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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2009 (No 2)
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EXPLANATORY STATEMENT

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

PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2009 (No 2)

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Overview

The changes made to the *Planning and Development Regulation 2008* (the regulation) by this amending regulation are a continuation of the wider planning system reforms launched by the ACT Minister for Planning in 2004.

The main aim of the reforms was to improve timeliness, transparency and efficiency in the planning processes.

One of the ways the *Planning and Development Act 2007* (the Act) achieves this aim is by allowing straightforward developments of low significance to be exempt from requiring a development approval (DA) (see section 133). The facility exists in the Act to remove the requirement for development approval for those projects where the development approval process adds relatively little value, for example, for new single residences in Greenfield sites and small structures such as sheds, garages and pergolas. This is because there is little value added in requiring a DA in such cases. The DA process typically verifies that the development is compliant with the relevant codes but does not enhance the quality of the proposed development. The DA process does not alter the proposed design.

This amending regulation adds exemptions for specified building work on existing school sites. It does this by amending schedule 1 of the regulation. Schedule 1 is made under section 20 of the regulation. The exempting of a range of developments at public and non-public schools in this amending regulation are in addition to a number of exemptions already set out in schedule 1 of the regulation.

This amending regulation includes DA exemptions for school buildings such as libraries, halls and gymnasiums and for things other than buildings such as flag poles, bike enclosures, etc.

The exemptions apply as follows:

1. DA exemptions for main buildings and minor alterations at an existing school campus:

- Apply to both private and public schools;
- Apply for 4 years (unless specifically extended by the ACT Legislative Assembly) and are subject to review;
- If a school project does not meet the physical parameters required for the DA exemption set out in this amending regulation, a DA is required. However, a separate regulation will specify these DAs as requiring only public notice to adjoining premises (limited public notification) which means the timeframe to respond is reduced from 15 working days to 10 working days. This is done by inserting the list of developments or activities relevant

for schools into schedule 2 of the regulation. A consequence of this is that proposals that only require limited public notification are not subject to third-party appeals. The Act provides that third-party appeals can only be made if the applicant can demonstrate 'material detriment' as defined in the Act. The provisions that insert these school related developments or activities into schedule 2 will automatically expire after 4 years;

- If a school project does not meet one of the general exemption criterion set out in ss1.10-1.17 of schedule 1 to the regulation, a DA is required (eg if the proposal contravenes the Heritage Act (s1.14 of schedule 1) then a DA is required)

The reason for a time-limit (4 years) for the exemption for main school buildings (refer clause 4, s1.99C) is related to the source of funding for these sorts of projects. It is anticipated that Commonwealth and Territory funding sources will be available for government school projects of this type with the intention that the funding be spent in the short term over the next 4 years for the benefit of schools and the economy of the Territory as a whole. In some cases, failure to utilise the funds could risk loss of the funds resulting in reduced benefits to schools and the economy. The provision automatically expires on 31 March 2013, unless continued by Legislative Assembly resolution.

The proposed exemption for minor alterations that do not increase the gross floor area by more than 5% (refer clause 4, s1.99D) is to provide for those minor types of works not explicitly covered by specific clauses within these proposed exemptions where these are of such a nature that they would not impact on adjoining premises. The scope of this exemption is relatively narrow and as such is unlikely to have any negative impact on adjoining premises. The provision automatically expires on 31 March 2013, unless continued by Legislative Assembly resolution.

2. DA exemptions for school projects other than main buildings or minor alterations, for example, bike enclosures, flag poles

- Apply to both private and public schools;
- Apply indefinitely (with the exception of 1.99C and 1.99D) but must be reviewed by the planning and land authority after 4 years;
- If a school project does not meet the physical parameters required for the DA exemption set out in this amending regulation, a DA is required. However, a separate regulation will specify these DAs as requiring only public notice to adjoining premises (limited public notification) which means the timeframe to respond is reduced from 15 working days to 10 working days. This is done by inserting the list of developments or activities relevant for schools into schedule 2 of the regulation. A consequence of this is that proposals that only require limited public notification are not subject to third-party appeals. The Act provides that third-party appeals can only be made if the applicant can demonstrate 'material detriment' as defined in the Act. The provisions that insert these school related developments or activities into schedule 2 will automatically expire after 4 years;

- If a school project does not meet one of the general exemption criterion set out in ss1.10-1.17 of schedule 1 to the regulation, a DA is required (eg if the proposal contravenes the Heritage Act (s1.14 of schedule 1) then a DA is required)

The proposed exemptions for projects such as installing flag poles are to apply indefinitely, subject to review. Such projects are relatively minor in comparison with school main buildings and as such, it is appropriate for these matters to be exempt irrespective of the immediate issue of funding. As a result, these exemptions apply indefinitely with the proviso that their operation is to be reviewed by the authority after a period of 4 years.

All of the proposed exempt developments or activities are subject to review (s1.99B) and requires the authority to review the operation of the division not later than 30 September 2012. The authority must prepare a notice to the Minister on the findings of the review which includes a summary of community comment on the operation of the division.

For further information about the government funding, refer to the Regulatory Impact Statement for this amending regulation.

The various parameters set out in this amending regulation were formulated with reference to present community facilities zoning controls in the Territory Plan and in consultation with ACT Department of Education and independent schools representatives.

The main rationale for the determination of the parameters was to ensure protection of the amenity of adjoining residential areas (for example, minimisation of overlooking or overshadowing) and to ensure school sportsgrounds and ovals could not be built on because they are used outside school hours.

Detailed summary of provisions

Clause 1 – Name of Regulation –states the name of the regulation, which is the *Planning and Development Amendment Regulation 2009 (No)*.

Clause 2 – Commencement –states that the regulation commences on a day fixed by the Minister by written notice.

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

Clause 4 – Schedule 1, new division 1.3.6A –inserts a new **Division 1.3.6A Exempt developments – schools** in Schedule 1.

Subdivision 1.3.6A.1 Preliminary

1.96 Definitions – div 1.3.6A - sets out the definitions for the division. It defines **commencement day**, **existing ground level** and **existing school**. An **existing school** means 1 of the following that exists on the commencement day:

- (a) a government school within the meaning of the *Education Act 2004*;
- (b) a non-government school within the meaning of the *Education Act 2004*;
- (c) a childcare centre licensed under the *Children and Young People Act 2008*, section 747, primarily for the education of young children.

Young child is defined in section 733 (3) of the *Children and Young People Act 2008*.

1.97 Meaning of existing school campus – regulation - states that in this regulation **existing school campus** means the grounds, including the boundary, of an existing school on the commencement day.

1.98 Application – div 1.3.6A - states that the division applies to a development or other activity only if it is on an existing school campus. The policy behind limiting the division to existing school campuses is to ensure the exemptions are reasonably defined and contained and because the funding source for the developments presently applies to existing schools only.

1.99 General exemption criteria - states that unless otherwise stated in a provision, a development to which this division applies must comply with the general exemption criteria in schedule 1 except criterion 8 in section 1.18. Generally, for a development to be exempt from requiring a development approval, it must comply with each relevant general exemption criterion in sections 1.10 to 1.18 of schedule 1, and any other criterion in part 1.3 of the schedule that applies to the development. Criteria 1.10 to 1.17 refer to easement clearances; plumbing and drainage clearances; certain exterior finishes in residential zones; heritage and tree protection; and compliance with lease and other DAs, and multiple occupancy requirements. Criterion 8 states that a development must comply with any other criteria in part 1.3 (Exempt developments) that apply to the development.

Many of the criteria in part 1.3 are intended to apply primarily to residential and rural developments etc and are not relevant to schools. For this reason, a development in this division need not comply with criterion 8 in section 1.18.

1.99A Activities not developments – states that an activity mentioned in this division that is not a development is not taken to be a development only because it is exempted under this division. This means that a development is only a development if it comes within the definition of development in section 7 of the Act and just because an activity is mentioned in this division does not mean it is necessarily a development within the meaning of section 7 of the Act.

1.99B Review of division – specifies that the planning and land authority (the authority) must review the operation of this division not later than 30 September 2012. After the review, the authority must prepare a notice stating that the authority has reviewed the division and the authority's findings on the review. The

review must include a summary of any community comment on each type of exemption, and the authority must assess the performance of each exemption. The authority must give the notice to the Minister and the notice is a notifiable instrument. This section expires on 31 March 2013. This allows the authority 6 months to prepare the notice after which time the section is no longer required and so expires.

Subdivision 1.3.6A.2 Exemptions – schools

1.99C Schools – new buildings or alterations to buildings – prescribes some of the technical parameters which must be complied with to make development in relation to building a new building on an existing school campus exempt from requiring development approval. It specifies that a designated development for building a new building or altering or demolishing an existing development (and carrying out any related earthworks or other constructions work on or under the land) is exempt development if the building is:

- (a) (i) a class 3 building (eg a dormitory); or
- (ii) a class 9b building (eg a hall, gymnasium); and

(this exemption is intended to also cover, for example, new school libraries, meeting halls, classrooms, auditoriums and similar)

- (b) The building is not within 6 metres of the boundary of a residential zone; and

- (c) the height of the building is not more than:

- (i) if the building is within 30 metres of the boundary of a residential zone – 6 metres above existing ground level; or

- (ii) in any other case, 12 metres above existing ground level.

These parameters minimise overlooking opportunities and other adverse impacts on the privacy of the adjoining land users.

As explained above (refer Section 1.99), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1 as well as the above criteria.

This section expires on 31 March 2013 unless, before the expiry date, the Legislative Assembly, by resolution, continues it. Section 1.99B requires the authority to review the operation of this and other exemptions in this regulation by 30 September 2012 and report the results to the Minister. This section together with section 1.99C provide for review and possible continuation. If this section is no longer required, it will simply expire.

Subsection (5) states that is the sub-section continues under sub-section (3), sub-section (2) to (4) and this sub-section expire on the day after the day the notice of

the resolution is notified. If the exemption is not continued by Assembly resolution, the whole section expires on 31 March 2013.

Section 1.2 of schedule 1 defines the meaning of the term **designated development**, in relation to land, for the purposes of schedule 1. The term covers building, altering or demolishing a building or structure on land, carrying out earthworks or other construction work on or under the land, or carrying out work that would affect the landscape of the land.

Class 3 and Class 9b buildings are defined in the Building Code of Australia, a copy of which can be inspected at the office of the authority during business hours. The Dictionary to the regulation states that **class**, for a building or structure, means the class of building or structure under the building code.

1.99D Schools – minor alterations - prescribes some of the technical parameters which must be complied with to make development in relation to a minor altering of a building (and carrying out any related earthworks or other construction work on or under the land) on an existing school campus exempt from requiring development approval.

Such minor alteration is exempt development if the development will not increase the gross floor area of the building by more than 5%.

Unlike the other sections in subdivision 1.3.6A.2, this section expires on 31 March 2013 and only applies if no other exemption in schedule 1 applies to the proposed development.

Subdivision 1.3.6A.2 Exemptions – schools applies and the building is not within 6 metres of the boundary of a residential zone.

1.99E Schools – entrances - prescribes some of the technical parameters which must be complied with to make development in relation to building a school entrance on an existing school campus exempt from requiring development approval. Section 1.98F (1) defines **school entrance** as meaning a public entrance to the school whether freestanding or part of a building; and includes any associated structure (for example, porticos, awnings, canopies, landings). A designated development for building or installing a school entrance (and carrying out any related earthworks or other construction work on or under the land) is exempt development if:

- (a) the entrance:
 - (i) does not have a roof; or
 - (ii) is not enclosed on all sides; and

- (b) the height of the entrance is not more than 6 metres above existing ground level.

1.99F Schools – verandahs etc – prescribes some of the technical parameters which must be complied with to make development in relation to building or installing a verandah on an existing school campus exempt from requiring

development approval. A designated development for building or installing a verandah (and carrying out any related earthworks or other construction work on or under the land) is exempt development if:

- (a) the height of the verandah is not more than 6 metres above existing ground level if the verandah is within 30 metres of the boundary of a residential zone or, in any other case, 12 metres above existing ground level;
- (b) the verandah is not within 6 metres of the boundary of a residential zone; and
- (c) the verandah is unenclosed on at least 1 side.

Under subsection 1.98F(1) verandah includes a balcony, awning, portico or landing.

1.99G Schools – signs – prescribes some of the technical parameters which must be complied with to make development in relation to putting up, attaching or displaying a sign or altering or removing a sign, on an existing school campus exempt from requiring development approval. A designated development for putting up, attaching or displaying a sign, or altering or removing a sign is exempt development if:

- (a) the sign is intended to display only school information; and
- (b) the sign is no higher than 3.6 metres above existing ground level; and
- (c) the sign is not both illuminated and animated (eg flashing neon).

Note 1 sets out that a sign may also be exempt under division 1.3.3.

Subsection 1.98G (2) specifies what ***school information*** includes.

1.99H Schools – playground and exercise equipment – specifies that a designated development for building or installing playground and exercise equipment on an existing school campus is exempt development. Such equipment includes swings, monkey bars, slippery dips, cubby houses, ropes and nets.

1.99I Schools – fences – prescribes some of the technical parameters which must be complied with to make development in relation to putting up a fence on an existing school campus exempt from requiring development approval. A designated development for building or installing a fence (and carrying out any related earthworks or other construction work on or under the land) on an existing school campus is exempt development if:

- (a) the height of the fence is not more than 4 metres above existing ground level if the fence is around or partly around a playing field or in any other case, 2.4 metres above existing ground level; and

(b) no vertical component of the fence is spiked.

Subsection 198I (1) states that a **fence** includes:

(a) a fence around the boundary, or part of the boundary, of an existing school campus; and

(b) a fence within an existing school campus, including a fence around, or partly around, a playground or playing field; or between buildings; and

(c) a gate that forms part of, or functions as, a fence.

Subsection 198I (3) states that playing field means an open space that is designed, or can be used, for playing or practising organised sport.

1.99J Schools – shade structures – prescribes some of the technical parameters which must be complied with to make development in relation to putting up a shade structure on an existing school campus exempt from requiring development approval. A designated development for building or installing a shade structure (and carrying out any related earthworks or other construction work on or under the land) is exempt development if:

(a) the height of the shade structure is not more than 10 metres above existing ground level; and

(b) the plan area of the shade structure is not more than 200 metre square; and

(c) the shade structure is unenclosed on at least 2 sides.

1.99K Schools – covered external walkways – prescribes some of the technical parameters which must be complied with to make development in relation to building or installing a covered walkway on an existing school campus exempt from requiring development approval. A designated development for building or installing a covered walkway (and carrying out any related earthworks or other construction work on or under the land) is exempt development if:

(a) the height of the walkway is not more than 6 metres above existing ground level if the walkway is within 30 metres of the boundary of a residential zone; or in any other case, the height of the walkway is not more than 12 metres above existing ground level; and

(b) the walkway is unenclosed on at least 2 sides.

1.99L Schools – flag poles – specifies that a **flag pole** includes a lanyard, flag or other item associated with a flag pole and that a designated development for building or installing a flagpole is exempt development if the height of the flag pole is not more than 10 metres above existing ground level.

1.99M Schools – water tanks – specifies that a designated development for building or installing a water tank (and carrying out any related earthworks or other construction work on or under the land) is exempt development if the water tank has a diameter of 8 metres or less.

1.99N Schools – landscape gardening – prescribes some of the technical parameters which must be complied with to make development in relation to landscape gardening on an existing school campus exempt from requiring development approval. A designated development for landscape gardening (other than construction of a retaining wall), and carrying out any related earthworks or other construction work on or under the land, is exempt development if:

- (a) the landscape gardening is defined landscaping; and
- (b) if the landscape gardening affects an existing public pedestrian access way, footpath or bicycle path – the landscape gardening maintains existing public access to the access way, footpath or bicycle path.

Pursuant to subsection 1.98N (2), section 1.11 (Criterion 1 - easement and other access clearances) does not apply to the landscape gardening in (b) unless the landscape gardening involves the construction or installation of a structure. This means a designated development for (b) does not need to comply with criterion 1 of the general exemption criteria provided the landscape gardening does not involve the construction or installation of a structure.

Subsection 198N (3) defines **defined landscaping** as meaning landscaping in relation to 1 or more of the following:

- (a) a footpath;
- (b) a landing;
- (c) artificial grass;
- (d) any other landscape structure (other than a retaining wall) or earthworks, if the vertical distance from the top of the structure or earthworks to existing ground level is not more than:
 - (i) if the top of the structure or earthworks is above existing ground level – 0.4m; or
 - (ii) if the top of the structure or earthworks is below finished ground level – 1.2m.

The Note indicates that **Finished ground level** is defined in the Territory Plan (Vol 2, Part 3 definitions)

1.99O Schools – car parks – prescribes some of the technical parameters which must be complied with to make development in relation to car parks on an existing school campus exempt from requiring development approval. A designated development for building or installing a car park (and carrying out any related earthworks or other construction work on or under the land) on existing ground level is exempt development if the car park does not reduce the area of a playing field. In this section, **playing field** means an open space that is designed or can be used for playing organised sport.

1.99P Schools – bicycle enclosures – prescribes some of the technical parameters which must be complied with to make development in relation to bicycle enclosures on an existing school campus exempt from requiring development approval. A designated development for building or installing a bicycle enclosure is exempt development.

1.99Q Schools – toilet and change room facilities - prescribes some of the technical parameters which must be complied with to make development in relation to toilet and change room facilities on an existing school campus exempt from requiring development approval. A designated development for building or installing a toilet facility or change room facility (and carrying out any related earthworks or other construction work on or under the land) is exempt development if the facility is not within 6 metres of the boundary of a residential zone.

1.99R Schools – driveways - prescribes some of the technical parameters which must be complied with to make development in relation to driveways on an existing school campus exempt from requiring development approval. A designated development for sealing or resealing a driveway (and carrying out any related earthworks or other construction work on or under the land) is exempt development if 1 or more of the following materials is used:

- (a) concrete (including coloured or patterned concrete);
- (b) bitumen;
- (c) pavers including bricks;
- (d) timber;
- (e) grass, including stabilising treatment.

1.99S Schools – security cameras - specifies that installing a security camera on an existing school campus is exempt development.

1.99T Schools – external lighting - specifies that installing external lighting, including security lighting and flood lighting (other than flood lighting for a playing field) on an existing school campus is exempt development.

1.99U Schools – demountable and transportable buildings- prescribes some of the technical parameters which must be complied with to make development in relation to building or installing demountable or transportable buildings on an existing school campus exempt from requiring development approval. A designated development for building or installing a demountable or transportable building (and carrying out any related earthworks or other construction work on or under the land) is exempt development if the building is not within 6 metres of the boundary of a residential zone.

1.99V Schools – class 10b structures - - prescribes some of the technical parameters which must be complied with to make development in relation to building or installing class 10b structures on an existing school campus exempt from requiring development approval. A designated development for building or installing a class 10b structure (and carrying out any related earthworks or other

construction work on or under the land) is exempt development if the structure is not within 6 metres of the boundary of a residential zone.

Examples of class 10b structures include retaining walls, a freestanding wall, mast or antenna, and a swimming pool.

Note 1 indicates that a class 10b structure may also be exempt under subdivision 1.3.2.3 and Note 2 indicates that a fence may also be exempt under section 1.98J.

Class 10b structures are defined in the Building Code of Australia, a copy of which can be inspected at the office of the authority during business hours. The Dictionary to the regulation states that **class**, for a building or structure, means the class of building or structure under the building code.

The exemption only applies if no other exemption in **Subdivision 1.3.6A.2 Exemptions – schools** applies.

Clause 5 – Schedule 1, section 1.101(b)(i) and note –substitutes new section 1.101(b)(i) and note. This is merely to ensure consistency of language between sections 1.100 and 1.101.

Clause 6 – Dictionary, new definitions – inserts new definitions in the regulation because of the additions made to schedule 1 by this amending regulation. The new definitions are:

commencement day, for schedule 1, division 1.3.6A (Exempt developments—schools)—see schedule 1, section 1.96.

existing ground level, for schedule 1, division 1.3.6A (Exempt developments—schools)—see schedule 1, section 1.96.

existing school, for schedule 1, division 1.3.6A (Exempt developments—schools)—see schedule 1, section 1.96.

existing school campus—see schedule 1, section 1.97.