

1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

BUILDINGS (DESIGN AND SITING) REGULATIONS (AMENDMENT)

EXPLANATORY MEMORANDUM

**Circulated by the Authority of Bill Wood MLA
Minister for the Environment, Land and Planning**

General Outline

These regulations amend the Buildings (Design and Siting) Regulations (the Regulations).

The Buildings (Design and Siting) Act 1964 (the Design and Siting Act) provides for the control of any development involving any aspect of the external design and siting of buildings. Section 14 of that Act provides for the making of regulations which inter alia exempt a proposal for the design and siting of a building, either absolutely or subject to conditions, from the application of all, or any, of the provisions of the Land (Planning and Environment) Act 1991 (the Land Act).

A number of changes are proposed to the Regulations.

In its report on the new Territory Plan, the Standing Committee on Planning, Development and Infrastructure recommended that the only form of public notification for single house design and siting applications should be by a letter served on the neighbour and by a sign placed on the site. The cost of newspaper advertisements were of concern to applicants and it was felt that the service of notices could be done in a less formal manner.

The Regulations will be amended to provide that where the applicant has received written notice from the ACT Planning Authority it will not be necessary to comply with the requirement to place a notice in the newspaper.

Paragraph 7(3)(c) provides that the Territory Plan can specify circumstances in which persons are not entitled to apply for review of decisions under the Land Act. There are no similar provisions to permit the Territory Plan to specify circumstances where persons are not entitled to apply for a review of decisions under the Design and Siting Act.

As the new Territory Plan has been set up in the expectation that provisions would be made for exemptions from third party appeals against design and siting

applications it is necessary to give effect to the exemptions by way of the Regulations. Exemption will only be provided where the proposal meets the applicable performance measures.

The definition of 'external design' as amended by the Buildings (Design and Siting) (Amendment) Act No.30 of 1993 commences on 1 December 1993. This will provide that public works, unless exempted, are subject to public notification and third party appeals. It is proposed to provide that public works which have been authorised before 1 January 1994 will not be subject to public notification and third party appeals.

Financial Implications

There will be some benefits from reductions in administrative processes due to the changes proposed.

CLAUSE NOTES

Clauses 1 and 2

Clauses 1 and 2 are machinery clauses that provide for the commencement of the Regulations and specify the Principal Regulations.

Clause 3

Clause 3 inserts a new clause 2A in the Principal Regulations. The new 2A provides that for the purposes of section 3 of the *Buildings (Design and Siting) Act 1964* (the Act) works for which funding has been authorised before 1 January 1994 from revenues, loans and moneys received by the Territory are prescribed works.

Section 3 of the Act defines the term "external design" which does not include prescribed works. The new Clause 2A specifies a class of "prescribed works" which is not subject to the provisions of the Act.

Clause 4

Clause 4 inserts a new clause 8A in the Principal Regulations. The new clause 8A will provide that public notification of an application for external design and siting can be limited by the ACT Planning Authority (the Authority) in certain circumstances.

Subclause 8(1) provides that paragraphs 229(1)(a) and (b) of the applied Part do not apply in respect of an external design and siting application with regard to a

dwelling where the applicant has been notified by the Authority that notice of the making of the application is to be given to the lessee of each adjoining property. The definition of dwelling is defined [subclause 8(5)], which includes garages and carports, and the notice is to be in a form approved by the Authority [subclause 8(2)].

If the applicant fails to notify within a time specified in the notice, or such further time given by the Authority, the application is deemed to have been withdrawn [subclause 8(3)]. The cost of the notice shall be borne by the applicant [subclause 8(4)].

Clause 5

Clause 5 amends Regulation 9 of the Principal Regulations. Regulation 9 provides for the exemption of activities from the application of those provisions of the applied Part dealing with public notification and third party appeals. Subregulation 9(1) is repealed. A new subregulation is inserted which provides that sections 229 and 276 of the applied Part do not apply in respect of an application for external design and siting approval where:

- (a) the external design and siting of a building complies with the requirements set out in paragraph 3.1 of the relevant land use policy in Parts B1 to 5 (inclusive) and Part B7 to 15 (inclusive) of the Territory Plan;
- (b) the external design and siting of a sign complies with the requirements in Part C3 of the Territory Plan; and
- (c) in the case of defined land, works carried out for or on behalf of the Territory.

Subregulation 9(3) is omitted. Subregulation 9(3) defined the term "community

organisation' and "government agency" for the purposes of subregulation 9(1). The definitions are not required given the amendment to subregulation 9(1). A new subregulation 9(3) is inserted which defines the terms "defined land and "works" for the purposes of paragraph 9(1)(c).