

**2020**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Community Consultation) Amendment Regulation  
2020 (No 1)  
(SL2020-35)**

**EXPLANATORY STATEMENT**

**Presented by  
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Minister for Planning and Land Management**

# Planning and Development (Community Consultation) Amendment Regulation 2020 (No 1)

This explanatory statement relates to the *Planning and Development (Community Consultation) Amendment Regulation 2020 (No 1)* (the **amendment regulation**) as made by the Executive. It has been prepared to assist the reader of the amendment regulation and to help inform any debate on it. It does not form part of the amendment regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the amendment regulation. It is not, and is not meant to be, a comprehensive description of the amendment regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

## OVERVIEW OF THE AMENDMENT REGULATION

Section 138AE of *Planning and Development Act 2007* (the **Act**) requires a proponent of a prescribed development to consult the community prior to lodging a development application (DA). The prescribed development types are outlined in section 20A of the *Planning and Development Regulation 2008* (the **Regulation**).

In November 2017, the Chief Planning Executive introduced the Pre-DA Community Consultation Guidelines for prescribed developments (the **Guidelines**). In accordance with section 138AF of the Act, a proponent of a prescribed development is required to undertake pre-DA community consultation in accordance with the Guidelines.

When introduced, the ACT Government also committed to undertaking a 12-month implementation review (the **review**) to understand if the goals of the Guidelines are being achieved. The review looked at a sample of DAs that undertook pre-DA consultation since the Guidelines were introduced and included consultation which targeted the users of the Guidelines, including members of both the community and industry.

The review, which was finalised in November 2019, found that pre-DA consultation is generally implemented in accordance with the minimum requirements of the Guidelines. The review also made observations and recommendations, this included a recommendation to update the triggers and exceptions of pre-DA consultation to ensure the scope of development captured meets the intent of the Guidelines. Specifically, the review recommended:

- adding estate development plan (EDP) DAs within existing suburbs and all development that are required to be reviewed by the National Capital Design Review Panel (NCDRP) to undergo pre-DA consultation
- review and revise the areas excepted from pre-DA consultation to limit them to greenfield areas with no existing communities.

The amendment regulation revises Section 20A and Schedule 1B of the Regulation to action the above recommendations.

## Section 20A

Section 20A identifies the types of development proposals that are required to undertake pre-DA community consultation, in accordance with Section 138AE and the Guidelines.

As detailed above, the review recommended EDP DAs within established suburbs and all development required to be reviewed by the NCDRP also be prescribed to undertake pre-DA community consultation.

Clause 4 of the amendment regulation inserts section 20A (1) (f). Section 20A (1) (f) prescribes EDP proposals to undertake pre-DA consultation. The intention of this provision is to only capture EDP DAs within established suburbs. This is supported by s 20B (2) which exempts applications in industrial areas and greenfield areas identified by the updated maps in Schedule 1B.

Clause 5 of the amendment regulation also inserts section 20A (1A). Section 20A (1A) prescribes development proposals required to consult with the NCDRP to also undertake pre-DA consultation. The intention of this provision is to capture the developments prescribed by regulation or required to by the Minister to obtain advice from the NCDRP and not those who voluntarily refer their application to the NCDRP for advice.

## Schedule 1B

Schedule 1B identifies the areas and land where development proposals are not required to undertake pre-DA community consultation.

When initially introduced, the land identified in schedule 1B was primarily greenfield areas that had not yet been developed and had little to no existing community to consult. As detailed above, the review highlighted that these areas have been largely developed and have established communities. As such, Schedule 1B has been reviewed and revised to ensure it reflects current greenfield areas and continues to meet its aim.

Clause 7 of the amendment regulation substitutes updated maps identifying greenfield areas where development proposals are not required to undergo pre-DA community consultation. The revised maps ensure proposals for a prescribed development in an area with established communities are required to undergo pre-DA consultation, while also exempting current and upcoming greenfield areas from this requirement.

## **CONSULTATION ON THE PROPOSED APPROACH**

Targeted public consultation was undertaken during the review to determine if pre-DA consultation has been operating as intended within the first 12-months of implementation. Consultation was focused on the users of the Guidelines, including members of the community and industry.

Consultation was undertaken over a four-week period between 28 March and 28 April 2019 with both face-to-face and online consultation activities being conducted. During this time, representatives from community councils, residents' groups and key community constituents, active proponents, consultants and other peak industry groups were invited to respond to online surveys and participate in drop-in information sessions. The project review team also presented to the Combined Community Councils on 6 April 2019.

A key finding from the consultation process was that the community strongly believed the development triggers and exceptions were no longer appropriate and did not capture enough development types, whilst industry generally considered them to be largely appropriate, albeit requiring some updating.

The changes made through this amendment regulation address the findings of the review process.

## **CONSISTENCY WITH HUMAN RIGHTS**

The amending regulation potentially engages the right of taking part in public life, in particular the right and/or opportunity to take part in the conduct of public affairs. The right is defined in Section 17(a) of the *Human Rights Act 2004*:

Every citizen has the right, and is to have the opportunity, to—

- a) take part in the conduct of public affairs, directly or through freely chosen representatives.

Under section 138AE of the *Planning and Development Act 2007*, prescribed development proposals are required to undertake community consultation before lodging a development application. This amendment regulation does not remove this right, it seeks to expand its operations to capture additional significant types of development and reduce the areas where development proposals do not need to undertake this requirement.

The amending regulation does not propose any changes that are considered to impede or limit a citizen's ability to take part in this process. Instead, it provides further opportunities for involvement through expanding the consultation requirement criteria. Furthermore, the revisions to the areas excepted from pre-DA community consultation has been revised to reflect only those areas with no existing community. This will increase the number of development proposals that will be required to undertake pre-DA community consultation in established suburbs, thereby facilitating further community involvement.

## **REGULATORY IMPACT STATEMENT**

A regulatory impact statement (RIS) is not required as the amendment regulation does not impose appreciable costs on the community, or part of the community under s 34(1) of the *Legislation Act 2001*. Also, a RIS is not required as the amendment regulation does not operate to the disadvantage of anyone other than the Territory by adversely affecting their rights or imposing liabilities on the person.

The amendment regulation does not affect a person's rights to lodge a development application. While the amendment regulation alters the types of developments which are required to undertake pre-DA community consultation, by adding estate development plan and NCDRP developments and reducing the excepted areas, this does not impose an appreciable cost on any person.

In fact, nearly all developments which are added as a result of these changes will be developments on behalf on behalf of the Territory, being estate developments, or NCDRP developments which are likely to also be captured by one of the other triggers.

The intent of pre-DA consultation is to deliver a benefit to the proponent for the development by engaging with the community early and providing an opportunity to understand and resolve issues prior to the lodgement of a DA. In this sense, it is considered that the requirement to undertake consultation delivers benefits to the proponent and the community, without imposing an appreciable cost in the context of a significant development proposed to be undertaken in the Territory.

## CLAUSE NOTES

### Clause 1 Name of Act

This clause provides that the name of the regulation is the *Planning and Development (Community Consultation) Amendment Regulation 2020 (No 1)*.

### Clause 2 Commencement

This clause provides that the regulation commences on 1 January 2021. The intent of delaying commencement is to provide proponents of prescribed developments with notice of the incoming changes, allowing enough time for consultation to be conducted in accordance with the updated requirements.

### Clause 3 Legislation amended

This clause provides that the regulation amends the *Planning and Development Regulation 2008*.

### Clause 4 New Section 20A (1) (f)

This clause inserts an additional type of development proposal into Section 20A (1) (f) of the Regulation. The intent of this clause is to also require estate development plan (EDP) DAs within established suburbs to also undertake pre-DA community consultation. This provision is to be read with the exceptions from the requirement to undertake pre-DA consultation set out in section 20A (2) of the Regulation and reflected in the maps in Schedule 1B.

### Clause 5 New Section 20A (1A)

This clause inserts an additional type of development proposal into Section 20A (1A) of the Regulation. The intent of this clause is to also require development proposals required to consult with the National Capital Design Review Panel (NCDRP) under section 138AL (1) or (2) of the Act to also undertake pre-DA community consultation.

The intention of this provision is to only capture developments *required* to obtain advice from the NCDRP and not those who voluntarily refer their application to the NCDRP for advice.

### Clause 6 Section 20A (2)

This clause substitutes the wording in section 20A (2) as a consequential editorial amendment required by the insertion of clause 5 above.

### Clause 7 Schedule 1B

This clause substitutes the maps presented in Schedule 1B with revised maps. The maps identify land where development proposals are not required to undergo pre-DA community consultation. The intent of the updated maps is to only except undeveloped and/or greenfield areas from the requirement to undertake pre-DA consultation.