

# Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020

Notifiable Instrument NI2020–357

made under the

Planning and Development Regulation 2008, Schedule 1, section 1.17A (Criterion 7A—affected residential premises)

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## 1 Name of instrument

This instrument is the *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020*.

## 2 Commencement

This instrument commences on the commencement of the *Loose-fill Asbestos Legislation Amendment Act 2020*.

*Note* Section 2 of the *Loose-fill Asbestos Legislation Amendment Act 2020* provides that the Act commences on 1 July 2020.

## 3 Guidelines

I make the guidelines at Schedule 1 about work essential for health, safety or reasonable living conditions at affected residential premises.

Mick Gentleman MLA  
Minister for Planning and Land Management  
25 June 2020

## **Schedule 1**

(see section 3)

### **GUIDELINES ON WORKS ESSENTIAL FOR HEALTH, SAFETY OR REASONABLE LIVING CONDITIONS AT LOOSE-FILL ASBESTOS AFFECTED PREMISES**

*Note: these guidelines apply for the assessment of both development and building works under the *Planning and Development Act 2007*, *Planning and Development Regulation 2008*, *Building Act 2004* and the *Building (General) Regulation 2008*.*

#### **1. PURPOSE OF THE GUIDELINES**

These guidelines have been prepared to provide advice to building certifiers, building industry practitioners, homeowners and the general public about the type of work that can be undertaken at affected residential premises.

These guidelines provide guidance on work that is considered essential for health, safety or reasonable living conditions that may be undertaken on residential properties affected by loose-fill asbestos insulation (Mr Fluffy properties).

#### **2. BACKGROUND**

##### **2.1. *Loose-fill Asbestos Legislation Amendment Act 2020***

In seeking to balance the individual needs of homeowners and the safety risk remaining affected properties pose to the community, the Government has enacted the *Loose-fill Asbestos Legislation Amendment Act 2020* (the Amendment Act).

The Amendment Act contains amendments to implement a range of initiatives to assist in managing any properties affected by loose-fill asbestos insulation that remain privately owned after 30 June 2020.

The Government's position remains that properties affected by loose-fill asbestos insulation should not be occupied and the only long-term way to address the risks of exposure is through demolition and site remediation. The Government also recognises the desire of a small number of homeowners to remain in their affected properties in the coming years.

The amendments in the Amendment Act aim to provide greater safety for people who live in or attend affected premises, including building and property industry practitioners and care workers. One of the ways in which this objective is proposed to be achieved is by restricting the kinds of building and development works that can be undertaken at affected premises.

Amendments are made to the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*, the *Building Act 2004* and the *Building (General) Regulation 2008* to restrict allowable development and building work to only demolition works or those

works which are essential for health, safety or reasonable living conditions at affected residential premises.

## **2.2. Development applications, exemptions, building approvals and essential works**

Under the current development and building regulatory frameworks, the ability to undertake works at affected residential premises is limited. In summary:

### **2.2.1. Development applications must be refused for any works (except demolition and remediation) at affected residential premises.**

Any development application that is submitted for a development involving affected residential premises must be refused by the decision-maker, unless that application is for a remediation development.<sup>1</sup>

A remediation development requires the demolition of each affected building on the premises including asbestos removal related to the demolition, and the remediation of the premises.<sup>2</sup>

### **2.2.2. Works, other than a remediation development, may only be undertaken if they are exempt from requiring development approval and are for the demolition of affected buildings or essential for health, safety or reasonable living conditions.<sup>3</sup>**

These guidelines provide further guidance on the type of work which is considered essential for health, safety or reasonable living conditions. Work must then also fall within an existing exemption provision, such as:

- Internal alterations of buildings<sup>4</sup>
- Maintenance of buildings and structures<sup>5</sup>
- Rebuilding damaged buildings and structures<sup>6</sup>
- Demolition of a single dwelling<sup>7</sup>
- Demolition of a building or structure, or part of a building or structure<sup>8</sup>

### **2.2.3. Building approvals may be issued only for demolition or other building works which are essential for health, safety or reasonable living conditions.**

There are a range of building works that are exempt from requiring building approval. Particular exemptions do not apply if the building the work relates to is erected at affected residential premises.<sup>9</sup> Some of these works are likely to disturb loose-fill asbestos and must

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<sup>1</sup> *Planning and Development Act 2007*, section 162(3).

<sup>2</sup> *Planning and Development Act 2007*, section 162(7).

<sup>3</sup> *Planning and Development Regulation 2008*, section 1.17A.

<sup>4</sup> *Planning and Development Regulation 2008*, section 1.20.

<sup>5</sup> *Planning and Development Regulation 2008*, section 1.23.

<sup>6</sup> *Planning and Development Regulation 2008*, section 1.110(1)(aa).

<sup>7</sup> *Planning and Development Regulation*, section 1.100B (1)(a).

<sup>8</sup> *Planning and Development Regulation*, section 1.101(1)(a)(ii).

<sup>9</sup> *Building (General) Regulation 2008*, sections 6(1A) and 6(5A).

be approved by a building surveyor appointed to certify the work.

Building approvals may only be issued if the works are:

- a) Related to the demolition of the affected building including asbestos removal related to the demolition; or
- b) Essential for health, safety or reasonable living conditions at affected premises.

Some building works at affected premises will remain exempt from requiring a building approval. These works include, for example, erecting certain boundary fences and erecting or altering a child barrier around an existing swimming pool. Some health and safety equipment, such as hand grips attached by suction, that are not permanently fixed to a building would not require a building approval.

The works that were previously exempt but now require building approval if they are to be undertaken on affected residential premises include the following:

- Internal and external alterations;
- Installation of photovoltaic panels, solar water heaters, and air-conditioning units.<sup>10</sup>

Some works exempt from requiring a development approval will require a building approval, and some works may be exempt from requiring both a development approval and a building approval.

For further information on requirements relating to building and development approvals, see the ACT Government's development application webpage at [https://www.planning.act.gov.au/development\\_applications](https://www.planning.act.gov.au/development_applications) and building approvals webpage at <https://www.planning.act.gov.au/build-buy-renovate/build-buy-or-renovate/approvals>.

#### **2.2.4. Works involving asbestos**

Work should not disturb asbestos or, where there is a reasonable risk of disturbing asbestos, must be undertaken in accordance with all necessary safety controls as required by the *Dangerous Substances Act 2004* and relevant work health and safety requirements.

### **3. GUIDING PRINCIPLES AND EXAMPLES FOR ESSENTIAL WORK**

The following principles and examples are provided to assist building certifiers, building industry practitioners, homeowners and the general public about the types of work which are considered essential for health, safety or reasonable living conditions.

#### **3.1. Principles for essential work**

1. Work is permitted only where it is necessary to allow lawful occupants to maintain tenable conditions to continue to live in their homes (affected premises).
2. Work is permitted only where it is necessary to be undertaken to allow the occupant to remain in the home until mid-2025 (when Government will consider compulsory acquisition actions, as previously announced).

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<sup>10</sup> *Building (General) Regulation 2008*, schedule 1, part 1.2, items 2-15, and part 1.3, items 14-16, 23-24.

3. Works which are aesthetic improvements only are not considered essential and are not permitted.
4. Work must be for an essential health, safety or reasonable living conditions reason, as detailed further below.
5. Where applicable, proposed works should be supported by written evidence from a relevant professional of the essential need for the work to be undertaken, for example: a health professional or disability access professional.

### **3.2. Examples**

Examples of works which are considered essential for health, safety or reasonable living conditions at affected residential premises may include, but are not limited to, the following:

Health - works that are required to support ongoing health requirements. For example:

- Internal and external alterations itemised within a relevant Australian standard for accessibility or adaptability or the National Construction Code, required to address accessibility or mobility requirements of the occupant including the alteration of door widths, strengthening of the structure to support installation of accessibility features, placement of socket outlets, bench heights, ramps, balustrades and handrails.
- The installation of fixtures recommended for the occupant by a registered health professional, including specific types of light switches, door hardware, taps and showerheads.
- Maintenance, repair and replacement of sanitary facilities and fixtures necessary for washing and hygiene, such as showers, water heaters and toilets.
- Works required to repair the building or maintain the condition of the building in protecting occupants from weather, pests and vermin, including work to prevent or fix damage to structural members and wall floor and/or ceiling linings, caused by storms, mould, mildew, termite attack or vermin.

Safety - works that are required to support safety. For example:

- The installation, maintenance and replacement of security devices such as security cameras and alarms, security screens, bars and door locks, smoke alarms etc.
- Works to repair structural members and other elements of the building or building systems that may be becoming unsound or unsafe.

Reasonable living conditions - works that are required for reasonable living conditions of the lawful occupants of the premises. For example:

- Maintenance and general repairs to existing structures, fittings and fixtures.
- Installation or replacement of fixtures and fittings installed for space heating and cooling equipment within the home.
- Maintenance, repair or replacement of facilities reasonably required for preparing and cooking food and clothes washing.