

KL α Australia Pty Ltd

**Report on the Granting and
Administration of
Concessional Leases in the
Australian Capital Territory**

Volume II

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LEGISLATIVE PROVISIONS

APPENDIX A -- LEGISLATIVE PROVISIONS

Land (Planning and Environment) Act 1991

159 Definitions for pt 5

In this part:

building and development provision, in relation to a lease, means a provision of the lease that requires the lessee to carry out specified works on the land comprised in the lease or on any 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 that lessee for the purpose of consolidating the parcels of land comprised in the surrendered leases.

lease means a lease (other than a sublease)—

- (a) granted under this Act; or
- (b) that is taken under section 289 (Status of leases and licences) to have been granted under this Act; or
- (c) granted or arising under the *Unit Titles Act 2001*.

lessee means the person who is the proprietor of a lease, whether or not he or she is the registered proprietor of the lease, and whether or not the lease was granted to him or her or the lease passed to him or her by assignment, transfer, devolution or operation of law.

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.

nominal rent lease means a lease of Territory land for nominal rent.

provision, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

public car park means a road related area within the meaning of section 42 (Regulations about parking) of the *Road Transport (Safety and Traffic Management) Act 1999* that is available for use by the public for parking without the payment of money.

registered lease means a lease registered in the register kept under the *Land Titles Act 1925*.

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 of Territory land for rent in excess of nominal rent.

residential lease means a lease of Territory land granted for residential purposes only.

rural lease means a lease of Territory land granted for rural purposes or purposes including rural purposes.

sublease means a sublease of a parcel of land, or part of a parcel of land, subject to a lease, or of a building, or a part of a building, on a parcel of land subject to a lease.

sublessee means the person who is the proprietor of a sublease, whether the sublease was granted to him or her or the sublease has passed to him or her by assignment, transfer, devolution or operation of law.

subdivision means the surrender of 1 lease, or the surrender of more than 1 lease, held by the same lessee, and the grant of new leases to that lessee for the purpose of subdividing the parcel or parcels of land comprised in the surrendered lease or leases, but does not include the subdivision of land under the *Unit Titles Act 2001*.

161 Granting of leases

- (1) The planning and land authority may grant a lease of Territory land by—
- (a) auctioning the lease; or
 - (b) calling tenders for the grant of the lease; or
 - (c) conducting a ballot for the right to the grant of the lease; or
 - (d) a direct grant to an applicant for a lease.

Note A fee may be determined under s 287 (Determination of fees) for this subsection.

- (2) A lease granted under this section may include provisions—
- (a) requiring the lessee to develop the land comprised in the lease, or any unleased Territory land, in a specified way; or
 - (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.
- (3) The planning and land authority may restrict the persons eligible for the grant of a lease under subsection (1) (a), (b) or (c) by specifying, in the relevant notice of auction, tender or ballot, a class of persons eligible or ineligible for the grant of a lease pursuant to the auction, tender or ballot.
- (4) Where, pursuant to a restriction imposed under subsection (3), only 1 person is eligible for the grant of a lease under subsection (1) (a), (b) or (c), the planning and land authority may grant a lease to that person under subsection (1) (d) without auctioning the lease, calling tenders or conducting a ballot (as the case may be).
- (5) A lease granted under subsection (1) (d) shall be granted subject to such provisions as are agreed between the Executive and the applicant for the lease.
- (6) The planning and land authority shall not grant a lease of Territory land under subsection (1) (d) otherwise than in accordance with criteria specified pursuant to subsection (7).
- (7) The Executive may, for the purposes of this section, in writing—
- (a) specify criteria for the granting of leases under subsection (1) (d); or
 - (b) amend or revoke criteria so specified.

- (8) An instrument under subsection (7) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

163 Leases to community organisations

- (1) In this section:

community organisation means a body corporate that—

- (a) has as its principal purpose the provision of a service, or a form of assistance, to persons living or working in the Territory; and
 - (b) is not carried on for the pecuniary profit or gain of its members; and
 - (c) does not hold a club licence under the *Liquor Act 1975*.
- (2) The planning and land authority may grant a lease of Territory land to a community organisation without charge or for a charge that is less than the market value of the lease.
- (3) The planning and land authority shall not grant a lease under this section otherwise than in accordance with criteria for the granting of leases to community organisations specified pursuant to subsection (4).
- (4) The Executive may, for the purposes of this section, in writing—
- (a) specify criteria for the granting of leases to community organisations; or
 - (b) amend or revoke criteria so specified.
- (5) An instrument under subsection (4) is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (8) A community organisation shall not transfer a lease granted under this section and a purported transfer of such a lease shall be of no effect.
- (9) This section does not limit the power of the planning and land authority to grant a lease of Territory land to a community organisation otherwise than under this section.

164 Special leases

- (1) The planning and land authority may grant a lease of Territory land for a charge that is less than the market value of the lease if the authority is satisfied that it is desirable and in the public interest to do so to facilitate—
- (a) the economic development of the Territory; or
 - (b) the development of business in the Territory.
- (2) The planning and land authority shall not grant a lease of Territory land under this section otherwise than in accordance with criteria for the granting of special leases specified pursuant to subsection (3).
- (3) The Executive may, for the purposes of this section, in writing—

- (a) specify criteria for the granting of special leases; or
- (b) amend or revoke criteria so specified.

(4) An instrument under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(7) The lessee under a lease to which this section applies shall not, for a period of 5 years after the day on which the lease is granted—

- (a) assign or transfer the lease; or
- (b) sublet the land comprised in the lease or any part of it; or
- (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the planning and land authority and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(8) The planning and land authority shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease; or
- (b) subletting the land comprised in the lease or any part of it; or
- (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should 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, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to subsection (2) in respect of the class of leases in which the lease is included.

167 Eligibility for certain classes of leases

(1) The Executive may, in writing—

- (a) declare a specified class of leases to be leases to which this section applies; or
- (b) specify, in respect of a class of leases declared under paragraph (a) to be leases to which this section applies, criteria for determining whether a person is eligible to hold the land comprised in a lease included in that class; or
- (c) amend or revoke a declaration under paragraph (a) or criteria specified under paragraph (b).

(2) An instrument under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(3) The planning and land authority shall not grant a lease to which this section applies to a person who does not satisfy the criteria specified pursuant to

subsection (1) (b) in respect of the class of leases in which the lease is included.

- (4) The validity of a lease to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).
- (5) The lessee under a lease to which this section applies, or any other person having an interest in such a lease, shall not—
 - (a) assign or transfer the lease; or
 - (b) sublet the land comprised in the lease or any part of it; or
 - (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the planning and land authority and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

- (6) The planning and land authority shall not consent to the lessee under a lease to which this section applies, or to any other person having an interest in such a lease—
 - (a) assigning or transferring the lease; or
 - (b) subletting the land comprised in the lease or any part of it; or
 - (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should 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, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to subsection (1) (b) in respect of the class of leases in which the lease is included.

Land (Planning and Environment) Regulations

22 Concessional lease increase—Act, s 184C (2)

- (1) The planning and land authority must increase the change of use charge for the variation of a concessional lease by an amount equal to 25% of the added value in relation to the variation.
- (2) This regulation applies in relation to the variation of a concessional lease only if—
 - (a) the lease is to be varied to provide for a use other than a community use; and
 - (b) the lease is not a lease held by the commissioner for housing to which regulation 19 (Commissioner for housing remission—Act, s 184C (1)) applies.
- (3) This regulation does not apply in relation to a variation of a lease where regulation 25 applies in relation to the variation.
- (4) For this regulation, the following leases are **concessional leases**:

- (a) a lease granted for a consideration less than the full market value of the lease, whether any such consideration was paid as a lump sum for the grant or is payable under the lease as rent, and in relation to which neither of the following payments have been made to the Territory:
 - (i) a capital sum or sums in respect of its grant equal to the market value of the lease at the time of the payment, or at the time of the last such payment, as the case may be;
 - (ii) a capital sum or sums to reduce the rent payable under the lease to a nominal rent under the Act, section 186;

except a further lease, a consolidated lease, a subdivided lease, a regranted lease, or a lease over land that, immediately prior to the grant of the lease, was owned, controlled or held by the commissioner for housing under the *Housing Assistance Act 1987*;
 - (b) a consolidated or subdivided concessional lease;
 - (c) a further concessional lease;
 - (d) a regranted concessional lease.
- (5) This regulation applies in relation to the variation of a lease consisting (by virtue the Act, section 184) of the grant of a lease following the surrender of a previous lease where the surrendered lease was a concessional lease.

(6) In this regulation:

consolidated or subdivided concessional lease means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases where—

- (a) each surrendered lease was a concessional lease; or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a concessional lease—
 - (i) the surrendered leases were not over parcels of land of equal area; and
 - (ii) the surrendered lease that was over the largest parcel of land was a concessional lease.

further concessional lease means a further lease where the surrendered lease was a concessional lease.

regranted concessional lease means a regranted lease where the surrendered lease was a concessional lease.

Australian Capital Territory

**LAND (PLANNING AND ENVIRONMENT) SECTION 167 LEASES
DETERMINATION 2003***

Disallowable instrument DI2003-193

made under the

Land (Planning and Environment) Act 1991 section 161(1)

The ACT Executive REVOKES instrument No 18 of 1992 and DETERMINES the following class of leases to be leases to which section 167 shall apply:

- any lease granted for the payment of an amount that is less than the market value of the lease, including all leases granted for the purposes of schools, youth, benevolent and welfare organisations, sporting and social clubs (including licensed clubs), community organisations, churches and religious organisations, national and local associations.

Criteria for persons eligible to hold a lease included in a class of leases are:

- the proposed transferee, or sub-lessee of a lease which was granted for the payment of an amount that is less than full-market value must satisfy the Planning and Land Authority that he or she meets the criteria for the initial grant of that lease under subsections 161(5), 163(4) or 164(2) of the Act.

Mr Wood
Minister for Urban Services
8 July 2003

Mr Corbell
Minister for Planning
8 July 2003

*Name amended under Legislation Act 2001 s60

Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT LEASE GRANTS (COMMUNITY ORGANISATIONS) DETERMINATION 2003 (No. 2)*

Disallowable instrument D12003-233

made under the

Land (Planning and Environment) Act 1991 section 163(4)

The ACT Executive REVOKES Instrument No. 210 of 2001 and SPECIFIES the criteria for the direct grant of Crown leases to COMMUNITY ORGANISATIONS.

The criteria are that the applicant must:

1. Demonstrate that it is a 'community organisation' as defined in section 163 of the *Land (Planning and Environment) Act 1991* (the Act).
2. Demonstrate to the Planning and Land Authority:
 - a. its financial capacity to develop and manage the land;
 - b. its non-financial capacity to develop and manage the land and facilities including details of expertise, resources and experience to undertake the proposal.
3. Have the support of the relevant government agencies.
4. Demonstrate that its use of the land will provide a service that meets the on-going social, spiritual, recreational, welfare or religious needs of people living in the Territory.

Mr Wood
Minister for Urban Services
8 July 2003

Mr Corbel!
Minister for Planning
8 July 2003

*Name amended under Legislation Act 2001 s 60

Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT LEASE GRANTS (COMMUNITY ORGANISATIONS) DETERMINATION 2003*

Disallowable instrument D12003-231

made under the

Land (Planning and Environment) Act 1991 section 163(4)

The ACT Executive REVOKES Instrument No 132 of 2000 and DETERMINES the criteria for the direct grant of Crown leases to COMMUNITY ORGANISATIONS. This Instrument specifies criteria for the direct grant of Crown leases to community organisations proposing to develop and operate an educational establishment.

Interpretation:

In this Instrument "educational establishment" means the use of land for the purpose of tuition or training, whether or not for pecuniary profit or gain, and may include associated residential accommodation.

Criteria:

The applicant must:

- be an association incorporated under the *Associations Incorporation Act 1991* (ACT), or incorporated under the Corporations Law, the principal objects of which include the conduct of an educational establishment for the provision or promotion of education in the ACT;
- be a non-profit organization
- complete and sign an application form and pay the determined fee in relation to that application;
- demonstrate its financial and non-financial capacity to develop and manage the land; and
- have the support of relevant government agencies to develop and operate an educational facility.

Mr Wood
Minister for Urban Services

Mr Corbell
Minister for Planning

*Name amended under Legislation Act 2001 s 60

Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT SPECIAL LEASE DETERMINATION 2003*

Disallowable instrument D12003-194

made under the

Land (Planning and Environment) Act 1991 section 164 (3)

The ACT Executive REVOKES instrument No 20 of 1992 and DETERMINES criteria for the direct grant of SPECIAL Crown leases. The criteria are:

The proposed lease must involve:

- a major manufacturing industry;
- a high-technology industry;
- a tourist development;
- a unique or innovative activity; or
- a building or development requirements of a specific or distinctive nature;

The applicant must

- must complete and sign a preliminary application for the lease in the required form giving details of:
 - brief details of the development proposal;
 - full name of proposed lessee;
 - form of tenancy, stating shares if relevant;
 - address for service of notices;
 - proof of full company particulars etc.
 - (if applicable)

The Planning and Land Authority

- must be satisfied it is in the public interest to grant the lease under section 164.

If negotiations are progressed, the applicant:

- must provide full details of the development proposal;
- must demonstrate to the Planning and Land Authority the financial capacity to develop and manage the land;
- must demonstrate to the Planning and Land Authority the non-financial capacity to develop and manage the land, including details of expertise, resources and experience to undertake the development;
- must demonstrate to the Planning and Land Authority's satisfaction the long term economic viability of the proposal; and
- must demonstrate to the Planning and Land Authority that the grant of the lease will:
 - generate employment in the Territory or the region;
 - benefit the economy in the Territory or the region;
 - contribute to the export earnings and import replacement of the Territory or the region; and
 - introduce new skills, technology or services into the Territory;
- must provide any Bank Undertaking required by the Planning and Land Authority; and
- must pay the agreed value for the lease; and
- must pay the fees and charges notified by the Planning and Land Authority as being applicable.

Mr Wood
Minister for Urban Services
8 July 2003

Mr Corbell
Minister for Planning
8 July 2003

*Name amended under Legislation Act 2001 s 60

Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT LEASE GRANTS (SYMONSTON) DETERMINATION 2003*

Disallowable instrument D12003-217

made under the

Land (Planning and Environment) Act 1991 section 164 (3)

The ACT Executive REVOKES Instrument No 148 of 1995 and DETERMINES the criteria for the direct grant of a Crown lease over Block 17 of Section 112 Symonston (the lease).

The criteria are:

1. The proposed activity on the lease must involve an advanced technology development and manufacturing industry.
2. The lessee must be:
 - (i) AOFR Pty Limited or a wholly owned subsidiary of AOFR Pty Limited; or
 - (ii) a person or entity who has entered into a sublease of the land from AOFR Pty Limited, in form and substance satisfactory to the Planning and Land Authority, which must not expire before 1 January 2001.
3. The Planning and Land Authority:
 - (i) must be satisfied it is desirable and in the public interest to grant the lease in order to facilitate
 - (a) the economic development of the Territory; or
 - (b) the development of business in the Territory.
 - (ii) may grant the lease for a nominal rent without payment of any premium.

MrWood
Minister for Urban Services
8 July 2003

Mr Corbell
Minister for Planning
8 July 2003

*Name amended under Legislation Act 2001 s 60