



Hardship and fee reduction guidelines

What this guide is about

The *Planning and Development Act 2007* and the *Planning and Development Regulation 2008* allows for a reduction in extension of time fees if certain criteria are met. This document provides further information on the hardship application process and the grounds under which a hardship application would be considered by the Environment and Sustainable Development Directorate (ESDD).

This document only applies to breaches of building and development covenants after 31 March 2008. Any breaches of development covenants prior to this date are calculated using a different method as detailed in our annual Fees and Charges. No hardship criteria apply to these earlier breaches. You will be required to pay the published fee in full for breaches of development covenants up to 31 March 2008.

The meaning of a 'Hardship Reason'

Hardship is defined under Section 204(4) of the *Planning and Development Regulation 2008*. For a lessee who is an individual a hardship reason is a **Personal Reason**, **Financial Reason** or **Unforeseen Major Event** that has prevented the lessee from complying with their building and development covenants. For a lessee who is not an individual a hardship reason is a **Financial Reason** or an **Unforeseen Major Event**. Hardship reasons only apply to single dwelling housing blocks. These hardship categories are explained in this document.

Evidence required

Suitable evidence to support any hardship claim is required. This evidence and your supporting submission must meet the criteria of legislated grounds for hardship. ESDD has no legislative basis to consider claims or evidence that does not meet the legislated grounds to reduce extension of time fees.

Fee calculations

The extension of time fee is calculated based on the number of days that your lease has been in breach of the development conditions of your Crown Lease. Demonstrated hardship reduces the calculated fee by a number of days equal to the number of days over which the hardship occurred.

For example, if you move interstate due to employment for 6 months after purchasing a block which breaches its development covenants, the calculated extension of time fee would be reduced by 6 months. ESDD would require evidence from your employer that the transfer was required after the purchase of the lease.

Previous applications

You cannot apply for a reduction in fees due to hardship if you have previously applied for an extension of time to commence or complete development on another lease that you own. You must provide a signed statement that you have not applied for an extension of time on another lease you currently own with your application. You can apply for hardship if you have previously made an extension of time application on the block for which hardship now applies providing you have not applied for an extension of time on any other blocks you currently own.

Legislated grounds for hardship

Personal reasons

The Act requires ESDD to be satisfied that you cannot comply with the building and development provisions of your lease because of one of the following reasons.

S 200(1)(a) You or a member of your immediate family have suffered from a trauma or illness that occurred after the purchase of the lease. Immediate family means your domestic partner; a parent or sibling of you or another lessee; an adult child of you or another lessee; another relative of you or another lessee who is a member of the same household; or a sole or primary carer who is living with a person listed above.

Evidence from an appropriate medical practitioner must demonstrate that the illness or trauma took place after the purchase of your lease. Pre-existing medical conditions cannot be considered in your application. Documentary evidence must demonstrate that the illness prevented you from complying with their building and development provisions. This evidence must demonstrate how long the period of illness or trauma affected you for us to provide a reduction in extension of time fees.



S200(1) (b) You or your domestic partner move interstate or overseas due to employment. The notification of the move must be received after the purchase date of your lease. We require evidence from your employer that you or your domestic partner were required to move interstate or overseas due to employment after you purchased your lease. This evidence must show how long the period of deployment was.

S 200(1)(c) You or your domestic partner have been unemployed for at least 3 months prior to making the EOT application. We require evidence that you or your partner has been unemployed for 3 or more months and that this unemployment has prevented you from complying with the building and development provisions of your lease. This evidence is likely to take the form of Centrelink documents and bank statements.

Financial reasons

ESDD must be satisfied that you cannot comply with the building and development provision for financial reasons; and that the financial reasons are connected to your lease.

S 298(3) You provide evidence that you were unable to meet the building and development provisions of your lease due to financial reasons. These reasons exclude use of the land as security for a purpose other than purchasing or developing the land.

This means that if you raise a mortgage on your asset to carry out a purchase not related to the land—for example buying another property or block of land—and this purchase causes financial difficulties which prevent you from developing the block in breach, you will not meet this hardship criteria.

The financial reasons for failing to meet building and development provisions must be connected to your lease unless these financial reasons are due to expenses that arose because of one of the three personal reasons listed above. This means that if you were unable to complete a development because financial resources were used for medical expenses or to cover a period of unemployment (and evidence is provided) then financial reasons will apply to your hardship claim.

If you were unable to comply with the building and development provisions of your lease for financial reasons not connected with the lease these hardship provisions will not apply. Examples of financial reasons not connected to the lease include the purchase of a luxury car, purchase of other land and expenditure on an extended overseas holiday.

Demonstrating that financial reasons have prevented you from meeting building and development provisions is likely to require evidence of income from you and every named lessee e.g. bank statements; loan applications; letters from financial institutions and correspondence from the Australian Taxation Office. Notification from a single mortgage lender that they have refused a home loan application will not satisfy the requirements. A failure to secure lending does not demonstrate hardship in isolation of other factors.

Hardship applications for completed developments

By completing building work you have proven your ability to comply with the building and development provisions of your Crown Lease. While you may have endured financial or personal issues during the construction process there is no legislative basis to consider a hardship application from you for your completed development.

Other legislative grounds for an extension of time fee reduction

There are other circumstances where an extension of time fee can be reduced which do not represent hardship grounds. These grounds are explained briefly within the hardship guidelines to provide lessees with a complete reference to what can reduce extension of time fees.

Unforeseen major event

S 298(2)(b)(iii) You provide evidence that an unforeseen major event outside of your control happened after you purchased your lease. You also provide evidence that this unforeseen major event had a demonstrable effect on your ability to develop the land comprised in the lease. This could include a bushfire or large increase in interest rates.

This does not include inclement weather, which forms a natural cycle; or reduced asset values in the wake of the GFC, which forms part of an expected economic cycle.

External reasons

S 205(3)(a) You must provide evidence that you have been unable to commence or complete development provisions because key infrastructure or services have not been completed by the Territory. These services—sewerage, water, gas, electricity—and road and traffic infrastructure are likely to be the responsibility of a range of Government agencies and ESDD will not be able to gather documentary evidence on your behalf.



S 205(3)(b) You cannot commence or complete the works required under the building and development provision for the lease because of a delay in obtaining a statutory approval required for the works. This excludes delays in obtaining this approval caused in whole or part by the actions of you or your agents and any decision to refuse, or impose a condition on, a statutory approval required for the works.

This means that if you submit compliant plans in a timely fashion to ESDD but do not receive notification of development approval within an acceptable timeframe, you could provide evidence that an external reason had delayed commencement of your development. Conversely, if you amend plans after submission or repeatedly submit plans in an inappropriate format this ground will not apply and no fee reduction can be granted.

Lease transferred or assigned in special circumstances.

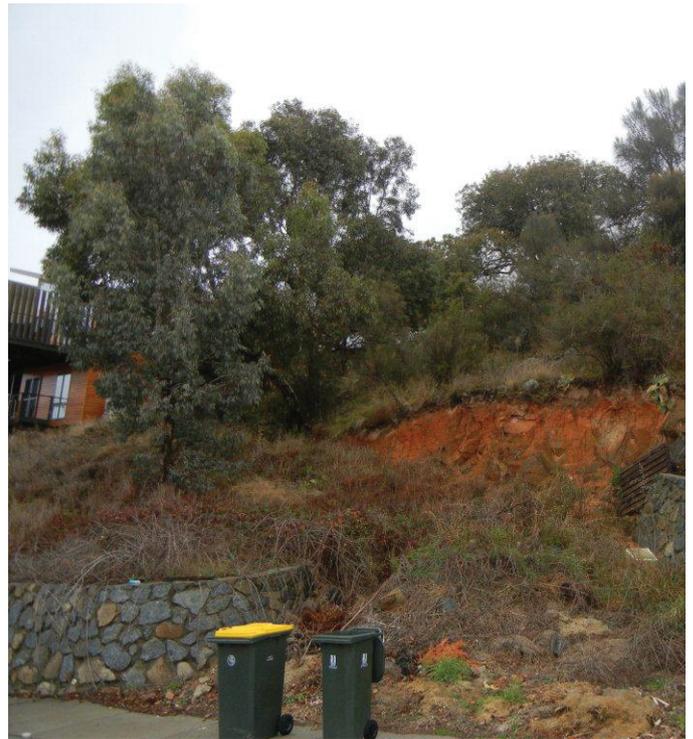
S 206(3) The lease can be transferred or assigned if the lessee has died; under order of the *Family Court*; under the *Family Law Act 1975* in another court having jurisdiction; under the *Domestic Relationships Act 1994*; under bankruptcy or insolvency operations and as a power of sale by an authorised deposit taking institution recovering default payments under the *Land Titles Act 1925*.

Under these special circumstances the extension of time fee payable is zero for the period from the day of transfer. This will continue for as long as the original building and development provisions were granted.

Certain leases granted prior to 31 March 2008

S 207 Certain leases (other than single dwelling leases) granted prior to 31 March 2008 can have their building and development provisions extended with a zero extension of time fee. ESDD must be satisfied through evidence and an appropriate submission that insufficient time for commencing or completing works was provided with the original Crown Lease.

For this clause to apply an application to commence the required works must be received with one year of the period allowed under the building and development provision when the lease was granted. Similarly, an application to complete the required works must be received within two years of the period allowed under the building and development provision when the lease was originally granted.



Waiver of fees

ESDD processes extension of time applications and associated hardship submissions but has no legislative basis to waive extension of time fees. ESDD will process the extension of time application and reduce the fee payable in accordance with the different grounds stipulated by the legislation. ESDD cannot waive a fee.

The ACT Treasurer can waive a fee under Section 131 of the *Financial Management Act 1996*.

Written submissions seeking a fee waiver can be made to the

ACT Treasurer

Mr Andrew Barr MLA

ACT Legislative Assembly

GPO Box 1020 Canberra, ACT 2601

ESDD cannot provide you with further information or guidance regarding this process.