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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2008 (No 1)
SUBORDINATE LAW No SL2008-8

EXPLANATORY STATEMENT

Circulated by authority of
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AUSTRALIAN CAPITAL TERRITORY
PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2008 (No 1)
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Overview

The Planning and Development Amendment Regulation is made under section 426 of the *Planning and Development Act 2007* (the Act).

This regulation amends the *Planning and Development Regulation 2008* (the regulation).The amendments are necessary—

- as a result of the passing of the *Planning and Legislation Amendment Act 2008* (the Amendment Act) by the Legislative Assembly which amended certain sections of the Act after the making and tabling of the regulation; and

- to make other less substantive and some minor and technical changes as explained herein.

Strict liability offence in the Regulation

Section 17 creates a strict liability offence. Under section 17(3), a person commits an offence if:

(a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (2); and

(b) the person does not have an inspector's approval to interfere with the thing.

Under section 17(4) it is a strict liability offence with a maximum penalty of 10 penalty units. A penalty unit is defined in the *Legislation Act 2001* and is currently $100.

As section 17 is a strict liability offence, it engages sections 18(1) and 22(1) of the *Human Rights Act 2004.* The government notes the following features and characteristics of the offence, which it believes justify the imposition of strict liability:

- The offence is regulatory in nature, and cannot be considered "truly criminal" in the sense that it does not involve conduct that is "morally wrong" or "reprehensible" (see *International Transport Roth GmbH & Ors v Secretary of State for the Home Department* [2002] EWCA Civ 185). Also, the offence would only apply in situations where investigation by an inspector is required to determine whether a controlled activity is occurring or to determine whether an alleged offence has occurred or to determine whether an occupier has complied with an already issued compliance order (such as a rectification direction), and would not apply to members of the community at large (see *Engle v Netherlands* (1980) 1 E.H.R.R. 647).

Further, the maximum penalty does not involve imprisonment and is relatively minor (10 penalty units), and is principally intended to act as a deterrent, and not be punitive or "extract retribution for wrong doing" (see *Ozturk v Germany* (1984) 6 E.H.R.R. 409).

- The offence is important to protect the integrity of the regulatory regime in the Act, and strict liability is necessary to ensure the offence can effectively be prosecuted. The Government notes that there is authority from the European Court of Human Rights and the Canadian Supreme Court holding that where the offence is not punishable by imprisonment considerations of "administrative efficiency" may be afforded some weight in determining whether the imposition of strict liability is justifiable (see *Re B.C. Motor Vehicle Act* [1985] 2 S.C.R. 486; and *R v The Corporation of the City of Sault Ste. Marie* [1978] 2 S.C.R. 1299,). Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the authority is in a position to readily assess the truth of a matter and that an offence has been committed. They can be dealt with by infringement notice which is a cheaper and less time consuming alternative to a court prosecution. Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme.

The Government is of the view that when the totality of the above factors are considered together, the imposition of strict liability is reasonable and demonstrably justified under section 28 of the *Human Rights Act 2004,* especially when considered in light of relevant international jurisprudence concerning offences of a similar nature.

Notes on Regulations

Section 1 - **Name of regulation** - names the regulation as the *Planning and Development Amendment Regulation 2008 (No 1).*

Section 2 - **Commencement** - provides that the regulation commences on the commencement of the *Planning and Development Regulation 2008*.

Section 3 - **Legislation amended** - states that the regulation amends the *Planning and Development Regulation 2008.*

Section 4 - **Section 20, notes** – substitutes a new note which removes Note 1 from the regulation as it is not correct.

Section 5 - **Sections 27 and 28** - substitutes new sections 27 and 28 as a result of the insertion of new section 152 by the Amendment Act. Substituted **section 27** specifies that an application for a development proposal in the merit track for an estate development plan in a future urban area must be notified in accordance with the Act, section 152(2)(a), that is, a sign displayed on the place and an advertisement in a daily newspaper, and, if applicable, under section 154 of the Act. An application for a development proposal in the merit track mentioned in schedule 2 of the regulation must be notified in

accordance with the Act, section 152(2)(b), that is, letters to neighbours and if, applicable, under section 154 of the Act.

Substituted **section 28** prescribes ***public consultation period*** for section 157(a) of the Act. This amendment of section 28 is required because of the amendment of section 152 of the Act by the Amendment Act. The public consultation period for development applications notified in accordance with section 152(1)(a) of the Act, that is, applications for estate development plans and applications mentioned in schedule 2 of the regulation, is 10 working days. The public consultation period for development applications notified in accordance with section 152(1)(b) of the Act, that is, any other application for a development proposal, is 15 working days.

Section 6 - **Section 100, definition of *territory entity*, note 2-** amends note 2 to include a reference to the now two sections in the regulation relating to direct sales to the housing commissioner. Previously, only section 109 of the regulation specified the criteria for the direct sale of a lease to the commissioner for housing. The Amendment Act amended section 240 of the Act to allow direct sales of leases by the planning and land authority (the authority) as prescribed by regulation. As a result, section 130 has been inserted into the regulation (see section 10 below) which, amongst other things, prescribes that a lease of allocated land to the commissioner can be sold directly to the housing commissioner by the authority.

Section 7 - **Section 102(2), note** – amends the note so that it refers to the correct section. Section 401 will become section 402 under section 18 below.

Section 8 - **Section 111(2), note** – amends the note so that it refers to the correct section. Section 401 will become section 402 under section 18 below.

Section 9 - **Section 120(a)** - inserts additional words in section 120(a) because of the insertion of section 130 in the regulation. The Amendment Act amended section 240 of the Act to allow direct sales of leases by the authority as prescribed by regulation. As a result, section 130 has been inserted in the regulation (see section 10 below) which, amongst other things, prescribes that a lease of land can be sold directly by the authority to the Territory if the land is used or occupied by the Territory. As a result, section 120(a) is amended to make it clear that it applies to leases granted to the Territory except those to which section 130(1)(f) applies. The new section 120(a) refers to the Act, section 240(1)(ca). This is a reference to section 240(1)(ca) as inserted by the Amendment Act, section 22 which is proposed to be editorially renumbered as section 240(1) (d) in the first republication of the Act on the Legislation Register for the commencement of the Act.

Section 10 - **New division 5.1.4** –
Division 5.1.4 Certain direct sales not requiring approval -
Inserts a new section 130 in the regulation as a result of the Amendment Act amending section 240 of the Act to allow direct sales of leases by the authority. Section 130 prescribes those leases that can be sold directly by the authority. They include:

(a) a lease offered at auction but not sold;
(b) a lease offered at ballot but not sold;
(c) a lease sold at ballot but the contract of sale is rescinded or otherwise ended before the lease is granted under the contract;
(d) a lease of allocated land to the housing commissioner;
(e) a lease to Community Housing Canberra Limited,
(f) a lease of land to the Territory if the land is used or occupied by the Territory.

The new section 130 refers to the Act, section 240(1)(ca). This is a reference to section 240(1)(ca) as inserted by the Amendment Act, section 22 which is proposed to be renumbered as section 240(1)(d) in the first republication of the Act on the Legislation Register for the commencement of the Act. Similarly, the reference to '240(1)(cb) to (e)' in the Note to division 5.1.4 is a reference to sections 240 (1)(cb),(d) and (e) of the Act. Section 240(1)(cb) was inserted in the Act by section 22 of the Amendment Act. Sections 240(1)(d) and (e) were inserted in the Act by section 1.125 of the *Planning and Development (Consequential Amendments) Act 2007*. Section 240(1)(cb)(d) and (e) are proposed to be renumbered as (e) (f) and (g) respectively in the first republication of the Act on the Legislation Register for the commencement of the Act.

Section 11 - **New sections 141 and 142 –** inserts new sections 141 and 142 in the regulation.

Section 141- Under section 251(1)(c) of the Act, as amended by the Amendment Act, section 251 applies to a lease granted under section 238(1)(d) of the Act other than…(ii) a single dwelling house lease, other than a single dwelling house lease prescribed by regulation. Section 11 prescribes such a lease and its effect is that a single dwelling house lease is subject to the restrictions under section 251 of the Act if the lease provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the authority.

The Note in new section 141 refers to the Act, section 240(1)(e). This is a reference to section 240 (1)(cb) as inserted by the Amendment Act, section 22 which will be renumbered as section 240(1) (e) in the first republication of the Act on the Legislation Register for the commencement of the Act.

Section 142 – prescribes those leases that are exempt from the Act, section 251 in accordance with section 251(2A) which was inserted by the Amendment Act. Section 142(1) clarifies that a concessional lease and a rural lease is exempt from sections 251(1) (a), (b) and (c). Sections 265 and 284 of the Act deal with restrictions on dealings with such leases. Under section 142(2), the following leases are exempt from section 251(b) and (c) of the Act:

(a) a lease to Community Housing Canberra Limited;

(b) a lease granted under the Act, section 238 (1) by auction, tender or ballot if—

(i) the class of people eligible or ineligible for the grant was restricted under the Act, section 239; and
(ii) the lease is sold for market value; and
(iii) the Act, section 251 (1) (a) or (d) does not apply to the lease;

(c) a lease granted under the Act, section 241 if—
(i) the lease is sold for market value; and
(ii) the Act, section 251 (1) (a) or (d) does not apply to the lease.
The new section 142 refers to the Act, section 251(2A). This is a reference to section 251(2A) as inserted by the Amendment Act, section 29 which is proposed to be renumbered as section 251(3) in the first republication of the Act on the Legislation Register for the commencement of the Act.

Section 12 - **Section 160 heading** – amends the heading of section 160 so that it refers to the correct section of the Act.

Section 13 - **New section 161** – inserts a new section 160 that prescribes the period of 20 working days for section 272B(1) of the Act which was inserted by the Amendment Act.

Section 14 - **New sections 202 and 203** – inserts new sections 202 and 203 in the regulation.

Section 298A(5)(b) was inserted in the Act by the Amendment Act. Under section 298A an application to extend the commencement or completion of a building and development provision must be accompanied by the required fee. The required fee is worked out in accordance with the formula in section 298A(3)(b). Under section 298A(5), "A" in the formula is 5, or a lower figure, if prescribed by regulation. New **section 202** prescribes the lower figures. It is 1 if a hardship reason applies to 1 or more of the lessees. The prescribed figure is 3 if:

(a) subsection 202(1) does not apply; and
(b) the lessee is 1 or more individuals only; and
(c) none of the individuals has made an application under the Act section, 298A in relation to another lease within the 3 year period before the day the application is made.

Under section 202(3) ***hardship reason*** means:

(a) a reason mentioned in the Act, section 298(2)(b)(ii) or (iii);
(b) and for a lessee which is an individual – a reason mentioned in section 200 of the regulation.

New **section 203** is a regulation required pursuant to section 298B(6)(b) which was inserted in the Act by the Amendment Act. It provides that the authority may extend the maximum aggregate period of time for compliance with a building and development provision in a lease beyond the 3 year maximum by any period up to a maximum of 2 years, if hardship is established.

The authority can extend the maximum aggregate period for an individual if satisfied that the lessee:

(1) cannot comply with the building and development provision within the required period because of:
(a) personal reasons; or
(b) financial reasons connected with the lease; or
(c) an unforeseen major event outside the lessee's control that has a demonstrable effect on the lessee's ability to develop the land; and

(2) has demonstrated that the lessee is reasonably likely to be able to meet the new extended time frame for compliance.

The authority can only extend the maximum aggregate period for an entity, other than an individual, if satisfied that the lessee:

(1) cannot comply with the building and development provisions because of:
(a) financial reasons connected with the lease; or
(b) an unforeseen major event outside the lessee's control that has a demonstrable effect on the lessee's ability to develop the land; and

(2) has demonstrated that the lessee is reasonably likely to be able to meet the new extended time frame for compliance.

The Note indicates that the authority may approve the extension only if satisfied on reasonable grounds that the extension for the period sought would not cause an unacceptable delay to another development or land release (see section 298B(3) of the Act).

Section 15 - **Section 400 heading** – substitutes a new heading to include the word "regulation" at the end. This is to clarify that section 400 is made for the purposes of the regulation because it relates to matters in the regulation.

Section 16 – **New section 400A** –inserts new section 400A. Section 400 is made for the purposes of the regulation because it relates to matters in the regulation while section 400A is made for the purposes of the Act, section 422A.

Section 17- **Section 401(g)** - substitutes a new section 401(g) for clarification purposes.

Section 18 - **Sections 400A and 401 (as amended)** – renumbers sections 400A and 401 as sections 401 and 402.

Section 19 - **New section 403** – inserts new section 403 in the regulation. It expands on section 392D which was inserted by the Amendment Act. Section 392D of the Act specifies that an inspector who enters premises under a search warrant may seize anything at the premises that the inspector is authorised to seize under the warrant. New section 403 states that the inspector may remove a seized thing from the premises or leave it at the place

but restrict access to it. A person commits a strict liability offence if the person interferes with a seized thing or anything containing a seized thing, to which access has been restricted, without an inspector's approval. The offence has a maximum penalty of 10 penalty units. A penalty unit is defined in the *Legislation Act 2001* and is currently $100.

Section 20 - **New section 410** – inserts new section 410 in the regulation. It provides that the regulation, schedule 5, modifies chapter 15 of the Act as stated in schedule 5, and that both new section 410 and schedule 5 expire on 31 March 2010. That is because the affect of new section 10 is intended to be for a transitional period of 2 years from 31 March 2008.

Sections 21- 43

Sections 21 to 43 make various changes to certain stated sections in Schedule 1, part 1.3. The amendments are necessary for one or more of the following reasons:

(1) to disapply certain of the exemption criteria of Schedule 1, part 1.2 to stated sections of part 1.3 to ensure the exemptions provided by part 1.3 achieve the intended effect;

(2) to adjust terminology for better consistency and readability, and to facilitate application of the amended definition of the term ***height*** in the dictionary to the regulation;

(3) to adjust format and numbering to increase usability and to facilitate any future insertion of additional provisions;

(4) to clarify that existing exemptions in relation to certain class 10a buildings are preserved and not subject to the more onerous exemption parameters applicable to larger class 10a buildings.

Other amendments to Schedule 1 are to improve usability or are consequential to amendments by the Amendment Act, in particular, in relation to fences.

In addition, the definition of the term ***height*** has been amended to ensure the intended effect.

Section 21 - **Schedule 1, section 1.1, new definitions**
Inserts new definitions for basic paling fence and open space boundary in Schedule 1, section 1.1 to improve consistency with similar changes in the Act.

Section 22 - **Schedule 1, section 1.13 (2)**
Amends Schedule 1, section 1.13 to add detail ensuring the exemptions provided by part 1.3 achieve the intended effect for specific open space boundary fencing.

Section 23 - Section 1.16, examples
Amends the examples of Schedule 1, section 1.13 to clarify the approvals required in a development where a house is combined with a rear deck or pergola. This amendment also accounts for the amended definition of ***height*** in the regulation.

Section 24 – Schedule 1, section 1.19
Omits schedule 1, section 1.19 from the regulation, as its provision is moved to a different section number. See section 28.

Section 25 – Schedule 1, section 1.20
Substitutes new criteria for internal alterations of buildings in Schedule 1, section 1.20 to ensure only the stated prescribed general criteria apply rather than all of the criteria. That is necessary to ensure the provision achieves its intended effect.

Section 26 – Schedule 1, section 1.21 (c)
Amends Schedule 1, section 1.21 (c) to ensure consistency with the amended definition of ***height*** in the regulation.

Section 27 - **Schedule 1, section 1.22 (1) new definition of *structure***
Inserts an amended definition of ***structure*** in Schedule 1, section 1.22 (1) to account for changes to provisions relating to open space boundary fences.

Section 28 - new Schedule 1, section 1.31
Inserts what was section 1.19 into new section number 1.31, for formatting purposes.

Section 29 – Schedule 1, division 1.3.2
Amends Schedule 1, division 1.3.2 to clarify that existing exemptions in relation to certain class 10a buildings are preserved and not subject to the more onerous exemption parameters applicable to larger class 10a buildings. Also amends numbering to increase useability.

Section 30 - Schedule 1, division 1.3.3
Amends Schedule 1, division 1.3.3 to ensure signs that are exempt development are not subject to inappropriate criteria, such as criteria that prohibit signs of a white or metallic colour. This is to ensure the original intent of the exemption is achieved. Numbering is also amended to ensure useability.

Section 31 - Schedule 1, division 1.3.4, section 1.70 to 1.73
Renumbers Schedule 1, division 1.3.4 to improve readability.

Section 32 - Schedule1, section 1.80
Amends Schedule1, section 1.80 to ensure rural lease developments that are exempt development are not subject to inappropriate criteria, such as criteria intended for urban settings. This is to ensure the original intent of the exemption is achieved.

Section 33 - Schedule 1, section 1.81
Renumbers Schedule 1, section 1.81 to improve readability.

Section 34 – Schedule 1, section 1.90 (1) (b) (iii)
Amends Schedule 1, section 1.90 (1) (b) (iii) to specify exempt territory development that are minor pubic works includes installation of a parking control sign or traffic control device approved by the authority in the form of a notifiable instrument. This is necessary to ensure that road signs not covered in relevant Australian Standards can be erected, but only of a kind approved by the ACT Planning and Land Authority.

It is anticipated that existing guidelines in relation to road signs could be approved in whole or in part, for example, to preserve the status quo in relation to road sign exemptions.

Section 35 – Schedule 1, section 1.90 (3)
Amends Schedule 1, section 1.90 (3) to specify the approval of the following is a notifiable instrument:

(a) a bus shelter master plan;

(b) a kind of a parking control sign or traffic control device.

See the explanation for section 34, above, for further explanation.

Section 36 – Schedule 1, section 1.95, notes 2 and 3
Amends Schedule 1, section 1.95, notes 2 and 3 to remove the general exemption criteria notes for temporary flood mitigation measures. This is to ensure the original intent of the exemption is achieved.

Section 37 – Schedule 1, section 1.100
Amends Schedule 1, section 1.100 to ensure single dwellings that are exempt development are not subject to the general exemption criteria of Schedule 1. This is necessary as the objectives of those criteria are taken account of in the section 1.100 provision in that the provision requires compliance with the relevant rules in a stated code under the territory plan and those rules are equivalent to the criteria. Applying the criteria in addition to the rules is therefore redundant.

Section 38 – Schedule 1, section 1.104 (1), note 2
Amends Schedule 1, section 1.104 (1), note 2 to remove the reference to the omitted section regarding verandahs.

Section 39 Schedule 1, section 1.104(3), definition of *prescribed landscaping*, paragraph (c)
Inserts a new paragraph (c) in the definition of ***prescribed landscaping*** to bring the references to natural grounds level into line with other references to the term in Schedule 1.

Section 40 – Schedule 1, sections 1.106 and 1.107
Amends Schedule 1, sections 1.106 and 1.107 to ensure resiting of buildings with development approval and resiting of exempt buildings are exempt under the prescribed general exemption criteria. That is to ensure the provisions achieves its intended effect.

Section 41 – Schedule 1, section 1.109
Amends Schedule 1, section 1.109 to clarify the meaning of ***designated area*** for developments not involving a lease variation.

Section 42 - **Schedule 1, new part 1.4**
Inserts new part 1.4 in Schedule 1, which specifies permitted open space boundary fence colours for section 1.52.

Section 43 - **Schedule 1, part 1.5 heading, note**
Substitutes a new Note in Schedule 1, part 1.5, to correct section references.

Section 44 - **Schedule 2, item 1, column 2, paragraph (d)(ii)**
Amends Schedule 2, item 1, column 2, paragraph (d)(ii) to clarify that the height of 6.5m is the height of 6.5m above natural ground level.

Section 45 - **Schedule 2, item 1, column 2, paragraph (f)**
Amends Schedule 2, item 1, column 2, paragraph (f) to clarify that the height of 6.5m is the height of 6.5m above natural ground level.

Section 46 - **Schedule 3, part 3.2, item 5, column 2, paragraph (d)**
Amends Schedule 3, item 5, column 2, paragraph (d) to clarify that the height of 10m is the height of 10m above natural ground level.

Section 47 - **Schedule 3, part 3.2, item 8, column 2, paragraph (h)**
Amends Schedule 3, item 8, column 2, paragraph (h) to clarify that the height of 6m is the height of 6m above natural ground level.

Section 48 - **Schedule 3, part 3.2, item 9, column 2, paragraph (i)**
Amends Schedule 3, item 9, column 2, paragraph (i) to clarify that the height of 6m is the height of 6m above natural ground level.

Section 49 - **Schedule 3, part 3.2, item 10, column 2, paragraph (i)**
Amends Schedule 3, item 8, column 2, paragraph (i) to clarify that the height of 6m is the height of 6m above natural ground level.

Section 50 - **New schedule 4**
Inserts a new schedule 4. Schedule 4 is inserted as a result of the insertion of new section 400A (to be renumbered as s401) – see sections 16 and 18 above. Section 400A/401 prescribes that section 47(6) does not apply to the territory plan instruments mentioned in Schedule 4 of the regulation, that is, they need not be notified on the Legislation Register. The reason for not requiring these instruments to be notified is that they are readily available either by purchase or on the internet and/or are subject to copyright.

Section 51 – New schedule 5 (Modification of Act)
Inserts new schedule 5 for section 410 of the regulation, which provides that schedule 5 modifies chapter 15 of the Act as stated in schedule 5, and that both new section 410 and schedule 5 expire on 31 March 2010. That is because the affect of new section 10 is intended to be for a transitional period of 2 years from 31 March 2008.

Amendment [5.1] of new schedule 5 modifies the Act by inserting new **section 429A (Modification of Act, ch 15—Act, s 429)**– under section 429A of the Act, modifies section 298A (5) of the Act. Section 429A modifies section 298A (5) of the Act by substituting a new definition of "D". The intention of s298A is that one fee is payable when extensions are sought in relation to multiple time limits contained in a lease. The intention is for the fee to be based on the maximum increase sought, that is, if a lessee seeks a 6 months extension to commence and a 12 months extension to complete, the fee is based on the 12 months. This regulation provides clarity to the legislative intent.

The modification expires on 31 March 2010 because of section 20 - New section 410.

Amendments [5.2] and [5.3] of new schedule 5 modify the Act by substituting section 442(1) and inserting section 442 (4). The modification expands section 442 to include an application for an amendment of an approval under the repealed Act and to clarify the meaning of the section by providing a definition of ***finally decided*** and ***reconsideration period.*** Under new s 442(1), the section applies, if before the commencement day of the Act:

(1) a person applied for an approval under the *Land (Planning and Environment) Act 1991* (the repealed Act), section 226 (Application to undertake development); or
(2) an amendment of an approval under the repealed Act, section 247 (Minor amendments); and

Immediately before commencement day, the authority had not finally decided the application.

Section 442(4) specifies the meaning of ***finally decided*** and ***reconsideration period*** for the section. An application for approval under the repealed Act is ***finally decided*** if:

(a) the period for making an application under the repealed Act, section 246 for reconsideration of the authority's decision on the application for approval has ended and no application for reconsideration has been made; or
(b) If an application for reconsideration of the authority's decision on the application for approval is made within the reconsideration period - the authority has made a decision on the application for reconsideration; or the authority is taken to have confirmed the original decision under the repealed Act, section 246B.

Reconsideration period means the period within which an application must be made under the repealed Act, section 246(3).

Under sections 442 (2) and (3), the repealed Act continues to apply in relation to the application despite its repeal and if the application is approved, the approval is taken to be a development approval under this Act.

The modification expires on 31 March 2010 because of section 20 - New section 410.

Amendment [5.4] of new schedule 5 modifies the Act by substituting a new **section 444** as follows:

Section 444(1) specifies that the section applies not only when a person has an approval immediately before the commencement day of the Act but also when the authority gives an approval under the repealed Act after the commencement of the Act. Under section 444 (2) the approval:

(a) is taken to be a development approval under the Act;
(b) unless extended under the Act, continues in force until the time when it would have ended under the repealed Act; and
(c) for the Act, section 198 (2) (Deciding applications to amend development applications) is taken to relate to a proposal in the merit track.

Pursuant to new section 444 (3), if the application to which the approval relates was not required to be publicly notified under the repealed Act, an application under the Act for the amendment of the approval need not be notified under the Act.

The modification expires on 31 March 2010 because of section 20 - New section 410.

Amendment [5.5] of new schedule 5 modifies the Act by substituting a new section 445 (2) (a). When an approval has been given under the repealed Act and an extension of the approval has been granted but has not commenced on commencement day of the Act, the approval is taken to be a development approval under the Act and ends at the end of the period for which the approval was extended under the repealed Act before commencement day.

The modification expires on 31 March 2010 because of section 20 - New section 410.

Amendment [5.6] of new schedule 5 modifies chapter 15 of the Act by omitting section 447. Section 447 is no longer required because of the modification of sections 444 and 445 by sections 502 and 503 above. Sections 502 and 503, amongst other things, insert a provision in section 444 and 445 (see s444 (2)(a) and s445 (2)(a)) that states that an approval under the repealed Act is taken to be a development approval under the Act. As a result, section 447 is redundant. Section 504 expires on 31 March 2010.

The modification expires on 31 March 2010 because of section 20 - New section 410.

Section 52 - **Dictionary, new definitions of *basic paling fence* and *class 10a* building**
Inserts new definitions of ***basic paling fence*** and ***class 10a building*** in the Dictionary.

Section 53 - **Dictionary, definition of *height***
Substitutes a new definition of ***height*** in the Dictionary to ensure it achieves its intended effect.

Section 54 - **Dictionary, new definitions of *open space boundary* and *prescribed general exemption criteria***
Inserts new definitions of ***open space boundary*** and ***prescribed general exemption criteria*** in the Dictionary as a consequence of new provisions inserted in schedule 1 of the regulation.

Cost impacts
Minor impacts and less fees through reduction for hardship cases.