

2006

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)
AMENDMENT REGULATION 2006 (No 2)

Subordinate Law No SL2006- 13

EXPLANATORY STATEMENT

Circulated by authority of Simon Corbell MLA
Minister for Planning

Overview

The *Land (Planning and Environment) Amendment Regulation 2006 (No 2)* (amendment regulation) amends schedule 7 of the *Land (Planning and Environment) Regulation 1992* to create exemptions from third party appeals in relation to all development within the Civic centre area, a town centre area and an industrial area.

The Civic centre area is outlined by a map that forms part of the amendment regulation. The four town centre areas of Belconnen, Gunghalin, Tuggeranong and Woden are also identified by maps that form part of the regulation. In the Civic centre area and a town centre area the exemption applies to any development within that mapped area regardless of land use policy area. The land use policy areas include commercial, community facilities, urban open space, entertainment, accommodation and leisure. The Civic centre area also includes designated areas.

Industrial areas are those areas designated as industrial by the territory plan. Currently these are Fyshwick, Hume and Mitchell.

The exemption from third party appeals applies from the date after the notification of the amendment regulation.

Notification of development applications in the Civic centre area, a town centre area and industrial areas will still occur in the circumstances where notification already occurs (Schedule 6 of the *Land (Planning and Environment) Regulation 1992* contains a number of exemptions to notification requirements). The amendment regulation also does not affect rights persons may have under the *Administrative Decisions (Judicial Review) Act 1989*.

Background

Section 276 of the *Land (Planning and Environment) Act 1991* provides that persons who have made an objection to a development application may apply to the Administrative Appeals Tribunal for the review of any decision by the relevant authority to grant approval to that application (known as third party appeals). Section 282 enables regulations to be made that exempt certain development from the application of section 276.

Schedule 7 of the *Land (Planning and Environment) Regulation 1992* contains the list of exemptions from third party appeals. A number of these exemptions already apply to certain development in the land use policy areas found within the Civic centre area and a town centre areas and in industrial areas. Certain exemptions also apply to development within designated areas. The effect of the amendment regulation is to widen the existing exemptions to encompass all development within the Civic centre area, a town centre area and industrial

areas, while allowing the existing exemptions to continue to apply in other parts of the Territory.

The Government in its Directions paper and technical papers for the Planning System Reform Project proposed to modify third party appeal rights, so that in general terms, only development applications having significant off site impacts, particularly in residential areas, would be open to third party appeals.

The Government's response, after considering the comments from the community on the Planning System Reform Project proposals, was to affirm its intention to continue with the development of a track based assessment system, in which there would be certain cases, such as town centres, where there might be notification but no third party appeal rights. The amendment regulation is broadly consistent with the Government's response.

The *Human Rights Act 2004*, in sections 12 (right to privacy) and 21 (right to a fair trial [including a hearing]), recognises certain rights that arguably may be affected by the amendment regulation. However, in relation to section 21, it would appear that case law from related jurisdictions indicates that human rights legislation containing the equivalent of section 21 does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. Case law in relation to human rights legislation containing the equivalent of section 12 suggests that any adverse impacts of a development authorised through a planning decision must be quite severe to constitute unlawful and arbitrary interference with a person's right to privacy.

To the extent that the amendment regulation limits any rights afforded by the *Human Rights Act 2004*, these limitations must meet the proportionality test of section 28 of that legislation. In this case the amendment regulation serves to improve the development assessment process within the Civic centre area, a town centre area and industrial areas by increasing certainty and reducing delays and costs. It should serve to facilitate development in these areas, which is of general benefit to the Territory. Persons that may be affected by particular development applications in these areas continue to have the ability to make submissions on individual development applications as well as territory plan variations that establish the overall planning policy for these areas. Rights of judicial review remain.

Amendments in detail

Section 1 - Name of regulations - provides that the name of the amendment regulation is the *Land (Planning and Environment) Amendment Regulation 2006 (No 2)*.

Section 2 - Commencement - provides that the amendment regulation commences on the day after its notification day.

Section 3 – Legislation amended – provides that the amendment regulation amends the *Land (Planning and Environment) Regulation 1992*.

Section 4 – Schedule 7, item 7, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other municipal services area exemptions.

Section 5 – Schedule 7, item 8, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other commercial area exemptions.

Section 6 - Schedule 7, item 9, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other entertainment, accommodation and leisure area exemptions.

Section 7 - Schedule 7, item 10, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other community facility area exemptions.

Section 8 – Schedule 7, new item 10A - inserts an additional exemption from third party appeals in relation to development on land within the Civic centre area, a town centre area and an industrial area.

Section 9 - Schedule 7, item 11, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other open space area exemptions.

Section 10 - Schedule 7, item 13, column 2 - is consequential on section 6 and clarifies the relationship between the exemption created by section 6 and other designated area exemptions.

Section 11 - New schedule 8 - inserts maps for the Civic centre area and the four town centre areas (Belconnen, Gunghalin, Tuggeranong and Woden) to which the exemption applies.

Section 12 – Dictionary, new definitions - inserts definitions of Civic centre area, town centre area and industrial area, which are defined as the areas outlined on the maps in schedule 8. An industrial area is an area designated as industrial by the territory plan. Currently these are Fyshwick, Hume and Mitchell.