2012

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Planning and Development Amendment Regulation 2012 (No 1)
SL2012-18

EXPLANATORY STATEMENT

Presented by
Mr Simon Corbell
Minister for Environment and Sustainable Development

EXPLANATORY STATEMENT

Background

Subsection 133 (a) (iii) of the *Planning and Development Act 2007* (the Act) provides a definition of exempt development and states that development can be exempt from development approval under the relevant development table in the territory plan or section 134 of the Act or under a regulation. Section 135 of the Act provides that an exempt development may be undertaken without a development application and development approval.

Under the regulation, section 20 provides that development that complies with Schedule 1 is exempt from requiring development approval. Schedule 1, section 1.2 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. Schedule 1, part 1.2 also sets out the general exemption criteria which form the general compliance requirements for exemption from the requirement for development approval.

The amending regulation inserts new provisions in the *Planning and Development Regulation 2008* (the regulation) to include an exemption from development approval for community gardens and electric vehicle charging points. The amending regulation also makes changes to existing provisions in the regulation for clarification and refinement purposes.

The exemptions from development approval for community gardens and electric vehicle charging points reflect the Government's commitment to sustainable development of the ACT consistent with the object of the Act. The object of the Act is set out in section 6 which states "the object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT – (a) consistent with the social environmental and economic aspirations of the people of the ACT; and (b) in accordance with sound financial principles."

Overview

New DA exemptions

Schedule 1- DA exemption for community gardens
From the *Sustainable Future* workshops in 2009-2010 held by the ACT Planning and Land Authority and interagency working groups, the promotion of community gardens was identified as one of the highest priorities for short to medium term action. Community gardens provide social and environmental benefits for the community such as improving the amenity of urban land, supporting active living with resulting physical and mental health benefits, promoting healthy eating, improving social and community cohesion, addressing food security issues and helping to reduce greenhouse gas emissions.

The amending regulation also implements the outcomes of *Time to Talk – Canberra 2030* in which the community indicated a desire for the city's open spaces to have more gardens and play spaces.

The amending regulation inserts a new Division 1.3.3A (Exempt developments – community gardens) which contains comprehensive provisions that define a community garden and outline the criteria for structures which may be included in a community garden without the need for development approval. The new Division helps to establish a 'one stop shop' for setting up community gardens. Rather than having to look through all the provisions of schedule 1 to see if what they are planning is an exempt development, a person setting up a community garden can go straight to the new Division which contains clear and comprehensive criteria for what garden infrastructure is exempt from development approval. That criteria is based on existing provisions for similar developments in schedule 1 which have been successfully used since the inception of the Planning and Development Regulation in 2008.

It is intended that the simplicity associated with this "one stop shop" scheme will facilitate the establishment of community gardens in the ACT.

The amending regulation exempts community gardens on unleased land from the requirement of development approval subject to the grant of a licence to be administered by Territory and Municipal Services (TaMS) under Part 9.11 of the Act or where the community garden is part of an existing school campus and where the community garden meets the stated general exemption criteria.

An exemption from development application (DA) means there is no public notification of the proposed development through the DA process. However, in the case of community gardens community consultation is undertaken by TaMS as part of the licensing process. Members of the community who may be impacted by a proposed community garden are provided with details of the project and have the opportunity to make comments to TaMS on the proposal. Also, the exemption criteria in the new community gardens division is based on existing exemption criteria in schedule 1 for similar developments which have been successfully used since the inception of the Planning and Development Regulation in 2008.

Schedule 1- DA exemption for electric vehicle charging points
The amending regulation will allow the installation of electric vehicle charging points without the need for a development approval. It is intended that the exemption will facilitate the provision of infrastructure to accommodate electric vehicle technology in Canberra and provide an incentive to use electric vehicles. The exemption is part of the Government's commitment to address climate change by providing practical mechanisms to encourage reduction of greenhouse gas emission in the transport sector. The ACT Government has set the most ambitious greenhouse gas reduction targets of any jurisdiction in Australia. Legislation has committed ACT targets of zero net emissions by 2060 and a 40% reduction in greenhouse gas emissions from 1990 levels by 2020 (http://timetotalk.act.gov.au/climate-change).

In a media release on 23 February 2012, the Chief Minister said:

> "The ACT Government supports the use of electric vehicles as one way of promoting a clean and sustainable future for Canberra and helping to achieve a 40% reduction in greenhouse gas emissions from 1990 levels by 2020. The ACT Government is also a foundation member of the Better Place Australia

electric car network which is being rolled out across Canberra and will play a key role in the transition from petrol to electric driving in the region. This trial will also be used to inform our use of that network."

The Government's 2011-2021 Infrastructure Plan identified a transport system that integrates sustainable urban development, which supports the environmental and economic goals of the ACT, and supports efficient and sustainable freight transport, as a significant priority. It was proposed that this be achieved through an investigation of opportunities to introduce electric vehicle technology in the Territory within two years, and providing infrastructure to support new vehicle technology like electric vehicles within five years (see pages 32 and 64).

The Government's Transport for Canberra Strategy 2012 -2031 launched on 19 March 2012 states that the government will explore ways to encourage a faster transition to a lower emission vehicle fleet and release a low emission vehicle strategy by June 2013. Modelling indicates that reducing the emissions from our private and public vehicles fleets has potential to be a cost effective way to help meet the Government's short term (2020) emissions reductions targets (in addition to meeting mode share goals) (see pages 49-50).

The installation of vehicle charging points will provide a network to keep electric vehicles 'topped up' and ensure that vehicles can continue to operate whilst out on the road for reasonable lengths of time. It is anticipated this will encourage and promote community use of electric vehicles.

The charging points are basically small low impact structures and may already be exempt structures. The purpose of the amending regulation is, therefore, to remove any doubt and to make it clear that the structures are exempt development provided they are built within the parameters set out in the exemption. In all the circumstances, the loss of the ability for public comment on the installation of the charging points is outweighed by the benefits associated with their installation.

Amendments to existing provisions

Schedule 1 - DA exemption for solar panels

Section 1.27 of schedule 1 of the regulation currently provides the criteria for the DA exemption for external photovoltaic panels ("solar panels"), heaters and coolers. However, operational experience, improvements in technology, increased interest and uptake of solar technology and a developing government policy of promoting solar energy in Canberra prompted a review of the section. The amending regulation places the exemption criteria for solar panels in its own section because the criteria are now sufficiently different from those for external heaters and coolers that a new section is appropriate. Parameters for external heaters and coolers in section 1.27 remain unchanged. The amendments to the criteria for solar panels ensure that solar panels that will have significant impacts on the solar access of neighbouring premises are subject to a development application.

Gungahlin Town Centre Map

The amending regulation updates the Gungahlin town centre map in schedule 3 of the regulation (clause 23) as a consequence of changes made to the boundary of the town centre by a Territory Plan variation. It expands the map to include new areas which means it extends the exemption from third party appeals into these areas. However, the existing underlying policy of exempting development in town centres from third party review has not changed.

The Scrutiny of Bills Committee's terms of reference require it to consider whether (among other things) a proposed law unduly trespasses on rights previously established by law or makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

The amending regulation raises potential issues with these terms of reference. By removing an existing right of review, it can be considered to trespass on rights previously established by law. The issue is whether it does so unduly. In addition, by removing existing review rights, the amending regulation makes certain rights, etc dependent on decisions that are (now) non-reviewable by ACAT. The issue is whether it does so unduly.

Schedule 3 of the Planning and Development Regulation identifies land in the ACT where development is exempt from third party appeal and includes maps of town centres in the ACT. Division 3.4.3 is the map of Gungahlin town centre. Given Gungahlin's ongoing development, commercial zones within the centre were revised and a precinct code for the town centre was established by Territory Plan variation 300. Variation 300 was presented in the ACT Legislative Assembly on 15 November 2011 and commenced on 16 December 2011.

The amendment to update the map of Gungahlin town centre continues an existing policy to exempt development in town centres from third party appeals and can be justified on the same basis as it was in previous legislation. The previous *Land (Planning and Environment) Act 1991* provided for exemptions from third party appeals and schedule 7 of the *Land (Planning and Environment) Regulation 1992* created exemptions from third party appeals in relation to certain development within the Civic centre area, a town centre area and an industrial area. In 2006, the exemption was extended to all development within these areas.

Schedule 1 of the *Planning and Development Act 2007*, item 4, column 2, par (b) creates a power to make regulations to exempt specified matters in the merit assessment track from being subject to third party ACAT merit review. Regulations have been made to exempt certain matters from third party ACAT merit review. These include sections 350 and 351 of the regulation and also schedule 3 of the regulation which exempts third party appeals for all development in industrial areas and within the geographic areas of Civic and the town centres of Gungahlin, Belconnen, Woden and Tuggeranong and in some specific commercial areas.
The amending regulation is justified on the basis that it continues the Government's ongoing policy of improving the development assessment process within town centres by increasing certainty and reducing delays and costs. Persons that may be affected by particular development applications in these areas continue to have the ability to make submissions on individual development applications as well as territory plan variations that establish the overall planning policy for these areas.

Other amendments

Other amendments to existing provisions clarify and refine those provisions and relate to the following matters:

- the definition of 'dwelling'(section 5);
- matters for consideration for the transfer or assignment of leases (section 201);
- criterion 4 of the general exemption criteria (section 1.14 of schedule 1);
- the development approval exemption for external photovoltaic panels (solar panels) external heaters and coolers (section 1.27 of schedule 1);
- the development approval exemption for retaining walls and decks (sections 1.53 and 1.48 of schedule 1);
- the development approval exemption for public works (section 1.90 of schedule 1)

In accordance with section 36 of the *Legislation Act 2001,* a Regulatory Impact Statement (RIS) for the amending regulation has been prepared.

Outline of Provisions

Clause 1 Name of regulation
Clause 1 names the regulation as the Planning and Development Amendment Regulation 2012 (No 1).

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

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

Clause 4 Section 5 (1) Definition of *dwelling,* paragraph (a) (i) (A)
Clause 4 deletes existing section 5 (1) (a) (i) (A) and substitutes a new section 5 (1) (a) (i) (A).

The existing section 5 (1) (a) (i) (A) defines *"dwelling"* for the purposes of the regulation. The existing definition includes parameters such as the number of kitchens, baths or showers and toilets which must be included in the building. However, whilst stating the maximum number of kitchens permitted, the definition does not include a minimum number.

New section 5 (1) (a) (i) (A) makes it clear that for a building to be a *"dwelling"*, it must have at least one kitchen but not more than two kitchens.

Clause 5 Section 201
Clause 5 deletes existing section 201 and substitutes a new section 201.

Existing section 201 refers in the heading to subsection 298 (5) of the *Planning and Development Act 2007* (the Act). Section 298 is in Part 9.9 of the Act which relates to certificates of compliance and building and development provisions. Specifically, section 298 relates to the transfer of land that is subject to building and development provisions. Subsections 298 (2) and (4) provide for the situations in which the planning and land authority may consent to a transfer of lease. Section 298(5) provides that in deciding under subsection (2) or (4) whether to consent to a transfer or assignment of the lease, the authority must take into account matters prescribed by regulation. Existing section 201 prescribes matters but incorrectly does not indicate that those matters are prescribed only for subsection 298(2).

New section 201 clarifies that the matters for transfer or assignment of leases prescribed under section 201 relate only to subsection 298 (2) of the Act and do not apply to subsection 298 (4).

Clause 6 Schedule 1, section 1.4 (1), examples
Clause 6 amends section 1.4 (1) of schedule 1.

New section 1.4 (1) omits any reference to *Environment Protection Act 1997* from the examples.

This is a minor editorial change consequential to amendments made to Schedule 1, section 1.14 by this amending regulation (see clause 8 below).

Clause 7 Schedule 1, sections 1.4 and 1.10
Clause 7 deletes Schedule 1, sections 1.4 and 1.10 and substitutes new Schedule 1, sections 1.4 and 1.10.

This is a minor editorial change consequential to amendments made to Schedule 1, section 1.14 by this amending regulation (see clause 8 below).

Clause 8 Schedule 1, section 1.14 heading
Clause 8 deletes the section 1.14 heading and substitutes a new heading as a consequence of amendments made to the section by clause 9 below.

Clause 9 Schedule 1, section 1.14(1)
Section 1.14 is one of several general exemption criteria. The term ***general exemption criteria*** is mentioned in a number of sections within schedule 1 as a compliance requirement for exemption from the requirement for a development approval. Where that is the case all the general exemption criteria must be satisfied in addition to any other requirements set out in the relevant section, unless a contrary intention appears, such as by referring only to a lesser number of specific criterion, or where compliance with the criteria is not mentioned. Section 1.10 of schedule 1 defines the term ***general exemption criteria*** as criterion in sections 1.11, 1.12, 1.14, 1.15, 1.17 and 1.18.

New section 1.14 (1) of schedule 1 recognises the importance of the *Environment Protection Act 1997* by adding the *Environment Protection Act 1997* as one of 3 Acts forming criterion 4.

Criterion 4 requires that the development must not contravene the legislation referred to in the criterion, including the *Environment Protection Act 1997*. This is to focus attention on the requirements of the laws listed as forming criterion 4, but is not to imply only those laws listed under criterion 4 are applicable to undertaking the development. The amendment focuses attention and makes it very clear that developments are not DA exempt if they contravene provisions of the *Environment Protection Act 1997*.

Section 1.4 of schedule 1 provides that although schedule 1 describes circumstances in which development may be exempt from requiring development approval, the schedule does not remove the requirement for development to comply with other applicable Australian Capital Territory legislation. For example, if the schedule provides that certain dwellings may be constructed without a development approval under the *Planning and Development Act 2007*, it may be that other authorisations are needed under other laws, such as a building approval under the *Building Act 2004*.

Clause 10 Schedule 1, section 1.23
Clause 10 amends Schedule 1, section 1.23

This is a minor editorial amendment consequential to amendments made to Schedule 1, section 1.14 (1) by clause 9 above.

Clause 11 Schedule 1, section 1.27
Clause 11 substitutes a new section 1.27 and inserts new section 1.27A.

Section 1.27 of schedule 1 currently provides the criteria for the DA exemption for external photovoltaic panels (“solar panels”), heaters and coolers. However, operational experience, improvements in technology, increased interest and uptake of solar technology and a developing government policy of promoting solar energy in Canberra prompted a review of the section.

The amendments to the criteria for solar panels ensure that solar panels that will have significant impacts on the solar access of neighbouring premises are subject to a development application.

The amending regulation places the exemption criteria for solar panels in its own section because the criteria are now sufficiently different from those for external heaters and coolers that a new section is appropriate.

Parameters for external heaters and coolers in section 1.27 remain unchanged.

New subsection 1.27A (1) requires no part of an externally mounted photovoltaic panel to be within 1.5m of a side boundary or rear boundary of the block (s1.27(1)(a)) and if the panel is a protruding panel, that no part of the panel is more than 300mm above the closest point of the roof (s1.27(1)(b)(i)) or that no part of the panel restricts solar access of another block (s1.27(1)(b)(ii)).

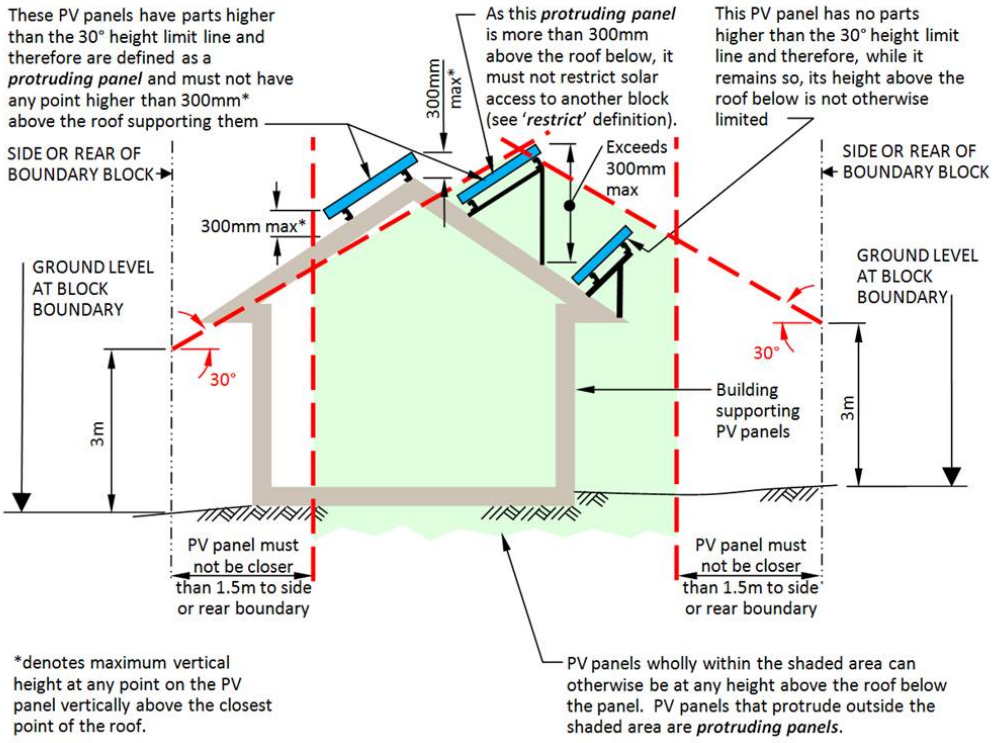
For panels that are mounted on the ground, no part of the panel can be between the front boundary and a building line for the block (s1.27(1)(c)).The development must

also comply with the general exemption criteria other than criterion 8 – compliance with other applicable exemption criteria (s1.27(1)(d)).

New subsection 1.27A (2) explains what is meant by ***protruding panel*** and ***restricts***. ***Protruding panel*** means a roof mounted panel any part of which is higher than a plane projected at 30 degrees above horizontal from a height of 3 metres above the natural ground level at a boundary of the block. A protruding panel ***restricts*** solar access to another block, if on the winter solstice when the sun's angle is 30 degrees above the horizon, the shadow cast by the panel at natural ground level on the other block is larger than the shadow that would be cast on the other block by the roof if the protruding panels were not mounted on it.

The following diagram is included by way of explanation of new s1.27A.

External photovoltaic panels – some DA exemption requirements



Clause 12 Schedule 1, section 1.48 (2) (e)
Clause 12 amends section 1.48 (2) (e).

The amendment inserts the words "higher than 0.4m above natural ground level" in section 1.48 (2) (e) of schedule 1.

New section 1.48 (2) (e) widens the exemption criteria for external decks. The conditions set out in section 1.48(2)(e) now only apply to decks that are higher than 0.4metres above natural ground level (natural ground level is defined in the territory plan).

The former external deck DA exemption was prescribed in the *Land (Planning & Environment) Regulation 1992* (L (P&E) regulation), schedule 1 (Unconditional exemptions from Act, pt 6), item 28 (extract below).

28	A development in relation to an external deck, external stairs, an external landing or a retaining wall if the deck, stairs, landing or wall is not more than 0.4m in height.

In translating the former exemption from the L (P &E) regulation into the regulation, an error was made in that the former unconditional exemption for decks less than 0.4m in height was not transferred into the regulation. The amendment corrects that error.

Clause 13 Schedule 1, section 1.53 (1) (a) and Clause 14 Schedule 1, section 1.53 (1) (c)

Clause 13 amends section 1.53 (1) (a) and clause 14 amends section 1.53 (1) (c). These two amendments are related and so are dealt with together in this explanatory statement.

The amendments to section 1.53 (1) (a) widen the exemption criteria for retaining walls for similar reasons to those for widening the criteria for decks in clause 12 above.

The former retaining walls DA exemption was prescribed in the L(P&E) Regulation, schedule 1 (Unconditional exemptions from Act, pt 6), item 28 (extract below).

28	A development in relation to an external deck, external stairs, an external landing or a retaining wall if the deck, stairs, landing or wall is not more than 0.4m in height.

In translating the former exemption from the L (P&E) Regulation) into the regulation, an error was made in that the former unconditional exemption for retaining walls less than 0.4m in height was not transferred into the regulation. The amendments correct that error.

The current section 1.53 of the regulation fails to give effect to the former item 28 exemption for retaining walls in that it precludes:

(1) a DA-exempt retaining wall from being between the building line and front boundary of the block (s1.53(1) (a)), and
(2) more than 2 class 10 structures being within the 1.5m side or rear boundary setback zone (s1.53(1)(c)).

These 2 exclusions are not a feature of the former item 28 exemption. The only exclusion inherent in the former item 28 exemption was that the retaining wall could not be more than 0.4m in height.

The amendments provide that irrespective of where the retaining wall is located on the block, it is exempt if its height above natural ground level is not more than 0.4m

and that the restrictions in section 1.53(1)(c) only apply if the retaining wall is higher than 0.4m above natural ground level on the lowest side of the wall.

Clause 15 Schedule 1, new division 1.3.3A
Clause 15 inserts new Division 1.3.3A.

New Division 1.3.3A provides exemption criteria for community gardens including garden infrastructure.

The purpose of the new division is to provide, as much as possible, a "one stop shop" for people wanting to set up a community garden. The division provides a central point for people to access information about exemption criteria for community gardens and for things commonly built in community gardens such as sheds, pergolas, shade structures, fences, garden beds and so on.

For the division to apply, the community garden must be established on unleased territory land under a licence granted under the *Planning and Development Act 2007* or on an existing school campus.

The division sets out exemption criteria for things commonly built in community gardens such as sheds, garden beds and so on. The criteria for these things in the division are based on the criteria for similar things already in schedule 1 with some variations to cater for certain special requirements for community gardens. For instance, exemption criteria is provided for garden beds and for the sort of fencing that is required for a community garden.

References to boundary in the division refer to the boundary of the unleased land. This is important because there is exemption criteria in the division that relates solely to the proximity of things to this boundary. Generally, under the division people can build sheds, etc in the garden (subject to meeting the relevant exemption criteria about size etc) and there is no limit on these if the community garden is situated in the middle of a large parcel of unleased land. However, if the garden is situated close to a street frontage or the boundary of the unleased land then there are some exemption criteria that have to be met about set backs from the street and the number of buildings and structures that can be built within 1.5 metres of the boundary. This ensures consistency in rules about set backs from street frontages and protects the amenity of areas in close proximity to the garden whilst allowing the community gardeners some freedom in what they build. It may still be possible to build other things in community gardens or near boundaries (for example, large sheds or large garden beds) but this would be subject to any licensing requirements and a development application would be required.

<u>New section 1.72 – Definitions – Div 1.3.3A</u>
This provision contains important definitions used within the division in relation to community gardens. The definition is required as a result of the insertion of the new division for community gardens. It defines boundary, community garden, class10a structure and class10b structure.

"Boundary" means the boundary of the unleased territory land on which the community garden is established. However, if the community garden is established

on an existing school campus, boundary refers to the boundary of the school campus on which the garden is established.

"Community garden" means the use of land for the cultivation of produce, primarily for personal use by individuals undertaking the gardening, including demonstration gardening or other activities to encourage the involvement of school groups, youth groups or others in gardening activities. This definition is based on the definition in the Territory Plan.

"Class 10a building" means a shed, a greenhouse, a gazebo, a pergola, a hail protection structure and a storeroom or other out-building that is a class 10a building under the building code.

"Class 10b structure" means an arbour, an arch, a fence, a freestanding wall, a garden bed, and a pole that is a class10b structure under the building code.

New section 1.73 – div 1.3.3A

New section 1.73 clarifies when the new division applies and which provisions under Schedule 1 of the regulation do not apply.

Under new section 1.73(1), the division applies to a community garden if the garden is established on unleased territory land under a licence granted under the *Planning and Development Act 2007* (part 9.11) (licences for unleased land) or if the garden is established on an existing school campus. Presently, applications for licences over unleased land are made to the custodian of the land, the Territory and Municipal Services Directorate who assess the application and conduct community consultation about the application.

The provisions of schedule 1 listed in new section 1.73(2) are specifically excluded because they contain elements which are inconsistent with certain provisions in the new division and if they were not specifically excluded there would be a conflict. A person setting up a community garden can still use provisions in schedule 1 that are not excluded by s1.73 (2) to determine if what they are building in the garden is exempt or not. For example, a person wants to build a retaining wall in a community garden. There is no provision in the new division that sets out exemption parameters for retaining walls and the existing exemption for retaining walls in schedule 1 (s1.53) is not excluded by section 1.73(2). Therefore, to determine if the proposed retaining wall is exempt development or not, the person needs to refer to existing section 1.53 of schedule 1. On the other hand, if a person is proposing to build a shed in a community garden then new section 1.74A of the new division determines if what they are proposing is exempt development or not and existing section 1.45 of schedule 1 does not apply because of new section 1.73 (2)(b).

New section 1.74 – Community gardens – general exemption criteria

New section 1.74 requires that a community garden to which the division applies must comply with the general exemption criteria with the exception of criterion 8, Schedule 1, section 1.18. General exemption criteria are set out in part 1.2 of schedule 1.

New section 1.74A – Community gardens - class 10a building

New section 1.74A sets out exemption parameters for building and installing class 10a buildings in a community garden. The meaning of class 10a building for the division is set out in new section 1.72 above.

Subsection 1.74A (a) requires the height of the building to be not more than 3 metres above natural ground level or not more than 4 metres if no part of the building is higher than a plane projecting at 30 degrees above horizontal from a height of 3m above the natural ground level at a boundary. As per new section 1.72, boundary means the boundary of the unleased land or school campus.

Subsection 1.74A (b) contains the requirement for the plan area of the building. If the community garden is less than 600^{m2}, the plan area of the building must not exceed 10^{m2} or if the community garden is 600^{m2} or more, the plan area of the building must not exceed 50^{m2}. A definition of ***plan area*** is in the Dictionary.

Subsection 1.74A (c) is applicable if the class 10a building has a floor. This subsection requires that for a building that is within 1.5m of a boundary, the height of the finished floor level must not exceed 0.4m above natural ground level. As per new section 1.72, boundary means the boundary of the unleased land or school campus. In any other case, the height of the finished floor level must not exceed 1m above finished ground level.

New subsection 1.74A (d) requires a building with a plan area of not more than 10^{m2} to be 6 m from any street frontage and a building with a plan area that is more than 10^{m2} and not more than 50^{m2} to be 15 m from any street frontage.

Under new subsection 1.74A (e), if any part of the building is within 1.5 m of a boundary that is not a street frontage the building must be the only class 10 building or structure within 1.5 m of the boundary or section 1.74C applies to the building. As per new section 1.72, boundary means the boundary of the unleased land or school campus. Section 1.74C is explained below.

New section 1.74B – Community gardens – class 10b structures

New section 1.74B sets out exemption criteria for building or installing class 10b structures in community gardens. The meaning of class10b structures for the division is set out in new section 1.72. Subsection 1.74B(3) sets out general criteria for class 10b structures. Subsections 1.74B(1) and (2) set out specific criteria for garden beds and fences due to their more unique character.

Subsection 1.74B (1) determines that for building and installing a garden bed in a community garden, the bed plan area must not exceed 50^{m2} and the bed must not be more than 1 m high.

Subsection 1.74B (2) requires a fence for a community garden to be made out of mesh and not higher than 2.3m and if the fence is a boundary fence, that it does not divert or concentrate surface water to flow onto other land.

Subsection 1.74B (3) relates to requirements and parameters for building or installing class 10b structures other than a garden bed or fence. This subsection

requires that the structure must not exceed a plan area of 2^{m2} and be wider that 2m, and must not be higher than 1.85m above natural ground level. Subsection 1.74B (3) (d) also requires that for structures with a floor, the floor must not be more than 0.4m above natural ground level. Subsection 1.74B(f) requires that if any part of the structure is within 1.5 m of a boundary, the structure is the only class 10 building or structure (other than a boundary fence) that has any part within 1.5 m of the boundary or section 1.74C applies. As per new section 1.72, boundary means the boundary of the unleased land or school campus. Section 1.74C is explained below.

New section 1.74C – Community gardens - boundary clearance area

Both section 1.74A and 1.74B refer to this section. It is in similar terms to existing section 1.41 of schedule 1 which sets out criteria for the number of buildings that can be located in a boundary clearance area.

Subsection 1.74C(1) defines ***boundary clearance area*** as the area between a boundary and a line drawn 1.5 m inside and parallel to the boundary. As per new section 1.72 boundary means the boundary of the unleased land or school campus. The subsection also clarifies that in this section a class 10 building or structure does not include a sign installed on a community garden.

"Relevant cross-section area" of a building or structure partially or fully within a boundary clearance area means the area of the largest cross section of the building or structure at any point in the area when measured in a plane parallel to the boundary.

An example of how new subsection 1.74C operates is as follows. A regular flat roofed shed is located inside 1.5m of a boundary (that is, the boundary of the unleased land or school campus on which the garden is situated – see s1.72). Its relevant cross section is the area of the rectangles bounded by the shed wall that faces the boundary and the edge of its roof. It is then desired to locate another shed within 1.5m of the boundary of the unleased land or school campus. The 2 sheds could be located within 1.5 m of a boundary as long as the total of their combined cross section area is not more than 30^{m2}.

New section 1.74D – Community gardens – water tanks

New section 1.74D contains exemption criteria for building or installing a water tank in a community garden. The section requires that a water tank must not exceed the capacity of 20 kilolitres, the height of the water tank must not exceed 3m above natural ground level and no part of the tank can be within 1.5m of a boundary. Boundary means the boundary of the unleased land or school campus (see new section 1.72).

New section 1.74E – Community gardens – ponds

New section 1.74E contains exemption criteria for building or installing an external pond in a community garden. This subsection requires that the pond must not be for, or used for, swimming, wading or bathing, cannot be deeper than 300mm and no part of the pond can be within 1.5m of a boundary. Boundary means the boundary of the unleased land or school campus (see new section 1.72).

New section 1.74F – Community gardens – shade structures

New section 1.74F provides exemption criteria for the building or installation of shade structures in a community garden. This section requires that the height of the shade structure must not exceed 4m above the existing ground level, the plan area must not exceed 50^{m2} and the shade structure must have at least 2 sides unenclosed.

Clause 16 Schedule 1, section 1.90 (2), new definitions

Clause 16 amends section 1.90 (2).

The amendment inserts new terms '*kiosk*' and '*public amenities'* into Schedule 1, section 1.90 (2).

The new term *'kiosk'* means a structure in an open space that is used to provide food and drinks to people using the open space mainly for another purpose.

The new term '*public amenities*' means toilets, showers and change rooms that are available for public use.

Clause 16 is a consequence of clause 17 below.

Clause 17 Schedule 1, section 1.90 (2), definition of *public works*, new paragraphs (k) and (l)

Clause 17 amends Schedule 1, section 1.90 (2) paragraphs (k) and (l).

The amendment inserts new section 1.90 (2) paragraphs (k) and (l). The new paragraphs expand the kinds of public works that are exempt from development approval. The expansion of the public works exemption is the result of operational experience about those sorts of public works which are done by or for the Territory and because of their minor nature, do not require development approval.

The insertion of new paragraphs (k) and (l) makes it clear that the installation and maintenance of a *"kiosk"* or "*public amenities"* fall within the definition of '*public works'.*

Clause 18 Schedule 1, section 1.90 (2), definition of *street and park furniture,* example 1

Clause 18 amends section 1.90 (2).

The amendment omits the term "*public toilet"* in example 1. This amendment is consequential to the amendment made above by clauses 16 and 17. Public toilets are now included as part of the term *"public amenities"*.

Clause 19 Schedule 1, section 1.90 (2), definition of *street and park furniture*, example 3

Clause 19 amends section 1.90 (2).

The amendment omits the term "*telephone kiosk"* and substitutes new term '*telephone booth'* in example 3 of the provision.

This amendment is consequential to the amendment made above by clauses 16 and 17. Because the term *"kiosk"* has been given a specific meaning in section 1.90, it was considered appropriate to change the wording from telephone kiosk to telephone booth.

Clause 20 Schedule 1, section 1.99C (1) (a) (ii), examples
Clause 20 amends section 1.99C (1) (a) (ii).
The amendment inserts new term *"environment learning centre"* in the examples of class 9b buildings. This makes it clear that the centres are class 9b buildings and are exempt development if they meet the criteria in section 1.99C.

Clause 21 Schedule 1, section 1.100B and 1.101
Clause 21 amends section 1.100B and 1.101.

The amendment substitutes the words (Criterion 4 - heritage, tree and environment protection). This is a minor editorial change consequential to amendments made to Schedule 1, section 1.14 by this amending regulation (see clause 9).

Clause 22 Schedule 1, new section 1.113
Clause 22 inserts new section 1.113 in Schedule 1, division 1.3.7.

New section 1.113 contains two subsections. Subsection 1.113 (1) makes a development for a vehicle charging point, '*designated development'* as defined in Schedule 1, section 1.2 and subject to compliance with the general exemption criteria with the exception of criterion 8 – compliance with other applicable exemption criteria.

Subsection 1.113 (2) defines a *vehicle charging point* for the section as a fixture that allows for electric charging of a vehicle if the fixture is attached to a building or structure and has a vertical surface area of not more than 0.5m2 or is attached to a free standing column or bollard that is not more than 1.8m in height and the plan area is not more 1m2.

Clause 23 Schedule 3, division 3.4.3
Clause 23 amends Schedule 3, division 3.4.3.

The amendment substitutes a new map of the Gungahlin town centre in Schedule 3 as a consequence of changes made to the boundary of the town centre by a Territory Plan variation. It expands the map to include new areas which means it extends the exemption from third party appeals into these areas.

Schedule 3 of the Planning and Development Regulation identifies land in the ACT where development is exempt from third party appeal and includes maps of town centres in the ACT. Division 3.4.3 is the map of Gungahlin town centre. Given Gungahlin's ongoing development, commercial zones within the centre were revised by Territory Plan variation 300. Variation 300 was presented in the ACT Legislative Assembly on 15 November 2011 and commenced on 16 December 2011.

The amendment to update the map of Gungahlin town centre continues an existing policy to exempt development in town centres from third party appeals and can be

justified on the same basis as it was in previous legislation. The previous *Land (Planning and Environment) Act 1991* provided for exemptions from third party appeals and schedule 7 of the *Land (Planning and Environment) Regulation 1992* created exemptions from third party appeals in relation to certain development within the Civic centre area, a town centre area and an industrial area. In 2006, the exemption was extended to all development within these areas.

Schedule 1 of the *Planning and Development Act 2007*, item 4, column 2, par (b) creates a power to make regulations to exempt specified matters in the merit assessment track from being subject to third party ACAT merit review. Regulations have been made to exempt certain matters from third party ACAT merit review. These include sections 350 and 351 of the regulation and also schedule 3 of the regulation which exempts third party appeals for all development in industrial areas and within the geographic areas of Civic and the town centres of Gungahlin, Belconnen, Woden and Tuggeranong and in some specific commercial areas.

Although this amendment affects third party review rights, the underlying policy of exempting development in town centres from third party review has not changed.

Clause 24 Dictionary, new definition of *boundary*
Clause 24 inserts a signpost definition.

This amendment is consequential to the addition of a new Division 1.3.3A (community gardens) in the regulation. The amendment directs users of the regulation to Schedule 1, section 1.72 which refers to the definition of boundary.

Clause 25 Dictionary, definition of *class 10a building*
Clause 25 inserts a signpost definition.

This amendment is consequential to the addition of a new Division 1.3.3A (community gardens) in the regulation. The amendment directs users of the regulation to Schedule 1, section 1.72 which refers to the definition of a class 10a building.

Clause 26 Dictionary, new definition of *class 10b structure*
Clause 26 inserts a signpost definition.

This amendment is consequential to the addition of a new Division 1.3.3A (community gardens) in the regulation. The amendment directs users of the regulation to Schedule 1, section 1.72 which refers to the definition of a class 10b structure.

Clause 27 Dictionary, new definition of *community garden*
Clause 27 inserts a signpost definition.

This amendment is consequential to the addition of a new Division 1.3.3A (community gardens) in the regulation. The amendment directs users of the regulation to Schedule 1, section 1.72 which refers to the definition of community garden.