

2006

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)
AMENDMENT REGULATION 2006 (No 3)

Subordinate Law No SL2006-19

EXPLANATORY STATEMENT

Circulated by authority of Simon Corbell MLA
Minister for Planning

Overview

The *Land (Planning and Environment) Amendment Regulation 2006 (No 3)* (amendment regulation) amends the *Land (Planning and Environment) Regulation 1992*-

- to introduce provisions to enable the ACT Planning and Land Authority to request additional information from an applicant for development approval and to expand the statutory timeframes for decisions to be made ('stop the clock');
- to make minor amendments to existing exemptions from development approval for smaller structures to clarify errors and oversights in the drafting of the existing exemptions.

The amendments will take effect one day after notification of the regulation. However, the ACT Planning and Land Authority will provide a grace period of two weeks before commencing processes under the 'stop the clock' provisions. It is considered that the amendment regulation does not impose an appreciable cost and, therefore, a regulatory impact statement is not necessary.

The amendment regulation is made under sections 282 and 288 of the *Land (Planning and Environment) Act 1991*.

Background

'Stop the clock'

The ACT Planning and Land Authority has the power to require the applicant for a development approval to supply information additional to that lodged with the application (s233 of the Land Act). The information must be supplied within the period stated in the request (no more than 28 days).

This procedure has no effect on the requirement for the ACT Planning and Land Authority to make a decision within the prescribed period (30-45 days, s230 of the Land Act and section 37 of the 1992 Regulation). After this period, if no decision has been made, the application is 'deemed to be refused' and the applicant acquires a right of appeal to the Administrative Appeals Tribunal (AAT). In many cases, the prescribed period runs out or nearly runs out because of the time taken to supply the requested additional information.

The above sequence of events has two disadvantages:

- it gives rise to a right of appeal before the ACT Planning and Land Authority has had a reasonable chance to make a decision on the relevant information. In practice, this right is illusory as the AAT is not likely to grant an appeal on the grounds of delay in these circumstances; and
- it creates the potential for confusion by requiring a deemed refusal and right of appeal in the middle of the assessment/decision process.

The ACT Planning and Land Authority, until recently, has sought to tackle these difficulties in part by requiring all applicants to complete a validation process prior to lodgement of the application. This process was designed to give the ACT Planning and Land Authority an opportunity to assess the need for further information prior to the lodgement of the application.

After reviewing the effectiveness of the validation process and after considering submission on the Planning System Reform Project, the ACT Planning and Land Authority now intends to remove validation for all development applications in favour of a document check at the counter.

However as it is likely that the ACT Planning and Land Authority will still require further information for some development applications, the amendment regulation establishes a system whereby the ACT Planning and Land Authority can seek further additional information within a 15 day period from lodgement of the application. A period of 28 days, or the period it takes for the applicant to respond, which ever is shorter, will be added to the period that the ACT Planning and Land Authority has to determine the application. Provision is also made for what happens when the information provided is insufficient or is not provided at all.

Minor adjustments to development approval exemptions

Schedule 1 of the *Land (Planning and Environment) Regulation 1992* exempts specified structures from Part 6 of the *Land (Planning and Environment) Act 1991*, that is, the requirement for a development approval. The amendment regulation corrects errors and oversights in relation to exemptions for certain structures.

The amendment regulation provides that:

- external decks, retaining walls, terraces or landings and external stairs (over 0.4m but less than 1m in height) are not exempt if the structure is within 1.5m of the side or rear boundary;
- the exemption of class 10 structures (sheds, gazebos, pergolas etc) will only permit one such structure to be built within 1.5m of a rear or side boundary without an approval. Any additional such structure shall require application for an approval.

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 3)*.

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 – Section 37

- remakes section 37 of the *Land (Planning and Environment) Regulation 1992*, which provides the time periods by which decisions on development application should be made, and for extensions to those periods. The remade sections are substantially the same as the sections they replace.
- Introduces new section 37D-37F, which establishes processes whereby the ACT Planning and Land Authority may seek further information from the applicant. This request for further information extends the time periods established by section 37. In most cases, the period is extended by the time

that it takes for the applicant to provide the information, although other periods exist to cover circumstances when the information provided is insufficient or is not provided at all. Any such request must be made within 15 business days of the date of lodgement of the development application.

Only one request for additional information (and a further request to rectify insufficient information) can be made that has the effect of extending the time periods for determining a development application. Additional requests for information can be made but will have no effect on time periods.

Section 5 – Schedule 1, item 16, column 2 - substitutes the existing exemption from development approval for structures such as retaining walls, carports, pergolas, sheds, gazebos, small decks with a new exemption for such structures; the new exemption stipulates that certain structures must be no less than 1.5 metres from a side or rear boundary and minimises the number of structures that can be located closer than 1.5 metres from a side or rear boundary.

Section 6 - Schedule 5, item 3, column 2 - makes minor changes to the wording of the existing notification exemption for class 10 structures; these changes do not affect the substance of the existing exemption.

Section 7 - Schedule 7, item 6, column 2 - makes minor changes to the wording of the existing exemption from third party appeals for class 10 structures; these changes do not affect the substance of the existing exemption.