

1993

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**BUILDINGS (DESIGN AND SITING) ACT 1964**

**BUILDINGS (DESIGN AND SITING) REGULATIONS (AMENDMENT)**

**EXPLANATORY MEMORANDUM**

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Bill Wood MLA  
Minister for the Environment, Land and Planning

## BUILDINGS (DESIGN AND SITING) REGULATIONS (AMENDMENT)

### Purpose of the Amendments

These regulations amend the *Buildings (Design and Siting) Regulations* ("the Design and Siting Regulations"). The purpose of the amendment is to prescribe times required to be prescribed under Part VI of the *Land (Planning and Environment) Act 1991* ("the applied Part"). The amendment also provides for exemptions from the requirement for public notification and third party appeal otherwise available under the applied Part.

### Effect of Substantive Provisions

Part VI of the *Land (Planning and Environment) Act 1991* ("the Land Act") applies to the approval of proposals for external design and siting by virtue of section 6 of the *Buildings (Design and Siting) Act 1964* ("the Design and Siting Act"). Part VI provides that certain actions must be carried out within prescribed times, these regulations specify those times.

The Design and Siting Act, at section 14, provides that regulations may be made to set out the circumstances in which persons, other than applicants for approval under the applied Part are not entitled to apply for a review of decisions under that Part. These regulations set out those circumstances.

### Associated Legislation

The *Land (Planning and Environment) (Consequential Provisions) Act 1991*, at section 30 foreshadows the making of regulations under the Design and Siting Act to specify the circumstances in which persons may not apply for review of a decision to approve a design and siting application, and circumstances in which public notification is not required.

### Financial Implications

There are no cost/revenue implications in relation to the regulations concerning prescribed times. Regulations relating to exemptions from public notification and apply affect revenue generated from application fees. However, the regulations replicate existing transitional legislation and although the regulations modify the transitional provisions to some extent, there is unlikely to be any discernible increase in the Territory's costs/revenue.

## Main Amendments

### *Substitution*

The purpose of this clause is to rearrange the Design and Siting Regulations by repealing the existing Regulation 3, inserting new Regulations 3 to 7 inclusive, then remaking existing Regulation 3 as Regulation 8. A new regulation, Regulation 9 is added.

### *Clause 3 Prescribed period - subsection 230(4) of the applied Part*

Subsection 230(4) of the Land Act provides that if the Authority fails to make a decision on a proposal in respect to the external design and siting of a building within the prescribed period, the Authority is taken to have refused the application. Clause 3 specifies that the periods in which decisions must be made are found in Columns 3 and 4 of Schedule 1. Sub-paragraphs (a) - (d) specify the circumstances in which the times in Column 3 or Column 4 apply. Additional time is allowed in circumstances where the applicant is required to publicly notify the application instead of the Authority publicly notifying the application. Further additional time is allowed when the application is to be referred to a concurring authority.

### *Clause 4 Prescribed period - subsection 235(1) of the applied Part*

Sub-section 235(1) of the Land Act requires a concurring authority to whom the Authority has referred an application, within the prescribed period, to give notice to the Authority of any objection it may have to the application. Clause 4 provides that the periods in which the concurring authority must respond are set out in Schedule 2. There are shorter periods for notification in respect to applications which are not notified in a daily newspaper than for applications subject to full public notification.

### *Clause 5 Prescribed period - subsection 237 of the applied Part*

Clause 5 provides where, pursuant to section 229 of the Land Act, an application is notified in a daily newspaper, a person wishing to object to the application has 21 days to lodge an objection. Where an application is not notified in a daily newspaper and the application is not otherwise exempt from third party appeal, a person has 42 days to lodge an objection.

### *Clause 6 Prescribed period - subsection 246(3) of the applied Part*

Clause 6 provides that where, pursuant to section 246(3) of the Land Act, the Authority has given concurring authorities notice that it is of the opinion that conditions imposed by one concurring authority are inconsistent with conditions imposed by another, the concurring authorities have 14 days to notify the Authority that either they have resolved the inconsistency or otherwise. If the inconsistency is not resolved, or not resolved within 14 days, the Authority may give directions or

make alterations to resolve the inconsistency.

*Clause 7 Prescribed period - subsection 256(6) of the applied Part*

Clause 7 provides that if the Authority fails to make an order within 21 days of receipt of an application for an order, the Authority is taken to have refused to make an order, and the applicant may apply to the Administrative Appeals Tribunal for a review of the decision to refuse to make an order.

*Clause 8 Exemption of activities from application of the applied Part*

Clause 8 replaces the original Regulation 3 which was repealed for the purposes of inserting it in a more logical position within the Regulations. There are no changes to the content of this regulation from that originally set out in Regulation 3.

*Clause 9 Exemption of activities from application of certain provisions of the applied Part*

Clause 9(1) provides that applications for the approval of the external design and siting of buildings are not subject to public notification or third party appeal where:

- (a) the building complies with the requirements of the Territory Plan relating to the building's siting and to requirements relating to measurements or quantifiable characteristics;
- (b) the building is to be constructed for the purposes of a government agency providing accommodation for persons with special or urgent accommodation needs;
- (c) the building is to be erected on Defined Land, and the proposed building complies with the Territory Plan;
- (d) the "building" is a sign that complies with the requirement of the Plan.

Clause 9(2) provides that applications for approval of the external design and siting of a building submitted to the Authority or to the Building Controller prior to the date that the Design and Siting Act became subject to the applied Part, are not subject to third party notification and appeal.