

# LG Alert

## Development Regulations amendments – what you need to know

Late last week, a large number of amendments were made to the *Development Regulations 2008*.

Of particular importance are the following amendments:

- representations for Category 2 and 3 development applications – regulation 35(e) has been amended so that a person only need to indicate whether they wish to be heard on their representation. In practical terms, this means that if a person does not indicate whether they wish to be heard or not, they are to be taken as not wishing to be heard;
- regulation 74A has been deleted such that a manufacturer's truss checklist is no longer required to be provided in respect of building work incorporating roof trusses;
- regulation 76C has been simplified such that it prohibits the construction of a brush fence closer than 3 metres to a Class 1 or Class 2 building unless the relevant wall of the building is fire resisting in accordance with the provisions of the Building Code relating to fire separation in respect of brush fences;
- whenever a building classification is assigned to a building or part of a building under regulation 82, the notice issued to the owner under section 66(4) of the *Development Act 1993* must now specify the maximum number of persons who may occupy the building (or part of the building) and if the building has more than 1 classification – the part or parts of the building to which each classification relates and the classifications current assigned to the other parts of the building;
- regulation 92 has been amended such that where a private certifier grants both development plan consent and building rules consent to a development application, they are no longer required to provide a certificate of consistency to councils. Further, all privately-certified documents can now be provided to a council via facsimile or electronic means with the prior approval of the relevant council;
- building rules assessment audits have now been delayed such that the first such audit does not need to occur until 30 June 2017. Development plan consent (residential code) audits have been delayed until 30 June 2018;
- Schedule 1A has been amended so that a swimming pool application will be a Schedule 1A form of development if the pool is to be ancillary to an

approved dwelling – meaning that these applications can be approved even if the dwelling does not yet exist;

- Clause 3 of Schedule 3 has been amended such that all land divisions by way of lease or licence over **non-residential land** are not development requiring approval under the Act. Only licences and leases over land that comprises a dwelling, a dwelling and its curtilage or which permit or is varied to permit land to be used for residential purposes for a period of over six years (including rights or options of renewal) is "development" requiring approval under the Act;
- Clause 4 of Schedule 3 and Schedule 3A as it pertains to masonry fences has been amended. All fences which are constructed wholly or partly of masonry over 1 metre in height are "development" and "masonry" is now defined to mean "stone, brick, terracotta or concrete block or any other similar building unit or material, or a combination of any such materials";
- Clause 2A of Schedule 4 has been amended such that alterations or additions to dwellings which are approved, but not yet constructed, can be assessed and determined as residential code developments;
- site contamination criteria for new dwellings under clause 2B of Schedule 4 have been broadened. If an applicant indicates or a relevant authority has reason to believe that the subject land is, or may have been subject to site contamination as a result of a previous use or activity on the land or in the vicinity of the land, then the relevant dwelling application cannot be assessed as a residential code-complying development unless clause 2B(4)(c) or (d) is satisfied;
- referral requirements to the Commissioner of Highways in Schedule 8 have been broadened to include advertising displays abutting certain roads and intersections;
- certain sheds, garages and outbuildings proposed within the River Murray Flood Plain no longer require referral under Schedule 8;
- **all** carports, sheds, pergolas, verandahs, swimming pools, spa pools and outbuildings are now Category 1 developments under Schedule 9;
- Schedule 10 has been amended such that development in a Conservation Zone is no longer DAC-assessed.

If you have any questions please contact Victoria Shute on 8113 7104 or [vshute@kellyjones.com.au](mailto:vshute@kellyjones.com.au)