

1997

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

LAND (PLANNING AND ENVIRONMENT) REGULATIONS
(AMENDMENT)

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for the Environment, Land
and Planning
Mr Gary Humphries MLA

CLAUSE NOTES

Clauses 1 and 2

Clauses 1 and 2 are machinery provisions that provide for the commencement of the Regulations and identify the regulations being amended as the Principal Regulations.

Clause 3 - Insertion

Clause 3 inserts the heading "PART I - PRELIMINARY" before regulation 1.

Clause 4 - Interpretation

Clause 4 amends regulation 2 by omitting the definition of "public money of the Territory" and defining several new terms for the purposes of the Principal Regulations.

In particular:

- subclause 4(b) provides for subregulation 2(1) to define a number of terms including "adjoining" and "minor development", and defines what is to be an "exempt building or structure" for the purposes of item 13 or 14 of Schedule 1 to the Principal Regulations. Note in particular that:
 - a) 'minor development' does not include a lease variation, because the provisions relying on the term relate to the physical effects of development rather than rights held under a lease; and
 - b) 'reticulated services' is intended to exclude both bulk services and connections to users on parcels of land.
- subclause 4(c) inserts a new subregulation 2(3), which provides that unless the contrary intention appears, words in the Regulations have the same meaning as in the Territory Plan, and that references to an "Area" are to an area governed by a Land Use Policy under the Territory Plan.

Clause 5 - Insertion

Clause 5 inserts a new heading "PART II - ENVIRONMENTAL ASSESSMENTS" after regulation 2.

Clause 6 - Repeal

Clause 6 repeals regulations 3 and 10 of the Principal Regulations.

Subregulation 16(1) provides that the prescribed period is 30 days after the date of the application, or 45 days if an objection is made under section 237 of the Act within 30 days after the date of the application. However, paragraph 12(1)(c) allows that 'initial period', which is defined in subregulation 16(6), to be extended pursuant to this regulation.

Subregulation 16(2) extends the initial period where a preliminary assessment has been directed under section 113 of the Act. The extension is equal to the period commencing on the day on which the direction is given and ending 42 days after the day on which the applicant submits the preliminary assessment to the Environment Minister.

Subregulation 16(3) extends the initial period where an Assessment has been directed under section 121 of the Act. The extension is equal to the period commencing on the day on which the direction is given and ending on the day on which the report under section 131 of the Act is completed.

Subregulation 16(4) extends the initial period where a panel has been established to conduct an Inquiry in relation to the application. The extension, which is in addition to any extension under subregulations 16(2) or (3), is equal to the period commencing on the day on which the panel is established and ending on the day on which the panel's report is laid before the Assembly under subsection 141(1) of the Act.

Subregulation 16(5) allows the Minister to extend the initial period, or further extend that period, where the applicant applies in writing before the expiry of that period as extended. The extension may be in addition to any extension under subregulations 16(2),(3) or (4).

Clause 11 - Prescribed period - s.237(1)

Clause 11 amends regulation 18 by omitting paragraphs (a) and (b) and substituting new paragraphs (a), (b) and (c).

Paragraph 18(a) provides that, for the purposes of subsection 237(1) of the Act, where notice of an application has been published in a daily newspaper pursuant to paragraph 229(1)(b), the period within which an objection may be made is 21 days commencing on the day the notice is published.

Paragraph 18(b) provides that, where paragraph 229(1)(b) (notice in a newspaper) and subsection 229(5) (the erection of a sign) of the Act do not apply, the period for objection is 14 days after the latest notice was given to an adjoining lessee or occupant under paragraph 229(1)(a) of the Act.

Paragraph 18(c) provides that, if public notification is not required under paragraphs 229(1)(a) or (b) or subsection 229(5), the period for objection commences on the day of the application and ends on the day before the application is approved or refused.

Subregulation 21(4) makes it clear that a development will not be exempted under subregulations (1), (2) or (3) if:

- a) it is part of, or associated with, a development that is not listed in Schedules 1, 2 or 3A;
- b) it may be inconsistent with the requirements for the conservation of a heritage place; or
- c) it would be inconsistent with a condition of an approval, a provision of a lease or an agreement collateral to the grant of a lease.

Exemptions from notification

Subregulation 22(1) provides for the exemption of a development from subsections 229(1) and (5) of the Act - public notification by notice to adjoining lessees, by notice in a daily newspaper, and by the erection of a sign - if the development is listed in Schedule 4.

Subregulation 22(2) provides that paragraph 229(1)(b) of the Act - notification in a daily newspaper - does not apply to a development listed in Schedule 5.

Subregulation 22(3) makes it clear that this regulation will not exempt a development from the notification requirements of section 229 of the Act if:

- a) the activity is part of, or associated with, an application for development that is not subject to an exemption under this regulation or regulation 21; or
- b) the development may, in the Minister's opinion, be inconsistent with the requirements for the conservation of a heritage place. This provision, unlike subregulations 21(4) and 24(3), requires the Minister to form an opinion as to the status of the land to which a decision relates.

Exclusions of appeals by applicants

Regulation 23 excludes appeals by applicants in relation to a decision about a development listed in Schedule 6, to the extent that the decision relates to that listed development.

Exclusions of appeals by third parties

Regulation 24 excludes appeals by third parties in relation to a decision about a development listed in Schedule 7, to the extent that the decision relates to that listed development. The exclusion will not apply if the development may be inconsistent with the requirements for the conservation of a heritage place.

THE SCHEDULE - EXEMPT DEVELOPMENTS

Paragraph 282(da) of the Act provides that the regulations may exempt the carrying out of certain development from the application of all or any of the provisions of Part VI or the regulations.

Regulations 21 and 22 refer to new Schedules 1 to 5 which identify certain development activities as being exempted from the operation of Part VI (Schedules 1 to 3A), or from notification provisions (Schedules 4 and 5).

Regulations 23 and 24 refer to Schedules 6 and 7 which identify development excluded from appeals by applicants (Schedule 6) and third parties (Schedule 7).

Schedule 1 - Unconditional exemptions from Part VI of the Act

Under subregulation 21(1), and subject to subregulation 21(4), Part VI of the Act will not apply to a development listed in Schedule 1.

Schedule 2 - Exemptions from Part VI of the Act subject to Authority guidelines

Under subregulation 21(2), and subject to subregulation 21(4), Part VI of the Act will not apply to a development listed in Schedule 2 if the proposed development is consistent with any guidelines or standards adopted by the ACT Planning Authority for the purposes of subregulation 21(2).

Schedule 3A - Exemptions from Part VI of the Act subject to implementation plans

Under subregulation 21(3), and subject to subregulation 21(4), Part VI of the Act will not apply to a development listed in Schedule 3A, if the development is consistent with an approved implementation plan under the *Buildings (Design and Siting) Act 1964*.

Schedule 4 - Notification exemptions - subsections 229(1) and (5) of the Act

Under subregulation 22(1), and subject to subregulation 22(3), subsections 229(1) and (5) of the Act will not apply to a development listed in Schedule 4 - public notification is not required.