

2008

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2008 (No 5)
SL2008-52**

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Andrew Barr MLA

Planning and Development Amendment Regulation 2008 (No 5) (the “amending regulation”).

The amending regulation facilitates construction of housing in new estates before subdivision and estate development is undertaken.

Background

New urban areas or ‘estates’ in the ACT can be established by selling a **holding lease**, for a significant tract of future urban area land, to an estate developer. The **holding lease** may require the land to be developed by building roads and other urban infrastructure and subdivision to produce residential and other blocks of land. The proposed development of the future urban area, as defined in the holding lease, is shown in an **estate development plan** (an EDP) defined at section 94 of the *Planning and Development Act 2007* (the Act). An EDP shows amongst other things the block boundaries for individual blocks proposed for inside the estate. An EDP is submitted and assessed under the normal development assessment processes. When the EDP is approved the land ceases to be future urban land and the proposed block boundaries are electronically recorded in the digital cadastre database maintained by the planning and land authority. Typically, the related infrastructure is then developed and the blocks of land are created under the *Districts Act 2002* through registration of a ‘deposited plan’ at the Land Titles Office.

Undertaking development, defined at section 7 of the Act, requires development approval (DA) unless the development is exempt. The *Planning and Development Regulation 2008* (the regulation) exempts a single dwelling on new residential land from requiring a development approval if it meets stated requirements. To be exempt the single dwelling must be built on a **block** as defined in the regulation. The regulation defines a block as a block shown on a **deposited plan** for the purposes of the *Districts Act 2002*. Land included in an approved EDP and the planning and land authority’s digital cadastre database, but not yet recorded in a deposited plan at the Land Titles Office, does not meet the definition of a **block** as defined in the regulation. This means that land does not become a **block** until the infrastructure is developed (e.g. physical roads etc) and a deposited plan registered. This means that the dwelling on ‘**preliminary blocks**’ on the digital cadastre database but not yet registered cannot be DA exempt.

Therefore, building the single dwelling, prior to completion of the estate requires development approval. The alternative is for the estate developer is to wait until the infrastructure is completed and the proposed blocks are registered at the Land Titles Office under the *Districts Act 2002*. Because block boundaries and location of roads etc are fully defined and fixed when the preliminary block is recorded prior to the development of the infrastructure and deposited plan, it is not necessary to require the developer to wait for the registration of a deposited plan to make use of the DA exemption for single dwellings. Such delay is unreasonable given that it can unduly add to developers holding costs, or prevent the early construction of such things as display villages and other residential dwellings. Such a delay is also not consistent with the Government policy to expedite the land release and development assessment process.

The amending regulation provides for the concurrent development of the estate, in terms of infrastructure including roads, and the building of exempt single dwellings. This is achieved by defining and including a **preliminary block** as a block of land that a single

exempt dwelling may be built on. A preliminary block is the block shown on the approved EDP and electronically recorded in the digital cadastre database maintained by the planning and land authority; it does not have to be a deposited plan registered at the Land Titles Office.

The regulation only permits exempt developments (single residential) on a holding lease where there is an approved EDP and the builder and estate developer are legally the same entity. This is to avoid the potential for mistakes in design and siting due to communication problems with unrelated third parties.

This form of exempt development will not impact other persons because the exemption continues to rely on surveyed block boundaries. These boundaries do not change from the digital cadastre stage, relied on in this amending exemption, to the deposited plan stage relied on in the existing regulation. Further, any exempt development must comply with an approved EDP and meet building certification requirements under the Building Act.

The amending regulation meets the requirements of the Legislation Act 2001 s36 (1) (b) in terms of the potential impact on persons as the amending regulation is of such a nature that it will not adversely impact on the person's rights or impose liabilities on that person.

Clause Notes

Clauses 1 – Name of Regulation –states the name of the regulation, which is the *Planning and Development Regulation 2008 (No 5)*.

Clause 2 – Commencement –states that the regulation commences the day after its notification.

Clause 3 – Legislation amended – states that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 – Schedule 1, section 1.100 (1) (aa)

Provides that a single dwelling-new residential land, for the purposes of exemption from requiring development approval, may include a single dwelling on a preliminary block if the dwelling is built by the lessee of the holding lease i.e. the estate developer.

Clause 6 refers to preliminary block and Clause 5 provides for when the dwelling is built by the lessee.

Clause 5 – Schedule 1, section 1.100 (1A)

Provides that for the purposes of schedule 1, section 1.100 (1) (aa) the dwelling is considered to be built by the lessee even if some or all of it is built by an employee or contractor of the lessee. For example if the lessee is a company, then employees of the company or persons contracted by the company are considered to be doing the building work for the lessee.

Clause 6 – Schedule 1, new section 1.100 (3)

New section 1.100 (3) inserts provisions that extend the meaning of the *block* for section 1.100. The meaning is extended to include the term *preliminary block*, which is defined in new section 1.100B (2) to be taken to be land to which the following applies—

- part of a holding lease (defined in clause 14 of the amending regulation to be the same as the definition in the *Districts Act 2002*, section 7 (7), Which provides—“*holding lease* means a lease issued to allow for urban development and subdivision”); and
- an **estate development plan** (an EDP) that has been approved under the Act in relation to the lease; and
- the EDP identifies the land as a **block**. (Such blocks comprise the proposed subdivision of the block that is subject of the holding lease into small blocks. An EDP could identify a block by showing its proposed boundaries within a proposed section containing several blocks, for example); and
- information about the boundaries of, and the distinguishing name or number for the land is **recorded in the database** maintained by the planning and land authority under the *Districts Act 2002*, section 17 (Digital cadastral database). (That database contains the land survey information, and other information, used in the processes that result in the production of plans that describe blocks for the purposes of the *Districts Act 2002*, and the setting out of the respective block boundaries in the field).
- the land is not a ‘block’ under the Districts Act 2002 (that is a deposited plan registered at the Land Titles Office).

Clause 7 – Dictionary, new definition

Inserts new definition for *holding lease*. A holding lease is defined as that provided under the *Districts Act 2002*, section 7 (7), which provides—“*holding lease* means a lease issued to allow for urban development and subdivision”.