

2017

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2017 (No 1)
SL2017-1**

EXPLANATORY STATEMENT

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management**

EXPLANATORY STATEMENT

This explanatory statement relates to the Planning and Development Amendment Regulation 2017 as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the amending regulation and to help inform debate on it. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision: this is a task for the courts.

Background

The Asbestos Response Taskforce (ART) is the business unit within the Environment, Planning and Sustainable Development Directorate responsible for the Territory's response to the asbestos contamination of residential houses in the Territory by loose-fill asbestos insulation. The response has involved:

- acquisition of blocks containing contaminated houses by voluntary surrender of the Crown lease in exchange for market value;
- the controlled demolition and remediation of the land to remove the asbestos contamination; and
- the sale of remediated blocks by way of sale of the grant of a new Crown lease.

These blocks are called 'surrendered residential blocks' (SRBs) and are defined in the Territory Plan as:

...a block that has been surrendered under the Loose Fill Asbestos Insulation Eradication Scheme Buyback Program and included as a surrendered block on the Affected Residential Property register. It does not mean a surrendered residential block that is part of a registered heritage place or a provisionally registered heritage place under the Heritage Act 2004.

The Territory Plan has been varied in relation to SRBs as follows:

- the minimum block size to unit title in the RZ1 Zone for an SRB is 700m where other blocks must be 800m;
- maximum plot ratios are adjusted to accommodate the above;
- as additional criterion requires dual occupancy units on SRB: 'the design of buildings encourages high quality architectural standards that contribute to a visually harmonious streetscape character with variety and interest, whilst not detrimental to, or overtly detracting from the existing streetscape character'; and
- SRB are limited to dual occupancy development for the purpose of subdivision under the Unit Titles Act 2001.

The *Planning and Development Act 2007* (the PD Act) prescribes the manner in which the Territory may sell first grant Crown leases of Territory land.

Only the ACT Planning and Land Authority (the Authority) (or the Land Development Agency, acting under a delegation from the Authority) can grant leases of Territory land.

All Crown leases (except for concessional leases, which SRBs are not) must be issued in consideration of payment of not less than the market value for that Crown lease.

Under section 238 of the PD Act, the Authority may only grant Crown leases by auction, tender, ballot or direct sale.

The Authority may only grant Crown leases by direct sale in limited circumstances set out in section 240 of the PD Act and its related regulations. ART may request LDA and/or the Authority grant Crown lease by direct sale in the same circumstances.

Overview

To date ART has been using auctions to sell SRBs where a remediated block does not have a first right of refusal by the former owner. However, this is not always the most effective sales release method. There is an increasing risk that where market demand may be low SRBs will fail to sell through the auction process. This regulation amendment will provide greater flexibility in relation to sales options and help manage this risk.

The amending regulation helps to avoid unnecessary administrative burden by removing steps that do not otherwise achieve any better outcome. It also provides flexibility to respond to market conditions and helps to maintain the integrity of the loose fill asbestos eradication scheme sales program.

The amending regulation provides that a SRB crown lease may be granted by direct sale without the requirement to have Executive or Minister's approval, by prescribing them under the regulation for the purposes of section 240 of the Act.

Regulatory impact statement

The *Legislation Act 2001* section 36(1) states in part:

- (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the *proposed law*) if the proposed law only provides for, or to the extent it only provides for:
 - (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—
 - (i) adversely affecting the person's rights; or
 - (ii) imposing liabilities on the person;

In this case, a regulatory impact statement is not required. This is because the regulation does not adversely affect any rights and does not impose liabilities. The regulation instead provides the advantage of reducing the need to go through an administrative process where the outcome would be the same as it would be without

the regulation. The regulation also operates to the benefit of the community by negating the need to do an administrative process for no benefit. Resources can instead be directed to necessary projects.

Outline of Provisions

Clause 1 Name of regulation

This clause names the amending regulation as the *Planning and Development Amendment Regulation 2017*.

Clause 2 Commencement

This clause states that the amending regulation commences on the day after its notification.

Clause 3 Legislation amended

This clause notes that the amending regulation amends the *Planning and Development Regulation 2008*.

Clause 4 New subsection 130(1)(i)

This clause inserts new subsections 130(1)(i) and (j) which makes the sale of a surrendered residential block a 'prescribed sale' for the purposes of section 240 of the *Planning and Development Act 2007*.

Clause 5 Section 130(2), definition of *surrendered residential block*

This clause inserts a new definition for ***surrendered residential block***.