schedule 7 Matters exempt from third party ACAT review

(see s 506, def *eligible entity*, par (c))

### Part 7.1 Definitions—sch 7

#### 7.1 Definitions—sch 7

(4) In this schedule:

***Belconnen town centre*** means the area outlined in bold on the plan in this schedule, division 5.3.2.

***city centre*** means the area outlined in bold on the plan in this schedule, division 5.3.1.

***Gungahlin town centre*** means the area outlined in bold on the plan in this schedule, division 5.3.3.

***Kingston Foreshore*** means the area outlined in bold on the plan in this schedule, division 5.3.6.

***town centre*** means the Belconnen town centre, the Gungahlin town centre, the Tuggeranong town centre or the Woden town centre.

***Tuggeranong town centre*** means the area outlined in bold on the plan in this schedule, division 5.3.4.

***University of Canberra site*** means the area outlined in bold on the plan in this schedule, division 5.3.7.

***Woden town centre*** means the area outlined in bold on the plan in this schedule, division 5.3.5.

## Part 7.2 Matters exempt from third party ACAT review

column 1 item	column 2 matters
1	a territory priority project
2	<p>a development, other than a significant development requiring an EIS or an estate development plan, on land in—</p> <ul style="list-style-type: none"> <li>(a) the city centre; or</li> <li>(b) a town centre; or</li> <li>(c) an industrial zone; or</li> <li>(d) the Kingston Foreshore; or</li> <li>(e) the University of Canberra site</li> </ul>
3	<p>a development, other than a significant development requiring an EIS or an estate development plan, on land in a non-residential zone if—</p> <ul style="list-style-type: none"> <li>(a) the land is at least 50m from any block within a residential zone; and</li> <li>(b) for a development involving the building or altering of a building or structure on the land—the new or altered building or structure meets the quantitative requirements for any applicable height and plot ratio provisions; and</li> <li>(c) for a development on land the subject of a lease or sublease which at the time of the application permits a community use—the decision does not authorise a lease variation to remove a community use; and</li> <li>(d) for land within a CZ4 (local centre) zone and the subject of a lease or sublease which at the time of the application permits the use of the land for a shop— <ul style="list-style-type: none"> <li>(i) the decision does not authorise a lease variation to remove the use of the land for a shop; and</li> <li>(ii) the development would not have the effect of permitting the building of a dwelling on the land; and</li> </ul> </li> <li>(e) for land in a non-urban zone—the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased, or permitted by a licence under this Act, at the time of the application</li> </ul>

**Schedule 7**  
**Part 7.2**

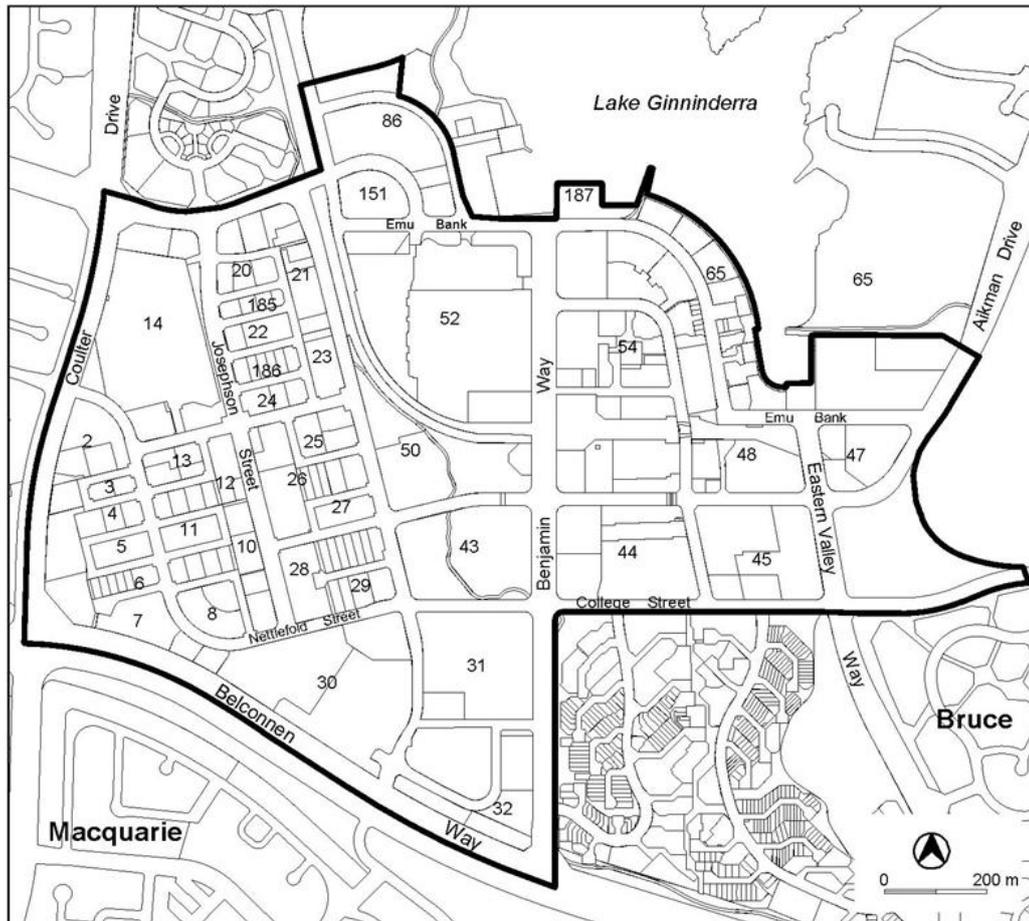
Matters exempt from third party ACAT review  
Matters exempt from third party ACAT review

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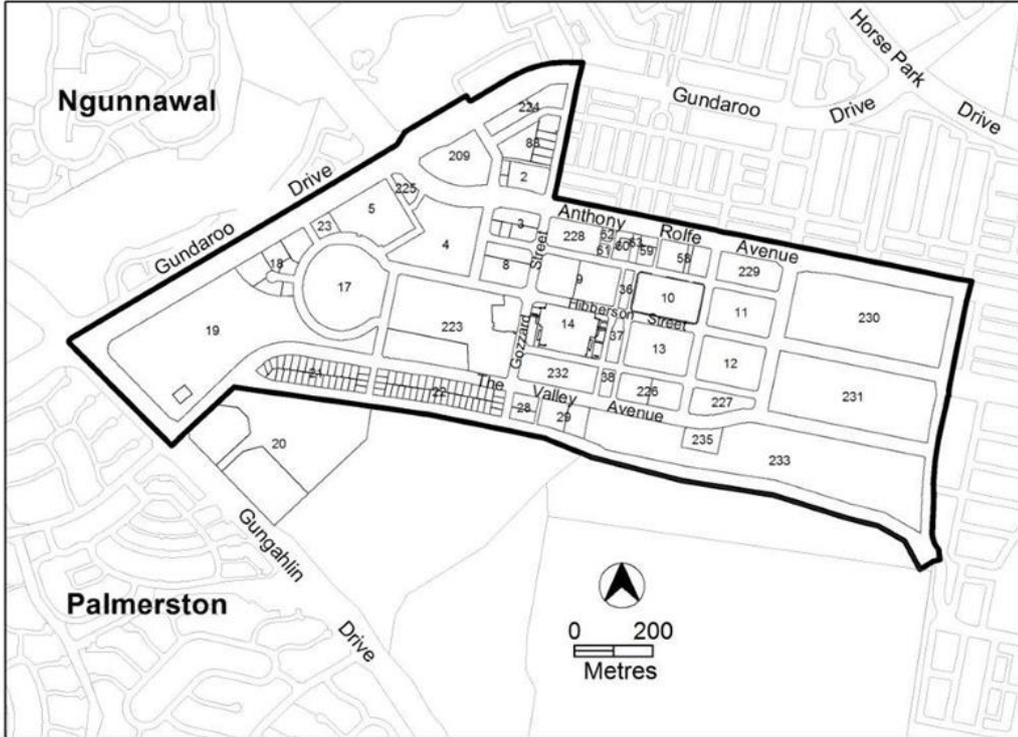
<b>column 1 item</b>	<b>column 2 matters</b>
4	the demolition of a building or structure in connection with a development, other than a significant development requiring an EIS or an estate development plan, consisting of the building or alteration of a building or structure to which this part applies
5	public works, other than a significant development requiring an EIS or an estate development plan, consisting of the building, alteration or demolition of— (a) electricity, water, gas or communication services; or (b) a floodway or sewerage or drainage works; or (c) a public road, public path, cycleway or car park
6	the building, alteration or demolition of public facilities on unleased land, or land leased to the Territory, including barbecues, seating and playground equipment, or related landscaping
7	the putting up, attaching or displaying of a sign or advertisement on land or to a building or structure on land



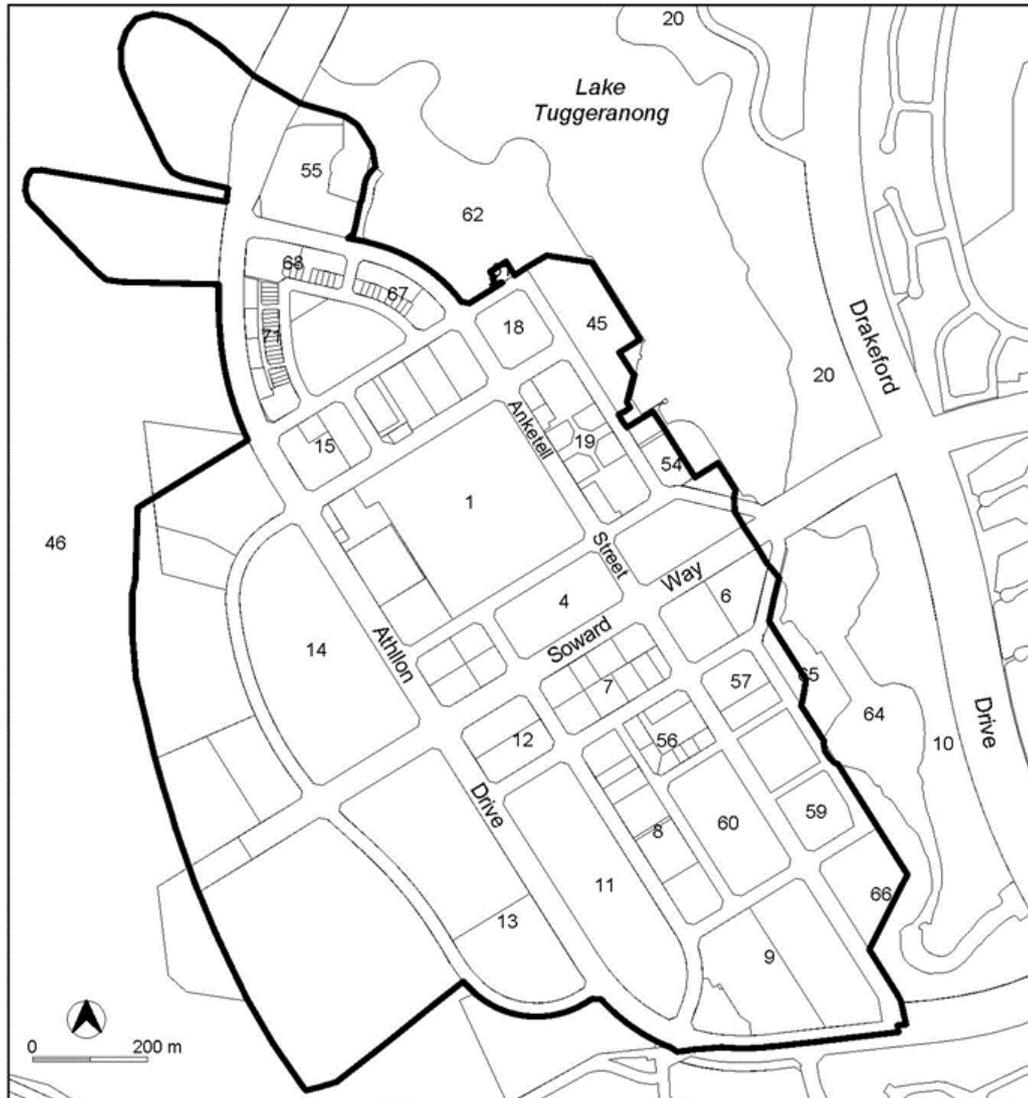
## Division 7.3.2 Belconnen town centre



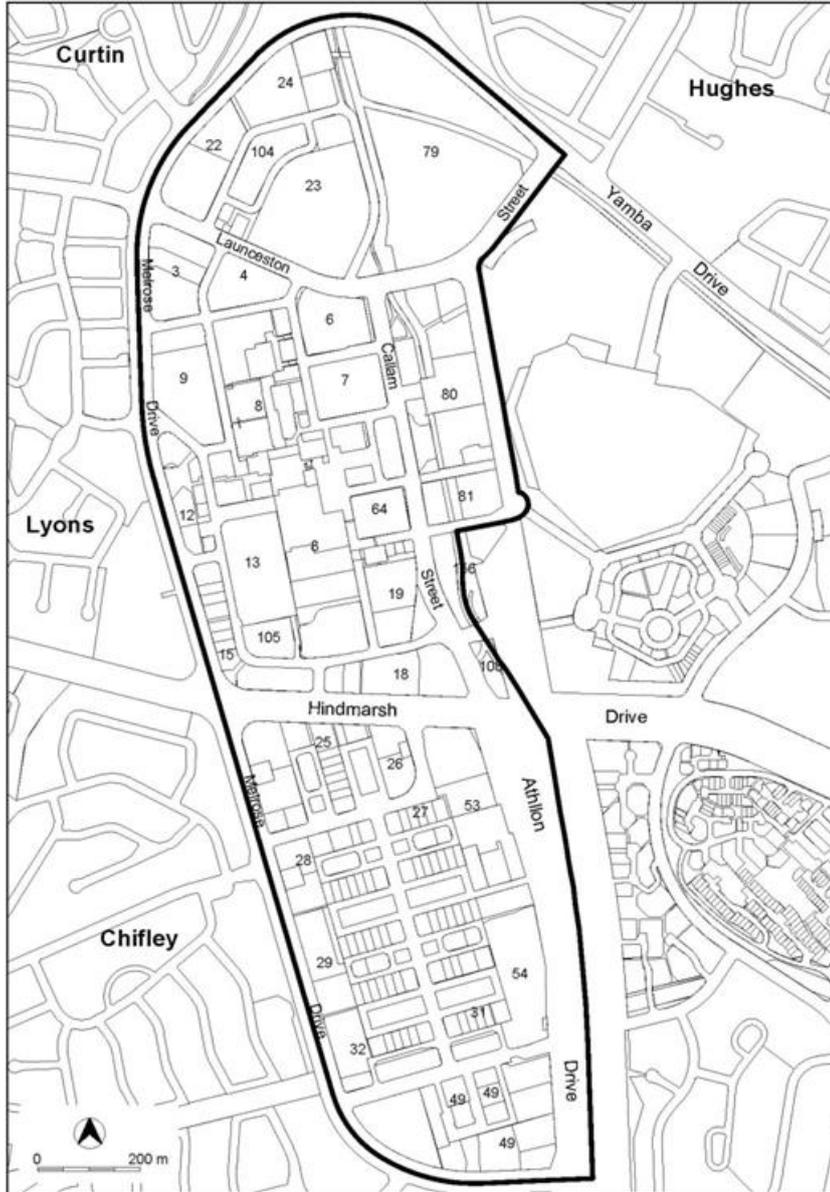
**Division 7.3.3      Gungahlin town centre**



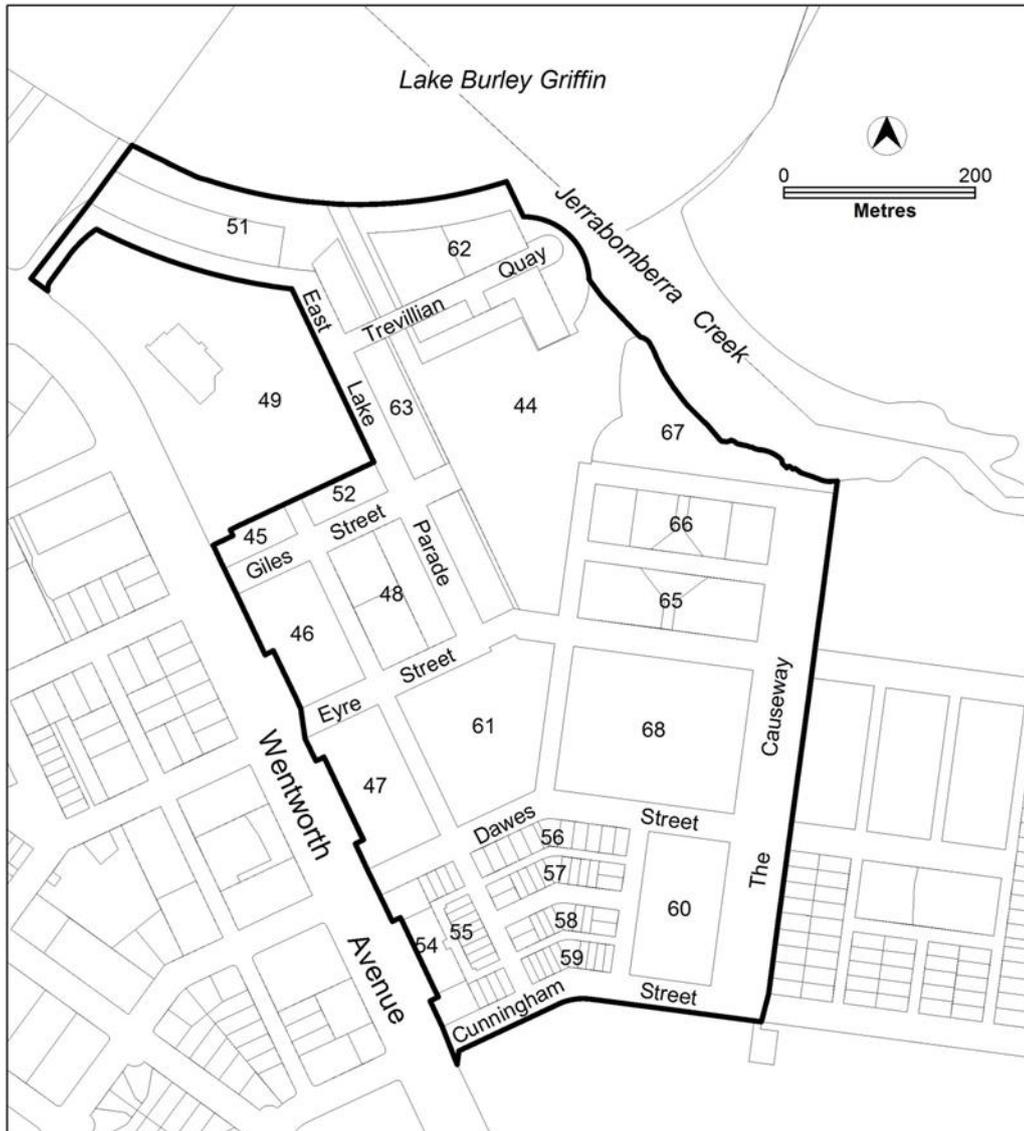
## Division 7.3.4 Tuggeranong town centre



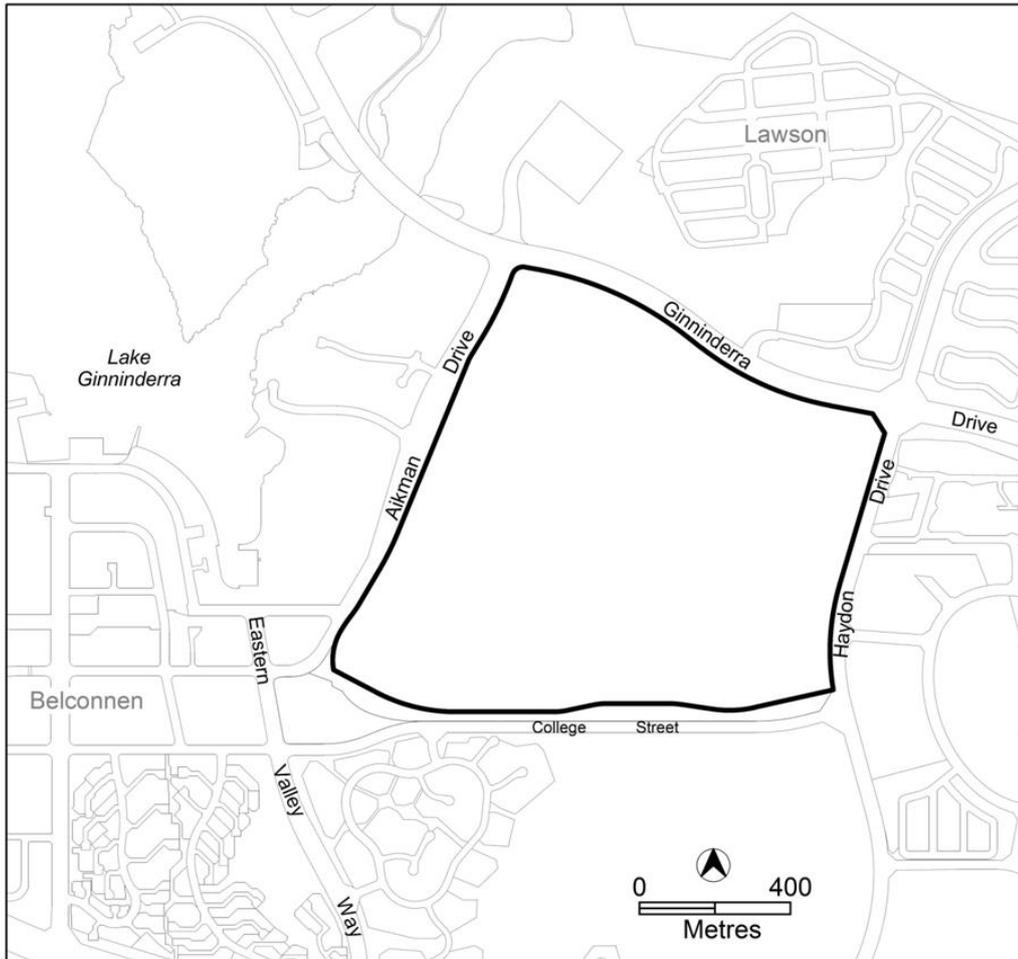
**Division 7.3.5      Woden town centre**



## Division 7.3.6 Kingston Foreshore



**Division 7.3.7 University of Canberra site**



## Dictionary

(see s 3)

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

- ACAT
- appoint
- city renewal authority
- commissioner for revenue
- conservator of flora and fauna
- contravene
- corporation
- document
- emergency service
- emergency services commissioner
- entity
- environment protection authority
- Executive
- exercise
- function
- found guilty
- head of service
- heritage council
- home address
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- national capital authority
- national capital plan
- person
- public servant
- registered surveyor
- registrar-general
- reviewable decision notice

- Self-Government Act
- suburban land agency
- territory authority
- territory instrumentality
- territory land
- territory-owned corporation
- the Territory
- under
- work health and safety commissioner
- working day.

**Aboriginal object**, for schedule 4 (Management objectives for public land)—see the *Heritage Act 2004*, section 9 (1).

**Aboriginal place**, for schedule 4 (Management objectives for public land)—see the *Heritage Act 2004*, section 9 (1).

**accredited valuer** means a valuer accredited by—

- (a) the Australian Property Institute Limited ACN 608 309 128; or
- (b) if another entity is prescribed by regulation—that entity.

**act** includes omission.

**activation and liveability principles**—see section 9 (2).

**additional rent** means amounts payable under a lease in addition to rent owed under the lease because rent or other amounts owing under the lease have not been paid as required.

**adjoins**, for division 7.5.4 (Public notification of development applications)—see section 170.

**applicant**, for a development application, includes a lessee who signs the development application.

**approval-holder** means a person whose application for development approval has been approved (with or without a condition) if the approval is in force.

**assessable development** means development that requires development approval.

**associated document**, for part 14.1 (Public register)—see section 503.

**authorised person**—see section 439 (1).

**authorised use**, of land, or of a building or structure on land, for part 7.2 (Exempt development)—see section 142.

**authority website**—see section 511.

**background papers**, in relation to a draft major plan amendment or major plan amendment, for part 5.3 (Territory plan—major plan amendments)—see section 52.

**Belconnen town centre**, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

**building and development provision**, for chapter 10 (Leases and licences)—see section 248.

**business hours**, in relation to premises—

- (a) means 9.00 am to 5.00 pm on a working day; and
- (b) if the premises are not residential premises—includes any period the premises are open for business outside the period mentioned in paragraph (a).

**certificate of compliance** means a certificate issued under section 360.

**certificate of occupancy** means a certificate issued under the *Building Act 2004*, section 69.

**chargeable variation**, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 319.

**chief planner** means the Chief Planner appointed under section 23.

**city centre**, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

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**Commonwealth entity** means—

- (a) a body established under a Commonwealth Act; or
- (b) a Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or
- (c) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or
- (d) a company in which a controlling interest is held by either or both of the following:
  - (i) the Commonwealth;
  - (ii) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth).

**community lease**—see section 283 (1).

**community lease provisions**, for a community lease—see section 284.

**community lease use**—see section 283 (1).

**community organisation** means a corporation that—

- (a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and
- (b) is not carried on for the financial benefit of its members; and
- (c) does not hold a club licence under the *Liquor Act 2010*.

**community use report** means a report prepared under section 288.

**complainant**, for part 12.2 (Complaints about controlled activities)—see section 414 (1) (b).

**concessional basis**—see section 250 (3).

**concessional lease**—see section 250 (1).

**concessional status removed**—see section 250 (2).

***concurrent development application*** means a development application for prohibited development made under—

- (a) section 154 (Applications in anticipation of major plan amendment); or
- (b) section 156 (Applications for development encroaching on adjoining territory land if development prohibited).

***conditional environmental significance opinion***—see section 136 (4) (b).

***connected***, for chapter 13 (Enforcement)—see section 461.

***consolidation***, for chapter 10 (Leases and licences)—see section 248.

***consultation comments***—

- (a) for part 5.3 (Territory plan—major plan amendments)—see section 60 (1) (c) (i); and
- (b) in relation to a minor plan amendment—see section 84 (2) (b) (i).

***consultation notice***—

- (a) for part 5.3 (Territory plan—major plan amendments)—see section 60 (1) (c); and
- (b) for a draft revised offsets policy—see section 222 (1); and
- (c) for draft offsets policy guidelines—see section 229 (1); and
- (d) for a draft land management plan—see section 390 (1).

***consultation period***—

- (a) for part 5.3 (Territory plan—major plan amendments)—see section 52; and
- (b) for a draft revised offsets policy—see section 222 (2) (b); and
- (c) for draft offsets policy guidelines—see section 229 (2) (b); and
- (d) for a draft land management plan—see section 390 (2) (b).

***controlled activity***—see section 412.

***controlled activity order***—see section 424.

***corresponding major plan amendment***, for a draft major plan amendment—see section 52.

***custodian***, in relation to land, means an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both.

***deal***, with a lease, means—

- (a) assign or transfer the lease; or
- (b) sublet the land described in the lease or part of it; or
- (c) part with possession of the land described in the lease or any part of it.

***deciding*** a development application means approving (with or without a condition) or refusing the application.

***decision-maker***—

- (a) for chapter 7 (Development assessment and approvals)—see section 140; and
- (b) for part 9.4 (Offset conditions)—see section 236; and
- (c) for chapter 15 (Notification and review of decisions)—see section 506.

***declared land sublease***—see section 357 (1).

***declared protected matter***—see section 214 (2).

***declared site***—see the *Tree Protection Act 2005*, dictionary.

***deferral arrangement***, for a lease variation charge—see section 335 (1) (c).

***design advice***—see section 98 (2) (b) (i).

***designated area***—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4.

***design principles***—see section 96 (1).

***design review panel*** means the Design Review Panel established under section 92.

***design review panel rules***—see section 95 (1).

***development***, in relation to land—see section 11 (1).

***development application***—see section 162 (1).

***development approval*** means approval for a development under chapter 7 (Development assessment and approvals).

***development proposal*** means a proposal for development, whether or not in a development application.

***discharge amount***, for a rural lease, for division 10.8.2 (Exceptions for rural leases)—see section 341.

***district***—see the *Districts Act 2002*, dictionary.

***district strategy***—see section 37 (1).

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

***draft EIS***—see section 109 (1) (a).

***draft land management plan***—see section 389 (1).

***draft major plan amendment***—see section 52.

***draft offsets policy guidelines***—see section 228 (1).

***draft revised offsets policy***—see section 221 (2).

***ecologically sustainable development***—see section 8.

***EIS***—see section 99 (2).

***EIS assessment report***—see section 123 (1).

**eligible entity**, for chapter 15 (Notification and review of decisions)—see section 506.

**ends**, for an appeal, means decided, withdrawn, dismissed or struck out.

**environment**—each of the following is part of the environment:

- (a) the soil, atmosphere, water and other parts of the earth;
- (b) organic and inorganic matter;
- (c) living organisms;
- (d) structures, and areas, that are manufactured or modified;
- (e) ecosystems and parts of ecosystems, including people and communities;
- (f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;
- (g) interactions and interdependencies within and between the things mentioned in paragraphs (a) to (f);
- (h) social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).

**environmental impact assessment** means an EIS or an environmental significance opinion.

**environmental significance opinion**—see section 135 (1).

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

**essential design element**, of a development proposal—see section 183.

**estate development plan**, for an estate—see section 39 (1).

**exempt development**—see section 141.

***exemption assessment***—see section 147 (1).

***exemption assessment D notice***—see section 148 (2) (b).

***exemption assessor***—see section 147 (1).

***expected greenhouse gas emissions statement***, for a development, for schedule 2 (Information and documents for certain development applications)—see schedule 2, section 2.1.

***finalised***—

- (a) for an EIS—see section 125; and
- (b) for a public health EIS—see section 126.

***formal error*** means—

- (a) a clerical error; or
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form.

***future urban area*** means an area of territory land identified in the territory plan for future urban development.

***government entity*** includes a territory authority, territory instrumentality and an administrative unit.

***greenhouse gas emissions***, for schedule 2 (Information and documents for certain development applications)—see the *Climate Change and Greenhouse Gas Reduction Act 2010*, dictionary.

***gross floor area***, for division 10.7.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

***Gungahlin town centre***, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

***holding period***, for a rural lease, for division 10.8.2 (Exceptions for rural leases)—see section 341.

***high-quality design principles***—see section 9 (2).

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**improvement**, in relation to land, for part 10.9 (Leases—improvements) see section 347.

**incorporated association**, for schedule 3 (Market value leases and leases that are possibly concessional)—see schedule 3, section 3.1.

**inquiry** means an inquiry into an EIS under section 129.

**inquiry panel**—see section 129 (1) (a).

**integrated delivery principles**—see section 9 (2).

**interested entity**, for chapter 15 (Notification and review of decisions)—see section 506.

**interested person**, in relation to land, for part 5.3 (Territory plan—major plan amendments)—see section 53.

**inspector** means a person appointed as an inspector under section 462.

**investment facilitation principles**—see section 9 (2).

**Kingston Foreshore**, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

**land management agreement**—see section 342 (2) (a).

**land management plan**—see section 394(1) (1).

**land rent lease**—see the *Land Rent Act 2008*, dictionary.

**land sublease** means a sublease of land approved under section 276 (Restriction on subletting of land) but does not include a sublease mentioned in section 277 (Subletting part of building).

**lease**—

(a) for this Act generally—see section 249; and

(b) for part 10.12 (Leases—building and development provisions)—see section 359.

**leasehold**, of a lessee, means the land held under the lease.

**lease variation charge**, for a variation of a nominal rent lease, means the lease variation charge applying under division 10.7.3 (Variation of nominal rent leases).

**lessee**—

- (a) for chapter 10 (Leases and licences)—see section 248; and
- (b) for a lease that has ended, for part 10.9 (Leases—improvements)—see section 347.

**light rail**—see the *Road Transport (General) Act 1999*, dictionary.

**limited consultation**, for Part 5.4 (Territory plan—minor plan amendments)—see section 84 (1).

**long-term focus principles**—see section 9 (2).

**major plan amendment**, part 5.3 (Territory plan—major plan amendments)—see section 52.

**management objectives**—see section 387 (1).

**market value**, of a lease, for chapter 10 (Leases and licences)—see section 248.

**market value lease**—see section 251.

**material detriment**, for schedule 6 (Reviewable decisions, eligible entities and interested entities)—see schedule 6, section 6.1.

**matter protected by the Commonwealth**—see section 215 (1).

**memorial**—see the *Land Titles Act 1925*, dictionary.

**Minister**, for part 9.2 (Offsets policy)—see section 218.

**minor plan amendment**—see section 82.

**monitoring warrant**—see section 486 (1).

**natural environment**, for schedule 4, (Management objectives for public land)—see schedule 4, section 4.1.

**natural environment conservation principles**—see section 9 (2).

**nominal rent** means—

- (a) rent of 5 cents each year; or
- (b) if another nominal amount each year is prescribed by regulation—rent of the other nominal amount.

**nominal rent lease** means a lease for a nominal rent.

**non-standard chargeable variation**, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 319.

**occupier**, of premises, for chapter 13 (Enforcement)—see section 461.

**offence**, for chapter 13 (Enforcement)—see section 461.

**offset**—see section 216.

**offset condition**, for a development approval—see section 237.

**offset management plan**, for an offset—see section 238 (1).

**offset manager**, for an offset management plan—see section 239.

**offsets policy**—see section 217.

**offsets policy guidelines**—see section 227 (1).

**offsets register**—see section 235.

**ongoing controlled activity order**, for part 12.3 (Controlled activity orders)—see section 428 (1).

**ongoing provision** included in an estate development plan—see section 39 (3) (g).

**original application**, for division 7.6.3 (Reconsideration of decisions on development applications)—see section 193 (1) (a).

***original decision***—

- (a) for division 7.6.3 (Reconsideration of decisions on development applications)—see section 193 (1) (a); and
- (b) for division 10.7.3 (Variation of nominal rent leases)—see section 326 (1) (b)

***personal information***—

- (a) means information or an opinion, whether true or not, about—
  - (i) an identified individual; or
  - (ii) an individual whose identity can reasonably be worked out from the information or opinion; and
- (b) includes an individual's name.

***plan*** means the territory plan.

***planning strategy***—see section 34 (1).

***possibly concessional***, in relation to a lease—see section 252.

***pre-decision advice***, in relation to a development application, see section 177 (1).

***premises***, for chapter 13 (Enforcement)—see section 461.

***preserved lease*** means a lease mentioned in an item in schedule 1, part 1.2, column 2.

***preserved lease use***, in relation to land described in a preserved lease, for schedule 1 (Preserved leases)—see schedule 1, part 1.1, section 1.1.

***project development deed***, for schedule 2 (Information and documents for certain development applications)—see schedule 2, section 2.1.

***prohibited development***—see section 151 (1).

***prohibition notice***—see section 453 (1).

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**proponent**, of a development proposal, means the person proposing the proposal.

**proponent-initiated amendment**, for part 5.3 (Territory plan—major plan amendments)—see section 54.

**protected matter**—see section 214 (1).

**provision**, of a lease, for chapter 10 (Leases and licences)—see section 248.

**public availability notice**, for a draft major plan amendment, for part 5.3 (Territory plan—major plan amendments)—see section 65 (a).

**public consultation period**, for a draft EIS, means—

- (a) the period stated under section 111 (a) (iii); or
- (b) if the period is extended under section 112 (3)—the period as extended.

**public land** means land identified by the territory plan as public land.

**public land management plan**, for an area of public land—see section 388 (1).

**Public Health Act Minister** means the Minister responsible for the *Public Health Act 1997*, section 134 (Development approvals under Planning Act 2022, s 102).

**public health EIS** means an EIS for a development proposal in a development application in relation to which the Public Health Act Minister has made a declaration for section 102 (When EIS is required).

**publicly notify**—

- (a) a draft EIS—see section 111; and
- (b) a development application—see section 171 (1).

**public notification period**, for a development application—see section 171 (2).

**public register**—see section 499.

**reconsideration application**—

- (a) for division 7.6.3 (Reconsideration of decisions on development applications)—see section 193 (2); and
- (b) for division 10.7.3 (Variation of nominal rent leases)—see section 327 (5).

**rectification work**—see section 436.

**rectification work order**—see section 443 (1).

**referral entity**—see section 166 (1) (a).

**registered interest**, in a lease, means an interest in the lease registered under the *Land Titles Act 1925*.

**registered interest holder**, for division 7.5.4 (Public notification of development applications)—see section 170.

**registered proprietor**, in relation to a lease, for chapter 10 (Leases and licences)—see section 248.

**registered tree**—see the *Tree Protection Act 2005*, section 9.

**related to light rail**—see section 211.

**relevant agency**, for an environmental significance opinion—see section 135 (1).

**relevant Assembly committee**, for part 5.3 (Territory plan—major plan amendments)—see section 52.

**remote application**—

- (a) for division 12.4.4 (Rectification work orders)—see section 442; and
- (b) for part 13.6 (Monitoring warrants)—see section 485.

**remote order**, for division 12.4.4 (Rectification work orders)—see section 442.

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**remote warrant**, for part 13.6 (Monitoring warrants)—see section 485.

**rental lease**—

- (a) for chapter 10 (Leases and licences)—see section 248; and
- (b) for schedule 3 (Market value leases and leases that are possibly concessional)—section 248.

**representation**—

- (a) about a development application, means a representation made under section 175; or
- (b) about a draft EIS, means a representation made about the draft EIS under section 112.

**required fee** for division 10.12.5 (Reduction or waiver of required fee for extension of time to complete work)—see section 369.

**residential lease**—

- (a) for chapter 10 (Leases and licences)—see section 248; and
- (b) for schedule 3 (Market value leases and leases that are possibly concessional)—section 248.

**reviewable decision**, for chapter 15 (Notification and review of decisions)—see section 506.

**rural lease**—see section 248.

**show cause notice**, for part 12.2 (Controlled activity orders)—see section 425 (1).

**scoping document**, for a development proposal—see section 106 (2) (b).

**significant**, in relation to an adverse environmental impact—see section 101.

**significant development**—see section 91.

**single dwelling house lease**, for chapter 10 (Leases and licences)—see section 248.

**standard chargeable variation**, of a nominal rent lease, for division 10.7.3 (Variation of nominal rent leases)—see section 319.

**statement of planning priorities**—see section 38 (1).

**structure** includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, road, footpath, driveway, carpark, culvert or service conduit or cable.

**subdivision**, for chapter 10 (Leases and licences)—see section 248.

**sublease**, for chapter 10 (Leases and licences)—see section 248.

**supporting report**, for part 5.3 (Territory plan—major plan amendments)—see section 52.

**sustainability and resilience principles**—see section 9 (2).

**territory entity** means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

**territory plan** means the territory plan under section 41.

**territory plan map**—see section 44 (1) (a).

**territory planning authority** means the Territory Planning Authority established under section 13.

**territory priority project**—see section 210.

**territory priority project declaration**—see section 212 (1).

**town centre**, for schedule 7—see schedule 7 (Matters exempt from third party ACAT review), section 7.1.

**transfer**, of a lease, for part 10.12 (Leases—building and development provisions)—see section 359.

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***Tuggeranong town centre***, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

***undertaken***, in relation to an improvement that is a building or structure, for part 10.9 (Leases—improvements)—see section 347.

***University of Canberra site***, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

***University of NSW*** means the University of New South Wales established under the *University of New South Wales Act 1989* (NSW), section 4.

***urban regeneration principles***—see section 9 (2).

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

***use***, of land, or of a building or structure on land—see section 12.

***variation***, of a lease—

- (a) includes the surrender of the lease and the grant of a new lease to the same lessee, subject to different provisions, over land that—
  - (i) is all or part of the land comprised in the surrendered lease; and
  - (ii) is not in an area identified in the territory plan as a future urban area; and
- (b) without limiting paragraph (a), includes the surrender of a concessional lease and the grant of a new lease to the same lessee as a market value lease; and
- (c) includes the consolidation, or subdivision, of the lease; but
- (d) does not include—
  - (i) the surrender of the lease and the grant of a further lease under section 281 (Grant of further leases); or

- (ii) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed.

**Woden town centre**, for schedule 7 (Matters exempt from third party ACAT review)—see schedule 7, section 7.1.

**working out statement**, for division 10.7.3 (Variation of nominal rent leases)—see section 326 (2).

**zone** means a zone identified in the territory plan.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2022.

**2 Notification**

Notified under the Legislation Act on 2022.

**3 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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