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**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2009 (No 5)  
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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 5)**

## **EXPLANATORY STATEMENT**

### **Overview**

The changes proposed to the *Planning and Development Regulation 2008* (the regulation) by this amending regulation extends reforms implemented through the planning system reform project. The main aim of the reform project 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 to be exempt from requiring a development approval (DA). Under the Act, section 133 and 135, the *Planning and Development Regulation 2008* (the regulation) may prescribe those things that do not require development approval (refer section 20, schedule 1 and schedule 1A). Development that does not require development approval is DA exempt development. Section 20 and Schedules 1 and 1A of the regulation exempt specified development from requiring a development approval.

The types of development already prescribed in schedule 1 include such things as single dwellings on new residential land and small structures such as sheds, garages and pergolas. In the majority, the range of things prescribed in schedule 1 has now been successfully used within the community since 31 March 2008. During this time the ACT Planning and Land Authority (the authority) has been monitoring the performance of the exempt development process, in particular, exemptions for single dwellings on new residential land. There have been no significant compliance issues identified around the use of the exemption for single dwellings on new residential land. The Land Regulation and Audit Unit of the authority audited 57 of 803 exempt single residential dwellings that were registered for building approval and found no significant issues of concern in relation to compliance with the Territory Plan code.

The amending regulation seeks to expand the current exemption that applies to development proposals for single dwellings in new residential estates (schedule 1, section 1.100) to development proposals for single dwellings in any residential zone providing the dwelling complies with the relevant Code and there would only be one dwelling on the block. The amending regulation therefore extends the same rights currently enjoyed by people building a single dwelling on new residential land to other members of the community who live in established residential zones.

The exemption will apply to residential zones only, that is, the exemption will not apply to Community Facility Zones, Commercial Zones, Non-urban Zones (eg Rural Zone), etc. The Territory Plan sets out zones and precincts in the ACT, objectives and development tables applying to each zone as well as a series of general, development and precinct codes.

A development proposal, for a single dwelling, will still need to comply with the relevant rules of the relevant Code and precinct code in the Territory Plan and

have building approval under the *Building Act 2004*. The relevant rules in the codes are the “black and white” quantitative rules and do not include the qualitative merit criteria in the relevant Code.

Clauses 10 and 11 of the amending regulation clarify the development approval exemptions in relation to the demolition of single dwellings and buildings and structures.

The existing exemption in schedule 1, section 1.101 **Building and structures – demolition** provides for the demolition of a building or structure if the building or structure would be exempt development, if built, and provided the demolition meets the relevant rules in the relevant precinct code and the relevant rules in the Residential Zones Single Dwelling House Development Code.

Clause 10 broadens the exemption to include the demolition of the whole or part of a single dwelling in all residential zones, irrespective of whether or not that dwelling, if built, would be exempt. Because of the definition of ***dwelling*** in section 5 of the regulation, the demolition of an existing class 10a building *associated* with the single dwelling is also included in the exemption.

Pursuant to clause 11, a development approval exemption will still apply to the demolition of development that, if built, would be exempt development.

The exemption for the demolition of the single dwelling and any *associated* class 10a buildings is not dependant on both the dwelling and the associated buildings being demolished at the same time. Both can be demolished at the same time, or the dwelling can be demolished and then the associated building or vice versa. However, this is with the proviso that if a dwelling is demolished well before the class 10a building, there is a risk that the class 10a building may no longer be considered *associated* with the dwelling and the exemption for the demolition of the class 10a building may be lost.

***Dwelling*** is defined for the regulation in section 5 as meaning a class 1 building, or a self-contained part of a class 2 building, that—

- (a) means a class 1 building, or self contained part of a class 2 building, that-
  - (i) includes the following that are accessible from within the building, or the self-contained part of the building:
    - (A) not more than 2 kitchens;
    - (B) at least 1 bath or shower;
    - (C) at least 1 toilet pan; and
  - (ii) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and
- (b) includes any ancillary parts of the building and any class 10a buildings associated with the building.

The amending regulation allows the following scenarios:

- (1) The building or altering of a single dwelling which is compliant with the relevant rules of the relevant Code (Code compliant) without development approval in all residential zones. Dwellings which are not Code compliant can still be built but require either development approval or an exemption declaration depending on what features are not Code compliant. See clause 7 & 9. Note: The relevant rules of the relevant Code are the “black and white” quantitative rules and do not include the qualitative merit criteria in the relevant Code.
- (2) The demolition of a single dwelling in all residential zones without development approval. See clause 10.
- (3) The demolition of part of an existing dwelling and an extension to the dwelling without development approval provided the extension is compliant with the relevant rules in the relevant Code (Code compliant). Extensions which are not Code compliant may still be carried out but are subject to development approval. The exemption still applies to an alteration of an existing dwelling even though part of the existing building is not Code compliant provided that existing part has previous development approval. See clause 7 and 10.
- (4) The demolition of class 10a buildings that are associated with a single dwelling without development approval. In this situation, the requirement that the class 10a building being demolished must be exempt development, if built, does not apply. This is because the definition of dwelling includes associated class 10a buildings. See clause 10.
- (5) The demolition of a building/structure without development approval if the building/structure would be exempt development, if built. For example, a garage which has parameters which would make its building exempt from development approval can be demolished without development approval. See clause 11.

### **Detailed summary of provisions**

**Clauses 1 – Name of Regulation** –states the name of the regulation, which is the *Planning and Development Amendment Regulation 2009 (No 5)*.

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

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

**Clause 4 – Section 20 (6) (c)** – substitutes new section 20(6) (c).

The new section 20(6) (c) omits the words “(single dwellings-new residential land) from section 20(6) (c) and substitutes the words “(compliant single dwellings)” consequent to the amendment of schedule 1, section 1.100 by this amending regulation – see clause 7 below.

Section 20 and schedules 1 and 1A of the regulation exempt specified development from requiring a development approval. Subsections 20 (3) and 20 (4) permit a DA exempt development to be changed in specified ways without risk to its DA exempt status, i.e. without requiring development approval. (Note: Subsections (2) and (3) do not limit the operation of other provisions that permit a subsequent DA exempt change being made after the development is complete). Subsection 20 (5) applies to development that combines notionally or potentially separable components, each of which, if constructed separately, would be DA exempt but when constructed together as a composite development are not DA exempt. Subsection 20 (5) provides that such a composite development is DA exempt.

**Clause 5 – Section 35 (4) (c)** — clause 5 omits the words “(single dwellings-new residential land)” from section 35 (4) (c) and substitutes the words “(compliant single dwellings)” consequent to the amendment of schedule 1, section 1.100 by this amending regulation – see clause 7 below.

Subsection 35 (4) was made under section 198C of the Act. Section 198C provides for the regulation to specify changes to development that are deemed to be consistent with the relevant development approval. Section 198C of the Act was inserted into the Act by a regulation modification, (section 20.1 of schedule 20 to the regulation) and as such, will expire on 31 March 2010.

Subsections 35(2) and 35(3) apply to development that has development approval under the Act. These sections permit (subject to subsection 35(4)) specified changes to a development prior to completion of construction even if the changes are not consistent with the relevant development approval. Prior to the insertion of section 35 (2) and (3), such changes required an application under the Act (section 197) for an amendment to the relevant development approval.

Subsection 35 (4) provides that subsections 35 (2) and (3) do not apply if the result would be to construct a building that would not comply with DA exemption requirements in schedule 1 that limit the number of DA exempt structures near lease boundaries and require there to be no more than one single dwelling on the relevant block of land.

**Clause 6 – Schedule 1, section 1.100 heading** —substitutes a new heading for section 1.100 consequent to the change in the subject matter of schedule 1, section 1.100 to include compliant single dwellings in all residential zones not just new residential estates by this amending regulation - see clause 7 below.

**Clause 7 – Schedule 1, section 1.100 (1)** —substitutes a new subsection 1.100 (1) in schedule 1 to exempt the building or altering of a single dwelling on a block from requiring development approval if, amongst other things, the dwelling will be the only dwelling on the block, whether or not another dwelling has previously been built on the block. This extends the existing exemption in section 1.100 to include the building or altering of a single dwelling not just in new residential estates but also where there has previously been a dwelling on the site as is usually the case in established residential zones in the ACT. The exemption only applies to

residential zones. It does not apply to Community Facility Zones, Commercial Zones, Non-urban Zones, etc

Clause 7 also amends section 1.100(1) (c) by making it apply to an alteration as well as the building of a single dwelling. It requires that the dwelling, as built, or the alteration, as built, needs to comply with the prescribed general exemption criteria (see clause 8), the relevant rules in any relevant precinct code and the relevant rules in the Residential Zones - Single Dwelling House Development Code to the extent that they are not inconsistent with each other.

Clause 7 also amends section 1.100(1) to insert paragraph (d) which states that the dwelling or the alteration will be in a residential zone.

Other exemptions, otherwise provided for in schedule 1, may still apply to the building or structure. For example, building a dwelling and garage together may not meet the single dwelling Code but the dwelling, by itself, may meet the Code and the garage, by itself, may meet an exemption parameter in schedule 1 (eg section 1.45).

**Clause 8 – Schedule 1, section 1.100 (4) new definition of *prescribed general exemption criteria*** – inserts a new definition for prescribed general exemption criteria because of the use of the term in clause 7 of this amending regulation. This clarifies that only certain of the general exemption criteria need to be met, amongst other things, for the exemptions in clause 7 (section 1.100) to apply. The general exemption criteria are set out in sections 1.10 to 1.18 of schedule 1.

**Clause 9 – Schedule 1, section 1.100A** — substitutes a new section 1.100A in schedule 1 to exempt the building of a single dwelling or alteration of the dwelling on a residential block from requiring development approval if the building of the dwelling or alteration would be exempt under s1.100 notwithstanding the actual construction would result in a minor breach of the relevant DA exemption rules.

Section 1.100A provides that the building or altering of a single dwelling on a block can remain DA exempt notwithstanding a minor non-compliance with the *defined rules*. For this section *defined rules* means – (a) the relevant rules in any relevant precinct code that would apply if the dwelling or alteration were not exempt; or (b) the relevant rules in the Residential Zones-Single Dwelling Housing Development Code that would apply if the dwelling or alteration were not exempt.

The section applies only if the breach of the defined rules involves an encroachment in one or more of the following ways, beyond the front, side or rear setback or beyond the building envelope that applies or into the required minimum private open space.

The section provides that the proponent for the proposed dwelling or proposed alteration can on application to the Authority seek to have the encroachment, of the *defined rules*, covered by an exemption declaration. An “exemption declaration” has the effect of declaring that a specified noncompliance with DA exemption requirements does not cause the construction or altering of the single dwelling to

cease to be DA exempt. The exemption declaration role is limited only to the subject of the declaration.

An exemption declaration, if granted, must state the distances that the proposed dwelling or proposed alteration is allowed to breach the defined rules by. The section only applies if the non-compliance is minor, does not adversely affect anyone other than the lessee and does no more than minimal environmental harm.

**Clause 10 – Schedule 1, section 1.100B** – inserts new **section 1.100B Single dwellings – demolition**. New section 1.100B provides that the demolition of a single dwelling, or part of a single dwelling, is exempt development provided that it complies with section 1.14 (Criterion 4 – heritage and tree protection). This means that the proposed demolition can not contravene the *Tree Protection Act 2005* or the *Heritage Act 2004*.

The provision provides that a single dwelling, or part thereof, can be demolished without a DA even if the dwelling, or part, if built, would not be exempt development (Contrast with section 1.101 inserted by clause 11 below which retains this requirement for a building or structure, or part thereof).

Because of the definition of **dwelling** in section 5 of the regulation, the demolition of an existing class 10a building associated with the single dwelling is also included in the exemption. However, if a dwelling is demolished well before the class 10a building, there is a risk that the class 10a building may no longer be considered associated with the dwelling and the exemption for the demolition of the class 10a building may be lost.

Any relevant processes under the *Building Act 2004* still apply (for example, sections 70A and 71).

**Clause 11 – Schedule 1, section 1.101** – substitutes a new section 1.101 in schedule 1 so as to include as exempt development, the demolition of part of a building or structure and to remove the requirements that the demolition comply with relevant rules in the relevant Code and the applicable general exemption criteria.

The exemption in Section 1.101 **Building and structures – demolition** now permits the demolition of a building or structure, or part of a building or structure, if the building or structure, or part, would be exempt development, if built.

The amendment is consequential on the insertion of new section 1.100B by clause 10 above. The exemptions for demolition of a single dwelling (or part thereof) and exempt development are dealt with separately for reasons of clarity.