

**2010**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2010 (No 2)  
SL2010-11**

**EXPLANATORY STATEMENT**

**Presented by  
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Minister for Planning**

This Explanatory Statement relates to the *Planning and Development Amendment Regulation 2010 (No 2)* (the amending regulation).

## Background

The purpose of the amending regulation is to omit section 36 from Part 3.3 of the *Planning and Development Regulation 2008* (the regulation).

The *Planning and Development Act 2007* (the Act) commenced on 31 March 2008 and introduced, amongst other things, leading practice for the assessment of development applications. Through monitoring during the initial implementation phase, and in consultation with Government, Agencies, industry and the community, a number of modifications were made to the Act and the regulation in order to respond to issues identified.

The Act modifications were made through the regulation making power in section 429 of the Act. Section 431 of the Act requires section 429 and regulations made under section 429 to cease two years after the commencement of the Act (i.e. two years after 31 March 2008). Section 429 and the regulations under this section are not saved by section 88 of the *Legislation Act 2001* (because of the exception in section 88(2) of the Legislation Act).

Section 21 of *Planning and Development Amendment Regulation 2008 (No.3)*, SL 2008 - 33, modified the Act to insert a new section 198C as follows:

### **198C When development approvals do not require amendment**

(1) This section applies if—

(a) the planning and land authority has given development approval for a development application; and

(b) the development is changed so that it is not covered by the approval.

(2) A regulation may prescribe the circumstances in which a development in accordance with the changed development is taken to be in accordance with the development approval.

Section 198C applies in the situation where a development is authorised by a development approval but the actual development as built (or part built) turns out to exceed some of the dimension parameters in the development approval. If the built form exceeds the approval parameters but is still within the circumstances prescribed in the regulation, the building is deemed to still comply with the requirements of the development approval and a new or amended approval is not required. Similarly, if the building includes a new feature outside the terms of the development approval (such as a new door or window) and the new feature is authorised under a regulation, then again the building is deemed to comply with the approval. For example, if the building is a class 1 building (eg a house) and the internal arrangement of the house's walls, ceilings, kitchen and bathroom fitouts are varied so they are outside the terms of the development approval, the building is deemed to comply with the approval if the variation is authorised under 198C. The provision effectively permits the regulation to exempt specified matters from requiring a development approval amendment in the same way as the existing regulations exempt specified matters from requiring development approval.

The regulations to accompany new section 198C were also inserted by *Planning and Development Amendment Regulation 2008 (no.3)* SL 2008-33. Section 5 inserted a new Part 3.3 in the regulation comprised of sections 35 and 36. Section 35 set out the

circumstances for section 198(2). Section 36 provides that the part expires on 31 March 2010. Section 36 was included because new section 198C, as a modification of the Act by section 429 of the Act, was going to expire on 31 March 2010.

The temporary Act modifications were made permanent by the *Planning and Development Amendment Act 2009* which was passed by the ACT Legislative Assembly on 15 September 2009. In making the section 198C modification permanent, the power to make regulations under section 198C was also made permanent. There is, therefore, no need for section 35 of the regulation to expire on 31 March 2010 as required by section 36. Section 36 should have been deleted by the Planning and Development Amendment Act when the other temporary modifications were made permanent. The amending regulation corrects this oversight.

## **Outline of Provisions**

### **Part 1 Preliminary**

#### Clause 1 Name of Act

Names the regulation as the *Planning and Development Amendment Regulation 2010 (No 2)*.

#### Clause 2 Commencement

Provides that the regulation commences on the day after its notification.

#### Clause 3 Legislation amended

States that the regulation amends the *Planning and Development Amendment Regulation 2008*.

#### Clause 4 Section 35 Heading

Substitutes a new heading in section 35 to reflect the correct section of the Act.

#### Clause 5 Section 36

Omits section 36