

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) ACT 1991
LAND (PLANNING AND ENVIRONMENT) (BUSHFIRE EMERGENCY) AMENDMENT
REGULATIONS 2003 (No 1)

SL 2003-7

EXPLANATORY STATEMENT

Circulated by authority of

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**AUSTRALIAN CAPITAL TERRITORY
LAND (PLANNING AND ENVIRONMENT) (BUSHFIRE EMERGENCY)
AMENDMENT REGULATIONS 2003 (No 1)**

SUBORDINATE LAW No. SL 2003-7

EXPLANATORY STATEMENT

Overview

These are amending regulations. They amend the Land (Planning and Environment) (Bushfire Emergency) Regulations 2003 (“the Principal Regulations”).

The Principal Regulations apply to buildings and structures affected by the bushfires of January 2003 and set out conditions under which they may be demolished and the land cleared without a development application under the Land (Planning and Environment) Act 1991.

The amending regulations simplify requirements for the rebuilding of buildings and structures destroyed or damaged by the bushfires.

They provide for the identification of buildings to which exemptions may apply.

No development application requirements then apply if buildings or structures are rebuilt as they stood just before the bushfires or are built in a form that was at one time approved.

Neighbour consultation requirements that may be part of a development application do not apply to rebuilding a building or structure which is similar in scale to one that was destroyed or damaged and generally complies with the requirements of the Residential Design Codes that form part of the Territory Plan.

This second exemption is limited to someone who owned the land at the time of the bushfires. This restriction is intended to limit concessions to owners affected by the bushfires and prevent a speculative purchaser from benefiting by the concessions on public notification.

Other applicable exemptions for minor changes in approved buildings or structures appear in items 16 to 19 of Schedule 1 to the Land (Planning and Environment) Regulations 1992.

Details

Name of regulations

Regulation 1 is a formal regulation that gives the name of the amending regulations.

Commencement

Regulation 2 is a formal regulation that links the commencement of the amending regulations to their notification on the legislation register.

Dictionary

Regulation 3 is a formal regulation that identifies the principal regulations.

New Part heading

Regulation 4 inserts a new part heading. In combination with other changes, the effect is to divide the amended principal regulations into three parts, of which “preliminary matters” and “clearing land” represent the original regulations, which are then slightly altered by the amending regulations to make them consistent with the enlarged scope of the regulations as a whole, while “rebuilding” contains the bulk of the new provisions.

Regulation 5

Regulations 5 of the principal regulations sets out the main object of the regulations. Amending **Regulation 5** rewords that object so that it refers to rebuilding (of which clearing may be part) and not to clearing alone.

New Part 2 heading

The revised heading inserted by **regulation 6** is in accordance with the change made by regulation 4.

Regulation 7 heading

Amending **regulation 7** gives a new title to regulation 7 of the Principal Regulations, in accordance with the change made by regulation 4.

Regulation 7(3)

Amending **regulation 8** alters regulation 7 (3) in accordance with the change made by regulation 4.

Regulation 7(4)

Amending **regulation 9** alters regulation 7(4) in accordance with the change made by regulation 4.

New Part 3

Amending regulation 10 inserts a new Part heading and new regulations 10 to 13 into the Principal Regulations.

The new **heading for Part 3** is in accordance with the change made by regulation 4.

Part 6 of the Land (Planning and Environment) Act defines certain activities as development and sets out approval requirements for them. New regulation 10 identifies circumstances in which construction is considered to be rebuilding of a building or structure affected by the bushfire emergency. It is then exempted by new regulations 12 to 13 from all or part of these approval requirements.

Regulation 7(1) of the principal regulations allows the Minister responsible for the

regulations to declare that the regulations apply to certain land. **New regulation 10** defines a fire-caused rebuilding development. It must take place on land that has been identified under regulation 7(1), and may involve either the replacement of a building or structure destroyed during the bushfire emergency of January 2003 or the alteration of a building or structure damaged during this period. If the new building or structure is a replacement, it must be of the same type as the one it replaces. For instance a swimming pool may not replace a retaining wall, even though both are structures.

New regulation 11 sets out the circumstances in which a proposal for the construction of a building or structure is to be considered to have been approved. Approval for construction or alteration or for key elements of it may have been given at any time under the Land (Planning and Environment) Act 1991 or the repealed Buildings (Design and Siting) Act 1964. This does not include an approval that was the subject of an undecided application for review at the time of the bushfire emergency or an approval where an application for review could still have been made at that time.

New regulation 12 exempts rebuilding if the building or structure is the same as one previously approved. The approved work need not have been constructed before the bushfire.

New regulation 13 exempts rebuilding from the neighbour consultation and objections provided for in the Land (Planning and Environment) Act 1991.

This exemption does not affect the requirements of the Act for consultation with other government agencies on tree protection, heritage listed places and environmental matters, or if the land is no longer owned by the person who held it at the beginning of the bushfire emergency (apart from someone who was legally committed to the purchase at that time).

If this exemption is to apply, the number of dwellings involved may not increase, the height of the building or structure may be reduced but not increased, the gross floor area of the building or structure may change but may not increase by over 15 % and, for residential buildings, setbacks from boundaries may change but must be at least the minimum for that kind of building under the Territory Plan (except that if a lesser setback was approved for construction or alteration at any time and is part of the plan to be followed in the rebuilding it need only provide that lesser setback).

Dictionary, new definitions

Regulation 11 adds to the **dictionary** that is part of the principal regulations items that give the meaning of references to “dwelling”, fire-caused rebuilding development” “gross floor area”, “height” and “setback”.

Of these “dwelling”, “gross floor area”, “height” and “setback” are given the same meaning as in Part D (Definition of terms) of the Written Statement of the Territory Plan.

Financial Implications

Nil.