

Planning and Development (Exempt developments – schools) Review Notice 2013 (No 1)

Notifiable instrument NI2013–49

made under the

Planning and Development Regulation 2008, Schedule 1, Division 1.3.6A, s 1.99B
(Exempt developments – schools, review of division)

1 Name of instrument

This instrument is the *Planning and Development (Exempt developments – schools) Review Notice 2013 (No 1)*.*

2 Commencement

This instrument commences on the day after notification.

3 Review of Division

The planning and land authority has reviewed Schedule 1, Division 1.3.6A of the *Planning and Development Regulation 2008*. The findings on the review, including a summary of comments from the community on the operation of this division, are set out in Schedule 1 of this instrument.

4 Community Consultation

Further detail on community consultation is set out in the report “Building the Education Revolution – Schools Development Approval Exemption Review” by Tania Parkes Consulting, at Schedule 2 of this instrument.

Ben Ponton
A/g Director-General
Chief Planning Executive
Environment and Sustainable Development Directorate
24 January 2013

*Name amended under Legislation Act, s 60

Schedule 1

Instrument of Review



ACT
Government

Environment and
Sustainable Development

**Instrument of Review: *Planning and Development Regulation 2008*, Schedule 1,
Part 1.3, Division 1.3.6A – Exempt developments – schools**

made under the

Planning and Development Regulation 2008, Schedule 1, s1.99B (Review of division)

1. Name of instrument

This instrument is the confirmation of review of Division 1.3.6A of Part 1.3 of Schedule 1 of the *Planning and Development Regulation 2008*.

2. Date of instrument

This instrument is effective on 2 October 2012.

3. Background

Division 1.3.6A, Exempt developments-schools, of Part 1.3 of Schedule 1 of the Regulation sets out a number of exemptions from development approval for developments on existing school and childcare centre sites (the exemptions). The exemptions were made under section 426 of the *Planning and Development Act 2007* (the Act).

Two of the relatively extensive exemptions in the division, s1.99C (Schools – new buildings or alterations to buildings) and s1.99D (Schools – minor alterations) expire on 31 March 2013, subject to the following. Section 1.99C does not expire if before 31 March 2013 the Legislative Assembly by resolution continues this section (section 1.99C(3)).

Section 1.99B of Part 1.3 of Schedule 1 of the Regulation requires the planning and land authority to review the use and effectiveness of each type of exemption in the Division by 30 September 2012. This date is effectively 2 October 2012, as 30 September 2012 falls on a non-working day (section 151A of the Legislation Act).

4. Confirmation of review

I declare that I have completed the review of Division 1.3.6A, Exempt developments-schools (the division), of Part 1.3 of Schedule 1 of the *Planning and Development Regulation 2008* (Regulation) as required by section 1.99B of Part 1.3.

5. Basis for review

6. This review takes account of the following:

- A
- a. community and stakeholder consultation by Tania Parkes Consulting as set out in the report “Building the Education Revolution: Schools Development Approval Exemption Review” (the Parkes report); and
 - b. internal Environment and Sustainable Development Directorate discussions including planning and land authority discussions of the division during the development of the Parkes report.

Findings of the review

7. This review makes the following findings:
 - a. the Parkes report indicates that the continuation of the exemptions is supported by both government and non-government education sectors;
 - b. the Parkes report did not point to any extensive community or industry objections to the continuation of the exemptions;
 - c. the exemptions are effective in reducing the time and cost involved in the realisation of relevant school developments;
 - d. there appears to be no impediment to retaining the substance of the existing exemptions in the division should that be the wish of the Government;
 - e. currently, the existing exemptions apply only to schools existing on 24 March 2009, the date when the exemptions commenced operation. If the exemption is to be retained, it would be appropriate for reasons of consistency and equity to extend the exemptions to new schools, that is, schools that have or will become operational after 24 March 2009;
 - f. the Government may wish to further assess the stakeholder comments and observations noted in the Parkes report and in particular assess whether:
 - a new definition of “school” is required and in particular whether the definition should include new schools that have development approval under the Act but have yet to built;
 - there should be further supporting information and other assistance for proponents in relation to government approval requirements outside the Act that may apply to school developments that are development approval exempt; and
 - clarification of some of the terms of the provisions in the exemption regulation is warranted.

Stakeholder support for the exemptions

8. The Parkes report summarised the following stakeholder comments which support continuing the existing exemptions:
 - a. the exemptions were described as well crafted and easily understood by officers who helped deliver the Building the Education Revolution (BER)

- projects in both the government and non-government sectors (Parkes report, 5.3 – Summary of consultation results, p30);
- b. both government and non-government education sectors made positive comments about the exemptions saving time and money (Parkes report, 5.3 – Summary of consultation results, p32-33);
 - c. both government and non government education sectors said they received strong support from schools and the local community for BER projects (Parkes report, 5.3 – Summary of consultation results, p34); and
 - d. continuation of the exemptions was supported by government and non-government education sectors and industry representatives.
 - e. while there were few submissions received from the wider community, those received showed no evidence of strong objections to the exemptions (Parkes report, 6.2 – Key findings, p38).

Stakeholder comments on the definition of ‘school’

9. The Parkes report summarised the following stakeholder comments with respect to the definition of a ‘school’ in the exemptions:
 - a. industry representatives and the government education sector expressed in principle agreement that the exemptions should apply to new schools ie to the construction of the first buildings on the school site (Parkes report 1.0 - Executive Summary p5 and 5.3 – Summary of consultation results, pp35-36). However, the Parkes report suggests there is a need for further community consultation on this matter (Parkes report 1.0 - Executive Summary p5);
 - b. the government education sector expressed the view that where there is staged development of new schools where progressive works are delivered over a number of years there should be clarification to identify at what stage such a development should be considered an ‘existing school’ (Parkes report, 5.3 – Summary of consultation results, p35)
 - c. the Parkes report pointed to comments indicating a possible need for clarification on when a school ceases to be a school and becomes a closed school (Parkes report, 5.3 – Summary of consultation results, p31)
 - d. the Parkes report also pointed to stakeholder comments indicating a possible need for clarification on:
 - i. the continued application of the exemptions to multi-use school sites that have facilities for combined education and community use (Parkes report, 5.3 – Summary of consultation results, pp5, 35);
 - ii. whether a building consisting of multiple structures was covered by the exemption when some elements of the building appeared

- to be outside the exemption parameters; (Parkes report, 5.3 – Summary of consultation results, p31); and
- iii. how to identify a nominated school site when non government schools are identified by street address, while government schools are identified by block and section numbers (Parkes report, 5.3 – Summary of consultation results, p31).

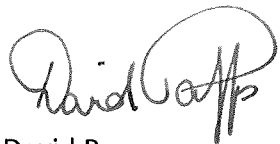
Stakeholder comments on other related matters

10. The Parkes report summarised the following stakeholder comments on other matters:

- a. some government education sector BER project teams notified school and local communities about proposed works of their own initiative, and described this as a positive experience (Parkes report, 5.3 – Summary of consultation results, p34);
- b. government officer level discussions pointed to a potential need for further information to be provided to development proponents on how to comply with government requirements outside the Planning and Development Act in relation to developments potentially impacting on utility services, public assets, heritage sites, environment protection, tree protection (Parkes report, 5.3 - Summary of consultation results, pp31-32); and
- c. discussions with non-government and government education sectors indicated some concern at delays to projects where otherwise exempt developments also require a separate development approval for associated works on adjacent Territory land, such as driveways and car parks (Parkes report, 5.3 – Summary of consultation results, p32);
- d. support from the environment protection authority for the continuation of the exemptions provided the exemptions are subject to conditions relating to hazardous materials (Parkes report, 5.3 – Summary of consultation results, p27). Note the existing exemptions are subject to the condition that the relevant exempt development not contravene the *Environment Protection Act 1997* (section 1.114(1)(c) of Part 1.2 of Schedule 1 of the Regulation). Also the exempt development must comply with other relevant legislation such as the *Building Act 2004*, *Electricity Safety Act 1971* and *Utilities Act 2000*.

Completion of review

11. The review of the division as required by the regulation, Schedule 1, s1.99B (Review of division) is this instrument and is completed on the making of this instrument.

A handwritten signature in black ink, appearing to read 'David Papps', with a large, stylized loop at the end of the name.

David Papps
Director General
Chief Planning Executive
Environment and Sustainable Development Directorate

2 October 2012

Schedule 2

**“Building the Education Revolution –
Schools Development Approval Exemption
Review” consultation report by Tania
Parkes Consulting**



Building the Education Revolution

Schools Development Approval Exemption Review



Gold Creek Primary School, Nicholls \$3.2 million environment centre and shade structure

Prepared for ACT Environment and Sustainable Development Directorate
September 2012

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Disclaimer

This report has been prepared with due care by the consultants, who believe the contents to be fair and accurate.

However, neither Tania Parkes Consulting nor individual authors of the Report accept any responsibility for any error or omission, nor for any application of its contents.

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1.0 Executive Summary

Between October 2008 and March 2009, the Australian Government announced a range of economic stimulus measures to combat the global financial crisis. The largest component of the Economic Stimulus Plan (funding of \$16.2 billion over four years) was to provide new facilities and refurbishments in Australian schools through the *Building the Education Revolution* (BER) program.

On a national basis, the three elements of the BER were:

1. *Primary Schools for the 21st Century (P21)* – \$14.1 billion for all Australian primary schools, K-12 schools (primary school component) and special schools to build new iconic facilities such as libraries, multipurpose halls or classrooms, or to upgrade existing facilities;
2. *Science and Language Centres for 21st Century Secondary Schools*– \$821.8 million for the construction of new science laboratories or language learning centres; and
3. *National School Pride program* – \$1.288 billion for all schools in Australia, government and non-government, for funding of minor capital works and maintenance projects.

The program aimed to provide economic stimulus through the rapid construction and refurbishment of school infrastructure and to build learning environments to support achievement, develop learning potential and bring communities together. BER funding was used for capital expenditure to construct new libraries; new multipurpose halls; classrooms, replacement of demountables or other approved buildings; or the refurbishment of existing facilities.

The BER P21 program funding for the ACT included \$139 million for 68 approved ACT Government school projects, and \$86 million for 61 approved ACT non-Government school projects. In the ACT there were 84 projects under the BER National School Pride (NSP) program with a total cost of \$12.7 million under which every school in the ACT received an allocation. All projects and programs in the ACT were completed.

The ACT did not receive any funding under the BER element for Science and Language Centres for 21st Century Secondary Schools.

In March 2009, the ACT Government put in place a number of development approval exemption provisions in the *Planning and Development Regulation 2008*. These provisions exempt certain developments on existing school sites and licensed child care centres from the Development Approval process. The exemption was implemented to support the delivery of the *Building the Education Revolution* (BER) and facilitated infrastructure projects for ‘existing schools’ in government and non-government schools and licensed child care centres. The provisions only exempt developments from requiring a Development Approval and do not affect the operation of other territory laws relating to land use or the provision of services for the development such as the

Tree Protection Act 2005, Heritage Act 2004, Environment Protection Act 1997, respective utility entity provisions and the *Building Act 2004*.

The two schools exemption provisions, 1.99C (Schools – new buildings or alterations to buildings) and 1.99D (Schools – minor alterations), automatically expire on the 31 March 2013 unless the ACT Legislative Assembly passes a resolution prior to 31 March 2013 to allow one of the provisions to continue and remakes the other.

The regulation requires the planning and land authority to review the Division no later than 30 September 2012.

The Environment and Sustainable Development Directorate (ESDD) has retained Tania Parkes Consulting to assist with its work.

A desk top literature review and stakeholder consultation including online surveys were undertaken to assist the planning and land authority in assessing the use and effectiveness of each type of exemption in Division 1.3.6A pursuant to Schedule 1, section 1.99B of the *Planning and Development Regulation 2008*. The objective of the stakeholder consultation was to engage ACT Government agencies, external stakeholders and the community to seek their opinions about the completed exemption process and whether the exemptions at Schedule 1, sections 1.99C and 1.99D should continue beyond 31 March 2013.

The scope of this review is to:

- Assist the planning and land authority to assess the use and effectiveness of each type of exemption in Division 1.3.6A;
- Consult with the ESDD on the form of the report and information to be provided in reviewing the operation of Division 1.3.6A; and
- In consultation with ESDD, develop and implement a consultation program on the value of Division 1.3.6A.

Key findings

The regulation to exempt existing schools and licensed child care centres from the requirement for a Development Approval (DA) contributed to achieving completion of the BER program within the timeframes stipulated by the Australian Government, and benefited the ACT community in providing school and community infrastructure.

The exemptions reduced potential delays that the DA process would impose and contributed to shorter development timelines and consequentially lower holding costs. Government and non government projects were said to have saved two to three months per project. ACT Government Shared Services Procurement supports continuation of the DA exemptions.

Administering agencies for heritage, protected and significant trees, the conservator of flora and fauna, environmental protection (through the Heritage Unit and the Heritage Council, Urban

Treescaping, Conservator of Flora and Fauna and the Environment Protection Authority) and utility services did not report any major infraction of their relevant legislation by either the government or non government sectors.

In relation to the government sector, there was minimal community concern reported over the BER program delivery and the exemptions. One community complaint received by the Education and Training Directorate related to location of a construction fence and the location of a new school library. No community complaints were submitted to the BER Implementation Taskforce (BERIT) about ACT government school projects during the BER works. There were two complaints to the BER Implementation Taskforce from school principals of Bonython Primary School and Hughes Primary School. Across the BER program, there were a few community queries to ACT Government agencies relating to heritage and trees, and occasional complaints about construction related noise, parking and traffic congestion.

Continuation of the exemptions beyond the BER program is generally supported by the community and overwhelmingly supported by government and non-government sectors and industry representatives. While supporting continuation of the exemptions, some issues arose during implementation of the BER program that could benefit from clarification.

Recommendation and observations

This review makes one recommendation. It is not within the scope, timeframe or resources of this review to develop solutions to the issues for clarification that have been raised, rather several observations are made for further consideration and response by ACT Government agencies.

In response to whether the existing exemptions should be continued beyond 31 March 2013, and whether there should be a further 'sunset' clause, this review recommends that in light of the key findings outlined in Section 6.2 of this report:

1(a) The existing regulation in relation to Development Approval for existing schools and licensed child care centres is continued without a nominated end date.

1(b) The definition of an existing school should capture government or non-government schools declared under the *Education Act 2004* or a licensed child care centre declared under the *Children and Young People Act 2008*, section 747, primarily for the education of young children. This definition is intended to capture currently operational schools (e.g. those constructed since 2009), but is not intended to capture new schools.

1(c) The regulation is regularly revisited to reflect the changing needs of school and licensed child care developments in the ACT community, and in the light of changing ACT planning requirements.

Observations

In response to:

- whether further exemptions at an ‘existing school’ are supported;
- whether any existing exemption should be withdrawn;
- whether the exempt status should be extended beyond ‘existing school’; and
- where operational processes can be improved and/or streamlined,

this review makes the following observations (in no particular order):

1. The existing list of exemptions should be retained as they were implemented without major community concern or infraction of other ACT legislation. There was some confusion about whether the exemptions applied to multi-use school sites that have facilities for combined education and community use, and parts of buildings such as offices that are ancillary to a main building. It would be useful to clarify that the regulation applies to development of school assets on declared school sites regardless of whether they are also used by the community, and that ancillary buildings are also covered by the regulation.

Consideration should be given to extending the exemptions to cover new schools where the existing Crown lease provisions are not contravened. The recommendation for this review does not include extension of the exemption to include new schools at this stage because while there was in principle agreement by industry practitioners and advocates that the regulation should apply to new schools, and there was only one complaint during implementation of the BER program, there were insufficient survey returns to assess community values on this issue. Of the surveys that were submitted by community members, there was some expression of concern about the potential for new school developments to impact negatively on new and existing neighbourhoods.

2. There should be further information, such as fact sheets with contact points, on how development proponents can comply with other ACT legislation such as the Heritage Act 2004, Tree Protection Act 2005, Environment Protection Act 1997, Utilities Act 2000 and the provision of utility services in relation to heritage, protected and significant trees, the conservator of flora and fauna, environmental protection, utility services and other territory laws in circumstances where there is no Development Approval process to trigger referrals.
3. The regulation and other related ACT Government legislation would benefit from clarification in the following areas:
 - a. Schedule 1, section 1.99C (Schools – new buildings or alterations to buildings) applies only to class 3 and class 9b buildings under the Building Code of Australia. The planning and land authority has had to provide advice about whether the exemption applies to developments which contain additional classes of building, for example, where a single school building has both class 9b classroom components and class 5 office components.
 - b. A common school classification system to identify the locations and boundaries of government and non government schools as defined in the *Education Act 2004*, to remove

the current confusion in relation to non government schools that are identified by street address rather than by block and section numbers as with government schools. While this issue is a matter for clarification of the *Education Act 2004*, it is noted here because it was reported by consultation participants as having caused some confusion in implementation of the schools exemptions.

- c. Definition of a ‘closed school’ to avoid confusion between capital works¹ on an operating school site and plans to redevelop a closed school site for uses other than education or child care. Care should be taken to capture an existing school that has been closed for a period greater than 12 months and reopened for the purposes of a school.
 - d. Where there is staged development of new schools where progressive works are delivered over a number of years there should be clarification to identify at what stage a new school development delivered progressively over multiple stages and across several years is defined as an existing school under the regulation.
4. Further publicity of explanatory notes or development of guidance notes to accompany the regulation would promote better understanding of the exemption process.
 5. Because the regulation exempts existing school developments from requiring development approval and therefore formal public notification, there would be benefit in promoting good practice in community relations amongst those who use the exemptions by advising neighbours of proposed works.
 6. There should be a streamlined process to minimise delays and improve planning coordination where exempt developments also require a separate Development Approval for associated works that straddle school boundaries and other Territory land, such as driveways and car parks.

2.0 Introduction

2.1 Background

Building the Education Revolution (BER) program

In response to the worst global financial conditions in 75 years the Australian Government announced a range of economic stimulus measures between October 2008 and March 2009. The \$42 billion *Nation Building and Jobs Plan* was announced on 3 February 2009 to support jobs and invest in future long term economic growth. The *Nation Building and Jobs Plan* combined with the December 2008 stimulus component titled *Nation Building – Economic Stimulus Plan*.²

The largest component of the Economic Stimulus Plan (funding of \$16.2 billion over four years) was to provide new facilities and refurbishments in Australian schools through the *Building the Education Revolution* (BER) program.

On a national basis, the three elements of the BER were:³

1. *Primary Schools for the 21st Century* – \$14.1 billion for all Australian primary schools, K-12 schools (primary school component) and special schools to build new iconic facilities such as libraries, multipurpose halls or classrooms, or to upgrade existing facilities;
2. *Science and Language Centres for 21st Century Secondary Schools*– \$821.8 million for the construction of new science laboratories or language learning centres; and
3. *National School Pride program* – \$1.288 billion for all schools in Australia, government and non-government, for funding of minor capital works and maintenance projects.

The three elements of the BER involved 23,675 construction projects (including 10,492 P21 projects to 7,935 schools) delivered by 22 separate government and non-government education authorities on a national basis.⁴

Objectives of the BER

Through the BER, the aims of the program were to:⁵

1. Provide economic stimulus through the rapid construction and refurbishment of school infrastructure; and
2. Build learning environments to help children, families and communities participate in activities that will support achievement, develop learning potential and bring communities together.

Governance

The Commonwealth, States, Territories and Block Grant Authorities (BGAs) agreed to work in partnership to deliver the BER.

The BER National Coordinator convened a BER Coordination Group made up of a BER Coordinator from each State, Territory and BGA. Each State, Territory and BGA submitted an Implementation Plan for the BER schools in their jurisdiction or for which they were responsible.⁶

BER funding

BER funding could be used for capital expenditure on the following items (in order of priority):⁷

1. Construction of new libraries;
2. Construction of new multipurpose halls (e.g. gymnasium, indoor sporting centre, assembly area or performing arts centre) or, in the case of smaller schools, covered outdoor learning areas;
3. Construction of classrooms, replacement of demountables or other building to be approved by the Commonwealth; or
4. Refurbishment of existing facilities.

State and Territory BER obligations

The States and Territories had the following BER obligations:⁸

1. Enter into Bilateral Agreements with the Commonwealth under which they received BER funding;
2. Call for and assess project proposals from government schools for each BER element;
3. Ensure that the design, application and assessment processes were fast-tracked, with minimal red tape;
4. Maintain current and planned level of investment for capital infrastructure in schools over the next four years, spending it concurrently with BER funding on school infrastructure, and provide the Australian Government with evidence of capital expenditure for the past four years and estimates for the next four years. This process is to be overseen by Heads of Treasuries and reported to the Council of Australian Governments (COAG);
5. Use a design from the templates submitted to the Commonwealth for each element of BER, where appropriate;
6. Ensure that projects covered by the funding used their best endeavours to give priority in contracting and tendering arrangements to businesses that agree to aim to secure at least 10 percent of the total contract labour hours to be undertaken by apprentices and trainees and those

seeking to up-skill, where this does not result in unreasonable costs to business, and report to the Commonwealth on this;

7. Assess proposals and prioritise infrastructure proposals in accordance with the *BER Guidelines*⁹ and prepare project lists for approval by the Commonwealth;
8. Include school stakeholders, such as school principals, Parents & Citizens Associations and local community members, in consultation at key points throughout the delivery process to ensure the best possible design and education outcomes for school communities;
9. Accept and adhere to pre-determined branding of the projects;
10. Accept and adhere to the reporting requirements as outlined in the National Partnership Agreement and funding agreements with the Commonwealth and in the BER Guidelines;
11. Provide information to the Commonwealth on the implementation of the BER by completing the Implementation Plan provided by the Commonwealth. In the Implementation Plan, States and Territories were asked to provide a wide range of information;
12. Work with non-government school systems and BGAs to enable the full participation of the non-government school sector in all elements of BER;
13. Pass on in a timely manner the nominated funding amounts to BGAs in their State or Territory; and
14. Appoint a State Coordinator for BER who will oversee government school participation in the program.

2.2 Application of the BER within the Australian Capital Territory

BER Program progress in the ACT

Under the BER P21, funding and projects for the ACT included:¹⁰

- ACT Government schools - \$139 million for 68 approved projects; and
- ACT Non-Government schools - \$86 million for 61 approved projects.

According to ACT Budget Papers (2011-12) in addition to the BER P21 program there were an additional 84 projects under the BER *National School Pride* (NSP) program with a total cost of \$12.7 million under which every school in the ACT received an allocation of funding for minor refurbishments and items such as interactive whiteboards, hall/classroom refurbishments and shade structures.¹¹ All projects and programs in the ACT were completed.

Details regarding the operative legislation and legal status of the Development Approval exemption are included within Section 3.3 of this report.

3.0 Purpose of Report

3.1 Objectives

The consultancy review task is intended to be brief, with the objective to:¹²

- Assist the planning and land authority assess the use and effectiveness of each type of exemption in Division 1.3.6A;
- Consult with the ESDD on the form of the report and information to be provided in reviewing the operation of Division 1.3.6A; and
- In consultation with ESDD, develop and implement a consultation program on the value of Division 1.3.6A.

3.2 Instructions

Tania Parkes Consulting was retained to conduct the following roles in undertaking the review:¹³

1. Review the operation of individual exemptions.
2. Consider the accessibility of exemptions.
3. Assess the operational experience of the exemption provisions.
4. Prepare a report including a summary of comments and any concerns received and recommendations in relation to:
 - i. whether the exemptions at 1.99C and 1.99D should be continued beyond 31 March 2013, and whether there should be a further ‘sunset’ clause;
 - ii. whether further exemptions at an ‘existing school’ are supported;
 - iii. whether any existing exemption should be withdrawn;
 - iv. whether the exempt status should be extended beyond ‘existing school’; and
 - v. where operational processes can be improved and/or streamlined.

Importantly, the exemptions only apply to operating education services (i.e. ‘schools’ as defined) and licensed child care services. The exemptions do not apply to new and closed school sites (refer to Section 3.3. of this report for more details).

3.3 Development Approval Exemptions in the ACT

Legislative background

The objects of the *Planning and Development Act 2007* (the Act) are set out in section 6 of that Act. Section 6 states that the object of the 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”.*

One of the main features of the Act is the development assessment system. This system is set out in chapter 7 of the Act. Section 199 of the Act makes it an offence to undertake development without development approval. “Development” is defined in section 7 of the Act. Applications for development approval are made to the planning and land authority and must be consistent with the requirements of section 139 of the Act.

The development assessment system includes features to ensure that:

- development is of a high standard consistent with the needs of the local community as well as the requirements of the territory plan, the Act and related legislation;
- the local and wider community is notified of a development and has a chance to comment (make representations);
- development applications are assessed against the territory plan and the assessment criteria in the Act in a thorough and efficient manner; and
- development applications are assessed by the planning and land authority which is accountable for its decisions under the Planning and Development Act. For example, ACT Civil and Administrative Tribunal (ACAT) merit review is available for developments of a significant nature.

Development proposals are assessed under the assessment track system under the Act. The assessment track system matches the level of the assessment process to the impact of the proposed development, in summary:

- Code track – for simple, straightforward developments. Code track developments are not publicly notified and do not attract appeal rights.
- Merit track – most developments are in the merit track. Public notification is required for all merit track development proposals, and the community may make representations.
- Impact track – the broadest level of assessment. Public notification is required and the community may make representations. In addition to public notification, these developments will need to include an environmental impact statement (EIS).

The offence of undertaking development without development approval does not apply if there is no requirement under the Act for development approval in the first place (section 199 (1) (b) of the Act). There is no requirement for development approval if the relevant development is exempt from requiring approval under section 133 of the Act. Section 133 (c) states that the development is exempt if it is declared to be exempt under the *Planning and Development Regulation 2008* (the regulation). The focus of this review is on certain exemptions in the regulation made under this section 133 (c). Development is also exempt if declared to be so under the relevant development table of the territory plan (section 133 (a) of the Act) or if the development is an authorised use of land as described in section 134 of the Act. These latter provisions are not relevant to this review.

In the case of existing schools, exemptions from the need for development approval are provided in the regulation. These exemptions (DA exemptions) are prescribed under Schedule 1, part 1.3 and division 1.3.6A (Exempt Developments – Schools) of the regulation. All school developments, new and existing, also have access to other general exemptions that are outside the school exemption division.

Schedule 1, section 1.99B of the *Planning and Development Regulation 2008* requires the planning and land authority to assess the use and effectiveness of each type of exemption in this division. The regulation exempts certain ‘existing school’ developments (as defined in Schedule 1, section 1.96A of the regulation) in the government and non-government sectors and licensed child care centres; and further general exemptions such as the installation of solar panels, from the requirement for a DA. To be exempt the development must not contravene the requirements of the *Tree Protection Act 2005*, *Heritage Act 2004*, *Environment Protection Act 1997* and respective utility entity provisions.

The exemption was established by the Territory to support the timely implementation of the BER. The explanatory statement to the *Planning and Development Regulation 2009 (No 2)* states that “*The main aim of the reforms was to improve timeliness, transparency and efficiency in the planning processes.*”¹⁴. The schools exemption under the regulation facilitated infrastructure projects for ‘existing schools’ in the government and non government sectors, and in licensed child care centres, as defined.

The measure was further supported by the ACT Government’s introduction of a Coordinator General to facilitate the process.

Although the operation of the exemption is administered by the planning and land authority within the Environment and Sustainable Development Directorate (ESDD) the exemptions are primarily used by Education and Training Directorate, Community Services Directorate, non government schools and private child care providers. The exemptions are intended to apply to existing schools and licensed child care centres (i.e. they do not apply to new and closed school sites).

School's exemption expiry and review dates

The regulation requires the planning and land authority to review the division no later than 30 September 2012.¹⁵ The schools exemptions at Schedule 1, sections 1.99C and 1.99D expire on 31 March 2013 unless the ACT Legislative Assembly passes a resolution prior to 31 March 2013 to continue 1.99C and remakes 1.99D to allow the provisions to continue.

Detailed exemptions

There are 20 current exemptions under the *Planning and Development Regulation 2008* in regard to existing schools (as defined, including licensed child care centres), as detailed in Table 1 below. Several of the exemptions have been grouped with other exemptions into logical building elements.¹⁶

Table 1 Exemption provision of the regulation, Schedule 1	Details and examples
section 1.99C (Expires 31 March 2013 unless continued by Assembly resolution)	Development of new buildings or alterations to an existing building. Examples include building a hall, auditorium, gymnasium, library, classroom, environmental learning centre, dormitory.
section 1.99D (Expires 31 March 2013 unless regulation is remade)	Minor alterations to a building where the development will not increase the gross floor area of the building by more than 5%. Examples include alterations, an air lock, or a small utility room.
section 1.99E	Development of a school entrance i.e. a means a public entrance to the school whether freestanding or part of a building, including any associated structure such as a portico, awning, canopy, landing, access ramp.
section 1.99F	Building or installing a verandah (i.e. includes a balcony, awning, portico or landing).
section 1.99G	Putting up, attaching or displaying a sign or altering or removing a sign if the sign displays, or is intended to display, only school information. The height of the sign is not more than 3.6 metres above existing ground level; is not both illuminated and animated.
section 1.99H	Development for building or installing playground and exercise equipment i.e. playground and exercise equipment includes swings, monkey bars, slippery dips, cubby houses, ropes and nets.
section 1.99I	Building or installing a fence where the height of the fence is not more than 4 metres above a playing field, or 2.4 metres in other cases.
sections 1.99J & K	Building or installing shade structures or covered external walkways. The shade structure is not more than 10 metres above the existing ground level; and the area of the shade structure is not more than 200 square metres. A covered walkway where the height of the walkway is not more than 6 metres above existing ground level within 30 metres of the boundary of a block in a residential zone; and in any other case 12 metres above existing ground level; and the walkway is unenclosed on at least one side.
section 1.99L	Building or installing a flag pole where the height is not more than 10 metres above the existing ground level.
section 1.99M	Building or installing a water tank where the tank has a diameter of 8 metres or less.
section 1.99N	Developing landscape gardening (other than the construction of a retaining wall), and carrying out any related earthworks or other construction work on or under the land, 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.

Exemption provision of the regulation, Schedule 1	Details and examples
sections 1.99O & R	Building or installing car parks or driveways. A designated car park (and carrying out any related earthworks or other construction work on or under the land) is to be on the existing ground level if the car park does not reduce the area of a playing field. Sealing or resealing a driveway (and carrying out any related earthworks or other construction work on or under the land) if one or more of. Concrete (including coloured or patterned concrete), bitumen, pavers, timber, and grass, including stabilising treatment are used.
section 1.99P	Building or installing a bicycle enclosure.
section 1.99Q	Building or installing a toilet or change room facility where the facility is not within 6 metres of a block in a residential zone.
section 1.99S	Installing a security camera.
section 1.99T	Installing external lighting including security lighting, and flood lighting (other than for a playing field).
section 1.99U	Building or installing a demountable or transportable building where the facility is not within 6 metres of a block in a residential zone.
section 1.99V	Building or installing a Class 10b structure (see Note 1 below - e.g. a retaining or freestanding wall, mast or antenna or swimming pool) where the facility is not within 6 metres of a block in a residential zone.

Note 1 – A Class 10b structure referred to in Exemption 1.99V is in accordance with the Building Code of Australia. Class 10 means a non-habitable building or structure (Class 10a non-habitable building being a private garage, carport, shed, or the like; or Class 10b structure being a fence, mast, antenna, retaining or free-standing wall, swimming pool, or the like). Classes 10a and 10b are separate classes but class 10 means both Class 10a and 10b.

3.4 BER Implementation Taskforce

The Building the Education Revolution Implementation Taskforce (BERIT) was established by the Australian Government in May 2010 to investigate and report on the delivery of *Primary Schools for the 21st Century* (P21) projects across Australia. The Taskforce issued its third and final report on 8 July 2011. There were a number of comparative performance statistics provided between the ACT and other States and Territories, with key details as follows:¹⁷

- The Final Report indicated that on a national basis 92% of P21 projects had been completed with 98% committed. All ACT public school projects had been completed, with the ACT being the first jurisdiction to complete all BER projects.
- The Final Report states that the ACT, along with Queensland, WA, SA and Tasmania, attained value for money. The report further stated that the “ACT and Tasmania have built some inspiring buildings, empowered school communities and managing architects and performed analogous to the Catholic and independent authorities”.
- The new library at North Ainslie Primary School is one of the school projects referred to as an example of design and best practice transfer.

- The Final Report is critical of the level of environmental sustainable design features in projects nationally, however does highlight that innovative and renewable heating and cooling systems were included in ACT school projects. The new environment centre at Gold Creek School is specifically referenced as a positive case study.
- There is no information in the Final Report in relation to employment outcomes for ACT public school projects. However, the ACT did record the number of workers engaged on ACT BER projects, including indigenous workers and apprentices. An important outcome was that no construction industry apprentice was out of work during the period of the BER initiative, with the construction industry having more than 26% of all apprentices.

With regard to ACT BER public school projects, the following information was highlighted in the BERIT Final Report:

1. **North Ainslie** – ‘Value for Money Study’

This project involved the construction of a new library and the conversion of the former library space into new classrooms. The BERIT Report states that the ACT passed the value for money assessment on this project. The project was delivered within the required contractual and project delivery dates. The time taken to deliver the new library was within the BERIT’s tolerances.

2. **Cost Analyses** – based on 16 ACT public school projects

The Final Report shows:

- The average total project cost for ACT public schools was \$2,559 per square metre. This is slightly above the national average of \$2,415 per square metre, but lower than the cost of \$2,648 per square metre for ACT non-government projects.
- ACT public school halls were on average 921 square metres, slightly above the national average of 896 square metres and cost \$2,438 per square metre, slightly above the national average of \$2,337 per square metre.
- ACT public school libraries were on average 986 square metres, significantly above the national average of 662 square metres and cost \$2,778 per square metre, which is almost equal with the national average of \$2,747 per square metre.
- ACT public school classroom projects were on average 403 square metres, below the national average of 774 square metres and cost \$2,332 per square metre, below the national average of \$2,572 per square metre.
- The overall building cost for ACT school projects was \$1,886 per square metre, which is below the national average of \$2,036 per square metre. The ACT is shown as spending the third lowest proportion of funds on building costs (behind NSW and Victorian

government schools). The area where the ACT spent significantly above other jurisdictions was in Agency and Management fees.

- The average floor area for all ACT public projects was 879 square metres which is above the national average of 574 square metres, reflecting the fact that the ACT has fewer smaller schools¹⁸.
- The average time to complete ACT school projects was 541 days, which is less than the national average of 560 days, with none of the ACT school projects being assessed as 'slow'.
- BERIT addressed two complaints from school principals concerning ACT public schools at Bonython Primary School and Hughes Primary School. These were matters closed out by BERIT in August 2010.
 - Bonython Primary School - concerns about possible inappropriate removal of building materials; and concerns about value for money regarding different buildings and furniture. Resolved through the Education and Training Directorate.
 - Hughes Primary School - concerns about consultation process and product priorities negotiated with the Education and Training Directorate. Resolved through the Education and Training Directorate.

4.0 Approach

4.1 Methodology

The methodology to undertake this review was developed to meet the project objectives outlined in Section 3.1 of this report.

Following project initiation and the initial desk top review of documents, a further literature review, stakeholder consultations and surveys were undertaken to supplement the preliminary research. The stakeholder consultations and surveys were also required to assess stakeholder and community views about application of the exemptions.

The review comprised qualitative and quantitative research as detailed in the following table.

Table 2	
Methodology step	Roles undertaken
Step 1 – Project inception	Confirmed project and communications protocols; points of contact; available information, facilities and resources; and other project management details.
Step 2 – Desk top review	Information reviewed to identify specific issues and trends impacting stakeholders and understand the exemption processes and associated matters that impacted on the management and administration of the process.
Step 3 – Literature review, consultations and surveys	<p>Further data and information researched through a literature review, consultations and surveys.</p> <p>Stakeholders and their key interests identified including the following groups (in no particular order):</p> <ul style="list-style-type: none"> ▪ ACT Community through community councils and ‘Time to Talk’ website; ▪ Licensed childcare sector operator groups ▪ School representative groups ▪ ACT Government directorates ▪ Building and other industry groups ▪ Utilities <p>Materials and communication methods developed for interviews with key stakeholders and representative groups, and for surveys.</p> <ul style="list-style-type: none"> ▪ A combination of face to face and telephone meetings, and two survey formats (short/long) were used. ▪ Where relevant, stakeholder groups with commonly held interests were interviewed together. ▪ Written submissions were also accepted. ▪ Information was maintained including records of all meetings; issues and records of conversations; emails and other correspondence received.

Methodology step	Roles undertaken
Step 4 – Review of data on operation of individual exemptions	Information was reviewed to consider: <ul style="list-style-type: none"> ▪ Whether the exemptions at 1.99C and 1.99D should be continued beyond 31 March 2013, and whether there should be a further ‘sunset’ clause; ▪ Whether further exemptions at an ‘existing school’ are supported; ▪ Whether any existing exemption should be withdrawn; ▪ Whether the exempt status should be extended beyond ‘existing school’; and ▪ Where operational processes can be improved and/or streamlined.
Step 5 – Analysis of data and information	The form of analysis required to meet the reporting requirements of the Review used proprietary and proven methods and experienced personnel.
Step 6 – Reporting	The Review requirement was for a report addressing the review criteria including a summary of comments and any concerns received and recommendations.

4.2 Surveys

An important research component of the review was to undertake surveys to understand a range of industry and community views on implementation of the BER exemptions for existing schools and licensed child care centres. Due to the level of detail included within the 20 exemptions (refer Section 3.3 herein for details on the specific exemptions), it was decided there should be two surveys developed; one for the broader community (as user groups and interested parties) and another that was more detailed and is closer aligned to ‘industry’ or practitioners and community members who wish to provide more detailed responses.

In developing the scope of the surveys the following was considered:

1. An ability for all parties to be able to comment on each and every exemption currently within Subdivision 1.3.6A, no matter how minor the exemption may seem to be;
2. An ability to be able to comment on each of the following ‘accessibility of exemptions’:
 - a. consider whether there are any other exemptions which would be beneficial for ‘existing schools’ that can be added or should be added to the exemption provisions (e.g. the introduction of community gardens as an exemption in the regulation);
 - b. determine how often the exemptions have been used and whether there may have been instances where an exemption was not appropriate;
 - c. consider whether industry has been able to understand the exemptions and work with it;
 - d. advise whether the exemptions should be narrowed – either definition of eligible applicants and/or categories of exemption;

- e. advise whether the exempt categories should be extended to other building activity at an ‘existing school’;
 - f. advise whether there are benefits in extending the exempt status beyond ‘existing schools’ (e.g. new schools or other community based services); and
3. To ensure that each of the following aspects are able to be commented on from an operational experience point of view:
- a. assess the operational experience of each exemption provision, what issues have come up and whether exemption provisions are workable and practical;
 - b. consider whether there had been any developments made using the exemptions provided which has raised significant community concerns; and
 - c. consider whether difficulties had been experienced in the administration and implementation of the exemptions.

All of the above matters were addressed in the online surveys developed specifically for the role.

Copies of the two surveys are included at Attachments 1A and 1B.

4.3 Consultations

The consultation process for the Schools Development Approval Exemption Review was undertaken between 23 June and 4 August 2012. It involved surveys (as described in Section 4.2 above) and individual and group interviews, telephone meetings, and receipt of short submissions.

The consultation process which included the surveys was notified in the:

- Canberra Times newspaper on 23 June 2012 (full advertisement) and 26 June 2012 (public notifications);
- Chronicle newspaper on 26 June 2012 (full advertisement);
- ‘Time to Talk’ ACT Government website (23 June to 4 August 2012);and
- ESDD ACT Government website (23 June to 4 August 2012).
- Information was also directly emailed to an extensive list of stakeholders including:
 - Community councils;
 - Stakeholders within ACT Government directorates associated with delivering the BER program for government schools and licensed child care centres;
 - Stakeholders involved in delivering the BER program for non-government schools and licensed child care centres;
 - Building industry representatives; and

- Professional associations as appropriate.

The complete stakeholder list is at Attachment 2.

Stakeholders with whom ESDD will have continuing discussions following the Review include:

- Planning and Development Forum;
- Industry Monitoring Group;
- Education sector groups;
- Office of the Coordinator-General;
- Community Councils;
- Planning Institute of Australia; and
- Building industry representatives and professional associations as appropriate.

Immediately prior to commencement of the community consultations, on 22 June 2012, the following Media Release was issued by the Environment and Sustainable Development Directorate:

Government Reviews Development Approval Exemptions for Schools

The ACT Government is reviewing legislation that streamlined development approval processes for schools and childcare centres during the Global Financial Crisis, Environment and Sustainable Development Directorate, Deputy Director-General, Ben Ponton said today.

“Canberrans are being asked to comment on amendments to the Planning and Development Act that exempted schools from needing development approval for additions and alterations,” Mr Ponton said.

“The exemptions were introduced 2009 to support the Building the Education Revolution, but have a statutory requirement to be reviewed by September 2012.

“I believe the exemptions have made it easier to improve our school and childcare infrastructure for our children.”

Over 200 exemptions have been granted to ACT schools for constructing new classrooms, libraries, entranceways, shade structures, water tanks, toilet blocks and other structures

Although the structures were exempt from development approval, they still required building approval and certification that they complied with the Territory Plan and building codes.

“The exemption from development application approval streamlined building work, benefitting the schools and generating employment at a crucial time during the Global Financial Crisis,” Mr Ponton said.

“I encourage anyone who has been affected by the exemptions as a participant or an observer to tell us about their experience during the six week consultation period.”

Public consultation is open between 23 June and 4 August 2012. For further information and to take part in an online survey visit the Time to Talk website www.timetotalk.act.gov.au

Consultation objective

The overall objective of the stakeholder and community consultation was to develop and deliver a robust methodology and time effective process to engage ACT Government agencies, external stakeholders and the community to elicit opinions about the completed DA exemption process and whether Schedule 1, sections 1.99C and 1.99D should continue beyond 31 March 2013.

The approach taken to achieve this objective was to:

- Identify stakeholder and community interests;
- Formulate communication and consultation methods to ensure stakeholder and community interests can constructively contribute to the project within a contained timeframe;
- Effectively communicate with target audiences to provide information on the project and its progress;
- Demonstrate the commitment to a high quality result in keeping with the significance of the subject matter by communicating its vision and expectations;
- Engage stakeholder and community interests to ascertain their views on proposals and options; and
- Ensure that the views of stakeholder and community interests are heard, accurately documented and effectively conveyed for consideration as the project progresses.

Consultation best practice

The approach used for stakeholder and community engagement was consistent with the ACT Government’s community engagement guidelines *Engaging Canberrans – A Guide to Community Engagement*.

There is no one-size-fits-all approach to community engagement. The development of an engagement activity will depend on the:

- Issue open for consideration;
- Size and diversity of the community affected by the issue;
- Depth of interest or concern about the issue;
- Scope for flexibility in policy/program/process outcomes;
- Time and resources available; and
- Extent of any prior engagement and/or policy development on the issue.

Best practice community engagement strongly recommended by the ACT Government consultation guidelines suggests “the absolute minimum for any community engagement activity be six weeks.

For large projects, policies and strategies seeking comprehensive feedback, twelve weeks is recommended¹⁹. The public consultation period for this project was for a period of six weeks (i.e. 23 June 2012 to 4 August 2012).

The engagement practices were also consistent with the following International Association for Public Participation (IAP2) best practice:²⁰

- The role, purpose and objectives of each consultation activity will be clearly explained to participants;
- A consistent approach to the role, expressed by all team members, will be adopted;
- The consultation process will be open, transparent and accessible;
- The consultation process will be advertised and promoted using various mechanisms;
- The community will have different ways to become involved other than attending meetings;
- Participation will be valued through providing feedback to participants;
- Information required to inform stakeholders will be readily available; and
- The existence of different views will be acknowledged.

5.0 Analysis

5.1 Overview

The BER P21 program funding for the ACT included \$139 million for 68 approved ACT government school projects, and \$86 million for 61 approved ACT non-government school projects. In the ACT there were 84 projects under the BER National School Pride (NSP) program with a total cost of \$12.7 million under which every school in the ACT received an allocation. All projects and programs in the ACT were completed.

The purpose of this Review is to:

- Assist the planning and land authority assess the use and effectiveness of each type of exemption in Division 1.3.6A;
- Consult with the ESDD on the form of the report and information to be provided in reviewing the operation of Division 1.3.6A; and
- In consultation with ESDD, develop and implement a consultation program on the value of Division 1.3.6A.

A desk top literature review and stakeholder consultations including two online surveys (short form/long form) were undertaken to assist the planning and land authority to assess the use and effectiveness of each type of exemption in division 1.3.6A pursuant to Schedule 1, section 1.99B of the *Planning and Development Regulation 2008*. The objective of the stakeholder consultation and surveys was to engage ACT Government agencies, external stakeholders and the community to seek their opinions about the completed exemption process and whether the exemptions at Schedule 1, sections 1.99C and 1.99D should continue beyond 31 March 2013.

The consultation process was undertaken between 23 June and 4 August 2012.

Despite advertising, media coverage and direct emailing about the consultation process there were a low number of survey returns. A total of eighteen (18) surveys were returned: seven (7) short form surveys and eleven (11) long form surveys. Of the short surveys, five (5) were fully completed and of the long surveys two (2) were fully completed. Of the eighteen (18) surveys returned, five (5) respondents explicitly supported continuation of the exemptions, one (1) respondent supported continuation of the exemptions with provisional comments in relation to compliance with environmental protection legislation, four (4) respondents explicitly did not support continuation of the exemptions, and eight (8) respondents did not answer the question. The low number of survey returns when considered with the low number of complaints during implementation of the BER program may suggest that the new facilities and refurbishments to existing schools and licensed child

care centres were supported by the community and the exemptions to facilitate the construction program did not overly concern them.

Consultation participants were generally pleased with the ACT Government's provision of DA exemptions to facilitate delivery of the BER program as it was widely understood that the ACT would forfeit any unspent funds had the program not been delivered within the Australian Government's stipulated timeframe. Media coverage that the ACT had performed well in an independent Australian Government review when compared in the context of national delivery of the BER program was often noted by stakeholders. While there was some private sector cynicism that the ACT Government had implemented special conditions to facilitate delivery of the BER program while not extending the same measures to privately financed non-school projects outside the BER program, there was overriding support for timely completion of the BER construction program that benefitted the ACT community. There was support also for continuation of the Development Approval exemptions beyond the BER program to reduce potential delays that the DA process would impose and which was said to have contributed to reduced development timelines and consequentially reduced holding costs.

There was an impression by some participants that removing the DA exemptions would automatically provide an opportunity for the community to provide input into a proposed development, whereas that is not necessarily the case. If the development is DA assessable in the code track, there is no requirement for public notification; only the merit or impact track developments require public notification.

Administering agencies for heritage, protected and significant trees, the conservator of flora and fauna, environmental protection and utility services did not report any major infraction of their relevant legislation by either the government or non government sectors.

5.2 Summary of survey results

The consultation process for the Schools Development Approval Exemption Review included an online survey component to help assess the impact of the exemptions. The survey was undertaken between 23 June 2012 and 4 August 2012.

There were two online surveys available for completion. Copies of the surveys are at Attachments 1A and 1B.

- The first survey of eight questions (short survey) was intended for the broader community and was available on the ACT Government's 'Time to Talk' website www.timetotalk.act.gov.au.
- The second survey of twenty six questions (long survey) was targeted to industry practitioners and members of the community who wished to provide a more detailed response. This survey covered each of the 20 exemptions under the Regulation and was available at <https://www.surveymonkey.com/s/GML65YS>.

The analysis of returned survey forms is both quantitative and qualitative and assumes equal weighting.

- a. The *quantitative* analysis examines the numeric results of the two forms of online survey undertaken; and
- b. The *qualitative* analysis examines the numeric and open commentary results more subjectively in that it provides context and emphasis to respondents' views.

As not all survey questions were answered by each respondent the totals of individual responses to questions do not add up to the total number of surveys returned. Individual counts rather than percentages have been used in this analysis because of the low number of returns.

Short survey (Time to Talk) – intended for the broader community

Of the seven (7) short surveys (Time to Talk website) that were returned, three (3) supported continuation of the school DA exemptions, three (3) did not support continuation of the exemptions of whom two provided reasons, and one (1) did not answer the question. As none of the respondents or their properties was directly affected by the BER construction undertaken since March 2009, the responses are based on observation or philosophical belief. An equal proportion of respondents supported and opposed continuation of the exemptions.

- Seven (7) short surveys were returned of which five were fully completed.
- Three (3) individual ACT residents, one (1) organisation and one (1) representative of a community council responded to the Time to Talk survey. Two (2) respondents did not answer this question.
- Prior to completing the survey, all seven (7) respondents had heard about the schools Development Approval exemptions through their local school (1); the consultation advertisement (2); a community council (1); an architect (1); the Time to Talk website (1); and via direct email (1).
- Of those who responded to the short survey none were directly affected: four (4) lived near an upgraded facility constructed as part of the BER or since March 2009 and one (1) did not. Two (2) respondents did not answer this question.
- Of the five respondents who lived near an upgraded facility the type of upgrade undertaken was a new building (1); a major renovation to an existing building (2); and landscaping (1). One (1) respondent was unsure of the type of upgrade construction that had been undertaken. Two (2) respondents did not answer this question.
- Three (3) respondents thought the school DA exemptions should continue, and three (3) respondents thought they should not be continued. One (1) respondent did not answer this question.

- The three respondents who supported continuation of the exemptions did so for the following reasons:
 - *“The developments to the schools I have visited have made a very positive impact on student life - in particular the halls & community-use spaces/facilities have inspired other non BER development, as well as impacted the positive 'feel' and motivation at the school.”*
 - *“I believe the DA exemption process was worthwhile and should be continued. The process was efficient, speedy and dependable. It has enabled building process to proceed more quickly and therefore saving time and money.”*
 - *“I believe the process has been good and has speeded up the whole building process, saving time and money.”*

- Of the three respondents who did not think the exemptions should be continued, two provided the following reasons:
 - *“Nearby residents should have the opportunity to object to a development. A full exemption process may be too rigid in so far as it appears to prevent or discourage community input. There are merits in retaining an exemption process for non-critical developments. Where a development can be construed as having a potential detriment or impact on nearby residents or the community a form of review is essential.”*
 - *“All development proposals should be subject to a proper review process.”*

Long survey – intended for industry practitioners and members of the community wishing to provide detailed responses

There were eleven (11) responses to the long survey, of which two (2) supported continuation of the school DA exemptions as they currently stand, one (1) supported continuation of the exemptions with provisional comments, and one (1) did not support continuation of the exemptions but did not provide a reason. Seven (7) respondents did not answer this question. The two respondents who answered all the questions relating to individual exemptions supported continuation of the exemptions.

- Eleven (11) long surveys were returned of which two were fully completed.
- Two (2) individual ACT residents, one (1) representative of a community council, and two (2) representatives of an existing non-government school responded to the long survey. Other respondents identified themselves as an ACT Government agency (1), Environment Protection ACT Government (1), ACT public servant – Schools Capital Works (1), and an ACT Government employee (1). Two (2) respondents did not answer this question.
- Prior to completing the survey, seven (7) respondents had heard about the schools DA exemptions through an ACT Government publication (2); the ACT Government advertising (1);

ACT Government briefings (3); and the media (1). Four (4) respondents did not answer this question.

- Six (6) long survey respondents found the schools DA exemptions easy to understand with one stating that *“it helps if the community understands why these exemptions were made”*. Five (5) respondents did not answer this question.
- Three (3) respondents would have found fact sheets helpful to better understand the exemptions while one (1) did not believe that a fact sheet would have assisted. Seven (7) respondents skipped this question.
- Four (4) respondents found the exemptions were effective in helping them achieve their outcomes while one (1) respondent did not find the exemptions effective. Six (6) respondents did not answer the question.
- Three (3) respondents thought the school DA exemptions should be continued, and one (1) respondent thought they should not be continued. Seven (7) respondents did not answer this question.
 - Of the three respondents who agreed with the exemptions being continued, one (1) respondent included the following provisional comment *“Environment protection is happy to support the ongoing DA exemptions provided that there are conditions imposed relating to things such as underground fuel tanks, hazardous materials etc. Further, a set criteria for the purpose of the exemption should be put in place.”*

The comments regarding *“underground fuel tanks, hazardous materials”* referred to exemptions Schedule 1, section 1.99C Development of new buildings or alterations; Schedule 1, section 1.99D Minor alterations; Schedule 1, section 1.99E Development of a school entrance; Schedule 1, sections 1.99J&1.99K Building or installing shade structures or covered external walkways; Schedule 1, section 1.99M Building or installing a water tank; Schedule 1, section 1.99Q Building or installing a toilet or change room; and Schedule 1, section 1.99V Building or installing a Class 10b structure (e.g. retaining wall etc).

This respondent also noted that they agreed with continuation of the exemption Schedule 1, section 1.99T in relation to external lighting *“provided lighting complies with Environment Protection Act 1997.”*

- The following table summarises the responses to individual exemptions:

Table 3 Exemption provision of the regulation, Schedule 1	Agree with continuation	Agree with continuation subject to condition	Disagree with continuation	Did not answer question
section 1.99C: Development of new buildings or alterations	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9
section 1.99D: Minor alterations to a building	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9
section 1.99E: Development of a school entrance	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9
section 1.99F: Building or installing a verandah	3	0	0	8
section 1.99G: Putting up, attaching or displaying a sign	3	0	0	8
section 1.99H: Development for building or installing playground or exercise equipment	3	0	0	8
section 1.99I; Building or installing a fence	3	0	0	8
sections 1.99J & K: Building or installing shade structure or covered external walkways	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9

Exemption provision of the regulation, Schedule 1	Agree with continuation	Agree with continuation subject to condition	Disagree with continuation	Did not answer question
section1.99L: Building or installing a flag pole	3	0	0	8
section1.99M: Building or installing a water tank	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9
section1.99N: Developing landscape gardening	3	0	0	8
sections1.99O & R: Building or installing car parks or driveways	3	0	0	8
section1.99P: Building or installing a bicycle enclosure	3	0	0	8
section1.99Q: Building or installing a toilet or change room	1	1 <i>"Please see previous comments relating to underground tanks and hazardous materials"</i>	0	9
section1.99S: Installing a security camera	3	0	0	8
section1.99T: Installing external lighting	2	1 <i>"Provided lighting complies with Environment Protection Act 1997"</i>	0	8
section1.99U: Building or installing a demountable or transportable building	3	0	0	8

Exemption provision of the regulation, Schedule 1	Agree with continuation	Agree with continuation subject to condition	Disagree with continuation	Did not answer question
section1.99T: Building or installing a Class 10b structure (e.g. retaining wall)	1	1 <i>“Please see previous comments relating to underground tanks and hazardous materials”</i>	0	9

5.3 Summary of consultation results

Key themes

The consistent themes that emerged from the consultations are provided below. The views expressed during consultation interviews were those of individual officers, and do not necessarily represent the views of the Directorate.

The regulation

- The *Planning and Development Regulation Amendment 2009 (No. 2)* to exempt existing schools and licensed child care centres from the requirement for Development Approvals was said to be well crafted and easily understood by those who delivered BER projects in both the government and non-government sectors.
 - The Canberra Christian School wrote that *“It was a simple process to meet legislated requirements to qualify for the DA exemption ... and the requirements (such as development height, distance from boundaries etc.) made for best practice development in any case, to ensure our school infrastructure aesthetically matches the community that it surrounds.”*
 - There was a suggestion that a guidance sheet or practice note would clarify a commonly held misconception that the regulation means an exemption from third party appeals only, and not an exemption from the DA process itself.
 - While the regulation was generally well understood by those who implemented the BER program, practitioners in the government school sector indicated the current list of permitted capital works is prescriptive and required interpretation at times. They suggest the regulation should instead contain an ‘exclusive’ list that nominates what should not be exempt.
 - Conversely, non government stakeholders welcomed the clarity and precision of the ‘inclusive’ list which to them, provided certainty.

- Some issues arose during implementation of the BER program that could benefit from clarification. These were:
 - The exemption status where a single building may have both class 9b classroom components and class 5 office components under the Building Code of Australia.
 - There has been some confusion in relation to the location and boundaries of non government schools because of how they are identified on the Register of schools. At present non government schools are identified by their street address, rather than by block and section numbers as with government schools.
 - The definition of an existing school was said to require clarification where there are contemporary practices and facilities within school boundaries such as where part of the school premises are leased to community organisations or where there are multi-use school sites that include combined education and community use, for example, Gungahlin College which includes a community library, CIT Flexible Learning Centre and performance space.
 - It was thought that inclusion of a definition of a ‘closed school’ would avoid confusion between capital works on an operating school site and plans to redevelop a closed school site for uses other than education or child care. Care should be taken however to capture an existing school that has been closed for a period greater than 12 months and reopened for the purposes of a school.
 - Address issues of compliance with *Building Code of Australia* energy and disability requirements in relation to use of demountable buildings as temporary staging facilities. Currently the regulation is frequently interpreted as requiring a DA each time a demountable building is relocated although traditional DA exemptions apply to certain temporary buildings, and BER DA exemptions are not framed to exclude temporary buildings.
- While generally supporting the continuation of exemptions for existing schools and licensed child care centres, further clarity and guidance was suggested on how to comply with other ACT legislation as there was some reported lack of understanding about the processes involved to comply with other ACT legislation in the absence of a Development Approval referral trigger. These were particularly in relation to heritage, protected and significant trees, the conservator of flora and fauna, environmental protection and utility services.
 - Officers of administering agencies for heritage, protected and significant trees, the conservator of flora and fauna, environmental protection and utility services did not report any major infraction of their relevant legislation by either the public or private sectors.
 - The common practice was that the agencies were contacted by government and non government sector project management teams on discovery of a potential issue. For example:
 - The Environment Protection Authority was advised and an appropriate process put in place when hazardous material was discovered at Red Hill Primary School.

- Appropriate notification to the Conservator of Flora and Fauna and building redesign was undertaken to accommodate a Superb Parrot habitat in a tree at Harrison School.
- In a number of cases officers of administering agencies (such as officers of the Heritage Unit and Heritage Council, Urban Treescapes, Conservator of Flora and Fauna, Environment Protection Authority) were cautious of the potential for legislative breaches in the absence of Development Approvals to trigger referral of proposed developments. There would be benefit in making information available to development proponents on how they can comply with other ACT legislation in circumstances where a Development Approval is not required.
- Site and boundary issues where existing school capital works straddle adjoining ACT Government land were raised frequently by practitioners in the government and non-government sectors.
 - The concern is that a school development exempt from DA processes under the regulation is delayed by the requirement for a DA for associated works on adjacent Territory land. For example:
 - A driveway, verge or car park associated with existing school capital works that straddles Territory land as occurred with St Edmund's College and Red Hill Primary.
 - A toilet/change room facility to be shared between Gold Creek School and Holy Spirit Primary School that was sited on an oval located between the two schools on abutting Territory land.
 - Officers of the Territory and Municipal Services Directorate (TAMSD) are concerned that the exemptions do not provide for a formal referral mechanism at the initial design stage of the developments as the custodians are responsible for the ongoing maintenance of the asset.
 - For example, 75% of a project may be completed prior to TAMSD Asset Acceptance becoming aware of a development at which stage it is too late to influence the design of road verges, driveways, car parks and traffic measures that may critically impact on services such as emergency vehicles, waste management trucks and public transport.
- Some industry representative organisations and professional associations expressed some cynicism that the ACT Government had implemented special conditions to facilitate delivery of the BER program while not extending the same measures to privately financed projects outside the BER program.

Time and cost

- It was said by both the government and non-government sectors that the DA exemptions reduced potential delays from the DA process which in turn contributed to shorter development timelines and lower costs. There was said to be certainty around processing times and consequent savings in design fees, project management fees and some trade fees which were reflected in the pricing.

Government and non government projects were said to have saved two to three months per project.

- ACT Government Shared Services Procurement officers support continuation of the DA exemptions.
- The Education and Training Directorate has data specific to all BER projects on cost and time, however, it was not accessible for analysis within the review timeframe. ETD did comment however, that *“BER projects were delivered in a timely manner and within the specified time requirements set by the Australian Government. Critical was the fact that there were 68 large projects running concurrently and the exemptions allowed design consultants, project managers and Territory project staff to “get on with the job” of delivering the projects”*.
- The Community Services Directorate representative said that *“We had to put in a lot of work and effort to bring construction prices down to a level which was comparable with what the private sector was achieving – a difference of about 2 per cent. ... Having a streamlined procurement process – using panels and the like also helped reduce costs and foster relationships with the builders.”²¹*
- The regulation has highlighted the potential for time and cost savings through streamlined assessment processes and several industry associations suggested that it would be beneficial to development proposals that are outside the exemptions to also have access to well coordinated development processes particularly in relation to the many approvals required through the Territory and Municipal Services Directorate.

Community

- The community was consulted through the community councils which were provided with both the short and long form surveys and an opportunity for a briefing or presentation. The community councils did not request a briefing or presentation but some individuals identifying themselves as representing a community council did respond to the surveys (see survey analysis above).
- The community was also consulted through a survey available on the ACT Government’s ‘Time to Talk’ website (see survey analysis above).
 - Survey respondents were generally in favour of continuing the exemptions for existing schools with only four of eighteen respondents explicitly not supporting continuation of the exemptions. Two of these four respondents took a stance in-principle that *“All development proposals should be subject to a proper review process.”*

These two survey respondents appear to assume that removing the DA exemptions would automatically provide an opportunity for the community to provide input into a proposed development, whereas that is not necessarily the case. Where the rule applied to the DA assessment is identical to the DA exemption parameters in the regulation, all that might be achieved by repealing the exemptions is that developments are delayed by requiring a DA

for what would currently be exempt. For clarity, where a merit or impact track development is being assessed public notification is required.

- Stakeholder consultations indicate that the government and non government sector experience with the BER program was strong school and local community support. Although the projects were exempt from the requirement for formal public notification, proponents generally notified local communities of impending school and child care capital works.
 - In relation to government sector child care, a social planner was engaged and community comments were sought although there was no requirement for formal public notification. Comments were considered and some changes were made in response to comments and submissions.
 - The Canberra Christian School wrote that *“Given that the majority of anticipated school development can be done within sensible guidelines that your experience suggests communities are comfortable with, unless a future school project is of such height, or mass that creates boundary, water etc. Issues – it is our hope that you would please consider extending the DA exemption legislation for relevant school developments.”*
- In relation to the government sector, there was minimal community concern reported over the BER program delivery and the exemptions with one complaint received by the Education and Training Directorate which related to location of a construction fence and the location of a new school library.
 - No community complaints were submitted to the BER Implementation Taskforce (BERIT) about ACT government school projects during the BER works.
 - Although not required to, government sector project teams consulted with school and local communities and kept them informed. Residents neighbouring school sites and the local school community were more accepting of capital works projects on school sites when they were informed of what was occurring, in advance.
 - In light of the benefits of this good practice, the Education and Training Directorate suggests that proponents of works to schools, early childhood and child care centres should be required, as part of the exemption provisions, to distribute simple information to the community explaining the works to be undertaken. This information should be clearly marked as not being a formal notification but instead community information.
- There were a few community queries to ACT Government agencies for heritage, protected and significant trees, the conservator for flora and fauna, environmental protection and utility services about the BER program. There were occasional complaints about construction related noise, parking and traffic congestion.
- The Planning Institute of Australia ACT Chapter does not believe that Government should assess its own process and planning applications and suggests consideration of systems similar to the

Part 5 environmental assessment process of the *Environmental Planning and Assessment Act 1979* (NSW) and similar systems in other jurisdictions.

New schools

- The Education and Training Directorate raised the issue of extending the Schools Development Approval Exemption regulation to new school sites.
 - *“New schools are not covered by the exemptions and undergo the full Development Approval process, similar to other new construction works in the Territory. The Directorate supports the continuation of this process with regard to estate planning. However, the Directorate would seek to ensure that provisions are included in future regulations that ensured that new school construction projects are able to be delivered on time to meet the needs of the local community. This may require appeal exemption status past the completion of the estate planning process.*
 - *In assessing the merits of this recommendation, it is suggested that the Review and ESDD should make careful consideration of staged developments for new schools that may involve progressive works over a number of years. The consideration of a detailed site master plan (and timetable) at the commencement of a school/child care centre development should be undertaken to avoid any suggestion that staged works for a new school or centre are works occurring on an existing school/centre site. Any scrutiny applicable to a new school should apply to all elements of a staged construction, irrespective of the timing of those stages.”²²*
 - In relation to multi-use sites the Directorate states that - *“While the Directorate has recommended the exclusion of new schools from part of the appeal process, careful consideration should be given to sites that will be developed for mixed education and community use. For example ... the new Franklin Early Childhood School includes child care as well as school facilities. Future education sites may also include a range of uses such as retail (coffee shops), business, recreation (e.g. gymnasium and indoor pool), sports facilities, theatres, art studios etc.”²³*
- The Architects Institute of Australia said that if it is not possible to have new school developments included, then:
 - *“It would be preferable to have a reduced DA process that focuses on key public access issues such as road and traffic issues.*
 - *Subsequent additions / extensions to new school campuses should fall under the DA Exemption provisions.*
 - *(... any allowance for reduced DA / Exempt DA assumes setback and height restrictions meet current Territory Plan requirements)”.*
- The Master Builders Association members would support extension of the exemptions to new schools but were cautious about situations where there is a need for additional community

consultation, for example, at a school site which was partly a former service station and there was a change of use involved.

- ACT Government Shared Services Procurement supports extension of the exemptions to new schools as long as they do not contravene lease conditions.

6.0 Findings

6.1 Introduction

This review provides the opportunity to consider and identify potential amendments, extensions and revisions to the current exemption processes.

The following recommendation has been developed from a range of processes including the review of the exemption process during the BER; targeted stakeholder consultation and community consultation, with the latter two being further informed by the two forms of survey, albeit noting that responses were limited. As a consequence of the limited number of survey responses received most of the community input to formulating the recommendation emanated from the stakeholder consultations.

The recommendation has been developed to take account of requirements of this review and in particular the following:

- whether the existing exemptions should be continued beyond 31 March 2013, and whether there should be a further ‘sunset’ clause;
- whether further exemptions at a ‘existing school’ are supported;
- whether any existing exemption should be withdrawn;
- whether the exempt status should be extended beyond ‘existing school’; and
- where operational processes can be improved and/or streamlined.

The recommendation has also been developed cognisant of current ACT Government policy as it relates to the impact of education and required resourcing. The *Canberra Social Plan 2011* in particular nominates the following priorities under the theme of ‘a liveable community’:²⁴

- More flexible use of schools, libraries and civic places through collocation and provision of common facilities for art, sport, recreation, gardening, bringing together communities of interest and everyday social interaction;
- Supporting collaborations between industry, employers and education stakeholders to drive initiatives and research, building the knowledge capital of the Territory and promoting the economic development of the region;
- Creating schools that provide 21st century learning and teaching environments and ensuring these sites are genuine community use facilities, in some cases incorporating child and family services, creative and performing arts facilities, and sporting and recreational facilities; and

- Investing in modern libraries that give people access to information from all over the world and provide meeting places for the local community. Libraries support literacy and lifelong learning through access to books, newspapers, journals and the array of information available online. Libraries are also a resource for local organisations and business. As community hubs, libraries play an essential role in reaching out to people who may be isolated as well as communities of interest such as book groups.

6.2 Key findings

The regulation to exempt existing schools and licensed child care centres from the requirement for a Development Approval (DA) contributed to achieving completion of the BER program within the timeframes stipulated by the Australian Government, and benefited the ACT community in providing school and community infrastructure.

The exemptions reduced potential delays that the DA process would impose and contributed to shorter development timelines and consequentially lower holding costs. Government and non government projects were said to have saved two to three months per project. ACT Government Shared Services Procurement supports continuation of the DA exemptions.

Administering agencies for heritage, protected and significant trees, the conservator of flora and fauna, environmental protection and utility services (such as officers of the Heritage Unit and Heritage Council, Urban Treescapes, Conservator of Flora and Fauna, Environment Protection Authority) did not report any major infraction of their relevant legislation by either the government or non government sectors.

In relation to the government sector, there was minimal community concern reported over the BER program delivery and the exemptions. One community complaint received by the Education and Training Directorate related to location of a construction fence and the location of a new school library. No community complaints were submitted to the BER Implementation Taskforce (BERIT) about ACT government school projects during the BER works. Across the BER program, there were a few community queries to ACT Government agencies relating to heritage and trees, and occasional complaints about construction related noise, parking and traffic congestion.

Continuation of the exemptions beyond the BER program is generally supported by the community and overwhelmingly supported by government and non-government sectors and industry representatives. Four of eighteen survey respondents explicitly did not support continuation of the exemptions with two of these four respondents taking an in-principle position that “*All development proposals should be subject to a proper review process.*”

While supporting continuation of the exemptions, some issues arose during implementation of the BER program that could benefit from clarification.

6.3 Recommendation and observations

This review makes one recommendation. It is not within the scope, timeframe or resources of this review to develop solutions to all the issues for clarification raised, rather several observations are made for further consideration and response by ACT Government agencies.

Recommendation

In response to whether the existing exemptions should be continued beyond 31 March 2013, and whether there should be a further ‘sunset’ clause, this review recommends that in light of the key findings outlined in Section 6.2 of this report:

1(a) The existing regulation in relation to Development Approval for existing schools and licensed child care centres is continued without a nominated end date.

1(b) The definition of an existing school should capture government or non-government schools declared under the *Education Act 2004* or a licensed child care centre declared under the *Children and Young People Act 2008*, section 747, primarily for the education of young children. This definition is intended to capture currently operational schools (e.g. those constructed since 2009), but is not intended to capture new schools.

1(c) The regulation is regularly revisited to reflect the changing needs of school and licensed child care developments in the ACT community, and in the light of changing ACT planning requirements.

Observations

In response to:

- whether further exemptions at an ‘existing school’ are supported;
- whether any existing exemption should be withdrawn;
- whether the exempt status should be extended beyond ‘existing school’; and
- where operational processes can be improved and/or streamlined,

this review makes the following observations (in no particular order):

1. The existing list of exemptions should be retained as they were implemented without major community concern or infraction of other ACT legislation. There was some confusion about whether the exemptions applied to multi-use school sites that have facilities for combined education and community use, and parts of buildings such as offices that are ancillary to a main building. It would be useful to clarify that the regulation applies to development of school assets on declared school sites regardless of whether they are also used by the community, and that ancillary buildings are also covered by the regulation.

Consideration should be given to extending the exemptions to cover new schools where the existing Crown lease provisions are not contravened. The recommendation for this review does not include extension of the exemption to include new schools at this stage because while there

was in principle agreement by industry practitioners and advocates that the regulation should apply to new schools, and there was only one complaint during implementation of the BER program, there were insufficient survey returns to assess community values on this issue. Of the surveys that were submitted by community members, there was some expression of concern about the potential for new school developments to impact negatively on new and existing neighbourhoods.

2. There should be further information, such as fact sheets with contact points, on how development proponents can comply with other ACT legislation such as the Heritage Act 2004, Tree Protection Act 2005, Environment Protection Act 1997, Utilities Act 2000 and the provision of utility services in relation to heritage, protected and significant trees, the conservator of flora and fauna, environmental protection, utility services and other territory laws in circumstances where there is no Development Approval process to trigger referrals.
3. The regulation and other related ACT Government legislation would benefit from clarification in the following areas:
 - a. Schedule 1, section 1.99C (Schools – new buildings or alterations to buildings) applies only to class 3 and class 9b buildings under the Building Code of Australia. The planning and land authority has had to provide advice about whether the exemption applies to developments which contain additional classes of building, for example, where a single school building has both class 9b classroom components and class 5 office components.
 - b. A common school classification system to identify the locations and boundaries of government and non government schools as defined in the *Education Act 2004*, to remove the current confusion in relation to non government schools that are identified by street address rather than by block and section numbers as with government schools. While this issue is a matter for clarification of the *Education Act 2004*, it is noted here because it was reported by consultation participants as having caused some confusion in implementation of the schools exemptions.
 - c. Definition of a ‘closed school’ to avoid confusion between capital works on an operating school site and plans to redevelop a closed school site for uses other than education or child care. Care should be taken to capture an existing school that has been closed for a period greater than 12 months and reopened for the purposes of a school.
 - d. Where there is staged development of new schools where progressive works are delivered over a number of years there should be clarification is to identify at what stage a new school development delivered progressively over multiple stages and across several years is defined as an existing school under the regulation.
4. Further publicity of explanatory notes or development of guidance notes to accompany the regulation would promote better understanding of the exemption process.

5. Because the regulation exempts existing school developments from requiring development approval and therefore formal public notification, there would be benefit in promoting good practice in community relations amongst those who use the exemptions by advising neighbours of proposed works.
6. There should be a streamlined process to minimise delays and improve planning coordination where exempt developments also require a separate Development Approval for associated works that straddle school boundaries and other Territory land, such as driveways and car parks.

Attachments

- Attachment 1 Copy of Surveys
- Attachment 1A Short form survey

Schools Development Approval Exemption Survey (Time to Talk)

Dear survey respondent,

Division 1.3.6A of the Planning and Development Regulation (the Regulation) contains provisions that exempt developments for existing schools and licensed child care centres from the requirement for a development approval (DA). A copy of the Planning and Development Regulation which includes the schools exemptions can be downloaded from <http://www.legislation.act.gov.au/sl/2008-2/current/pdf/2008-2.pdf>.

The exemption was implemented to support the delivery of the Building the Education Revolution (BER) which was one of the key elements of the Commonwealth Government's economic stimulus package. The schools exemptions under the Regulation facilitated infrastructure projects for 'existing schools' in the government, non-government and licensed child care centres.

Please note that the schools exemptions do not apply to closed schools. Furthermore, the Regulation does not exempt schools from compliance with building approvals; or from heritage, tree protection and environment protection legislation; or from utilities easement and access requirements.

The planning and land authority is required by law to review these exempt development provisions. We would like to know your experiences, if any, of the exempt development process for schools and your views on whether the exemptions should be continued. The survey results will be collated and presented in a report to the Minister for the Environment and Sustainable Development.

1. Are you completing this survey as:

- an ACT resident?
- an organisation in the ACT?
- a member of an ACT school community?
- a representative of a community council?
- a user of a licensed child care centre in the ACT?

Other (please specify)

2. Did you know about the schools DA exemptions that have been operating in the ACT to deliver the Commonwealth Government's Building the Education Revolution (BER) stimulus package?

- No (please move to question 7)
- Yes

Comment

Schools Development Approval Exemption Survey (Time to Talk)

3. How did you find out about the schools DA exemptions?

- | | |
|--|--|
| <input type="checkbox"/> letterbox flyer | <input type="checkbox"/> community council |
| <input type="checkbox"/> local school | <input type="checkbox"/> media (e.g. Canberra Times, Chronicle, RiotACT) |
| <input type="checkbox"/> neighbourhood Watch | <input type="checkbox"/> residents group |
| <input type="checkbox"/> child care centre | <input type="checkbox"/> friend or neighbour |
| <input type="checkbox"/> ACT Government notice | <input type="checkbox"/> social media (e.g. Facebook, Twitter) |
| <input type="checkbox"/> advertisement | |

Other (please specify)

4. Do you live near a school or child care centre that has had upgraded facilities or new buildings constructed as part of the BER or since March 2009?

- No (please move on to question 6)
- Yes

Comment

5. If you answered yes to question 4, what type of upgrade was made?

- | | |
|--|--|
| <input type="checkbox"/> new building | <input type="checkbox"/> school entrance |
| <input type="checkbox"/> major renovation to existing building | <input type="checkbox"/> verandah |
| <input type="checkbox"/> minor alteration | <input type="checkbox"/> shade structures |
| <input type="checkbox"/> transportable building | <input type="checkbox"/> toilet block/changeroom |
| <input type="checkbox"/> external works (e.g. fencing, water tank) | <input type="checkbox"/> swimming pool |
| <input type="checkbox"/> landscaping | <input type="checkbox"/> driveway/car park |
| <input type="checkbox"/> play/exercise equipment | <input type="checkbox"/> security measures |

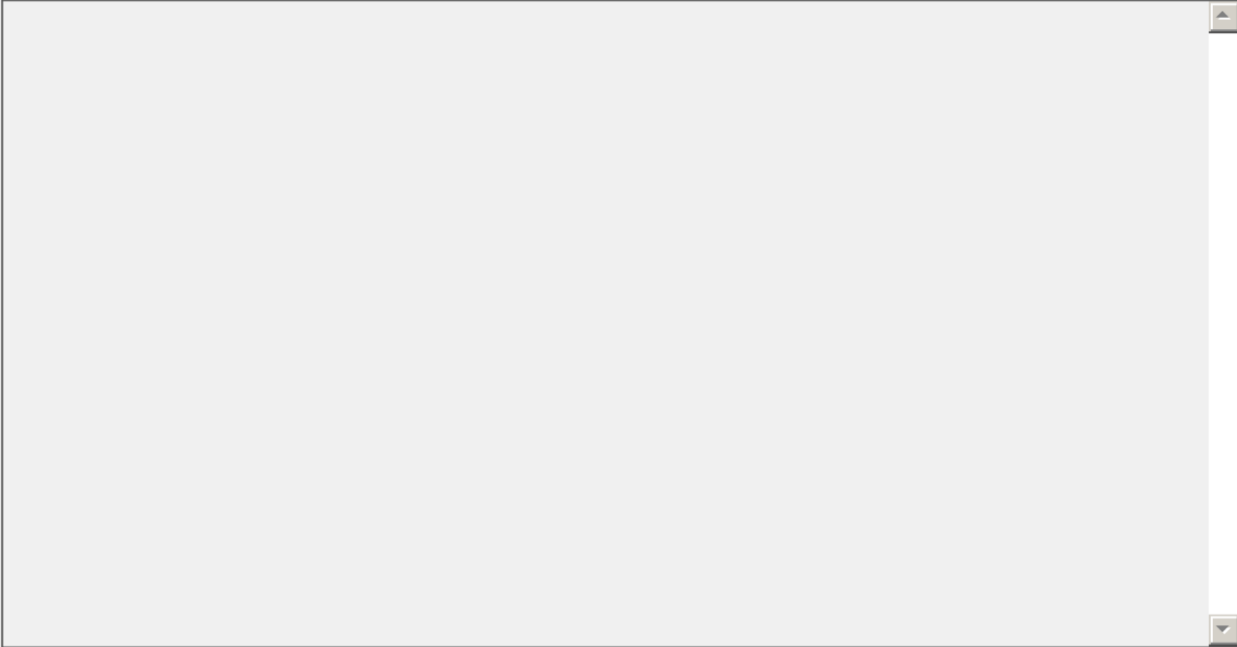
Other (please specify)

Schools Development Approval Exemption Survey (Time to Talk)

6. Does the school or child care development directly affect you or your property?

- No
- Yes

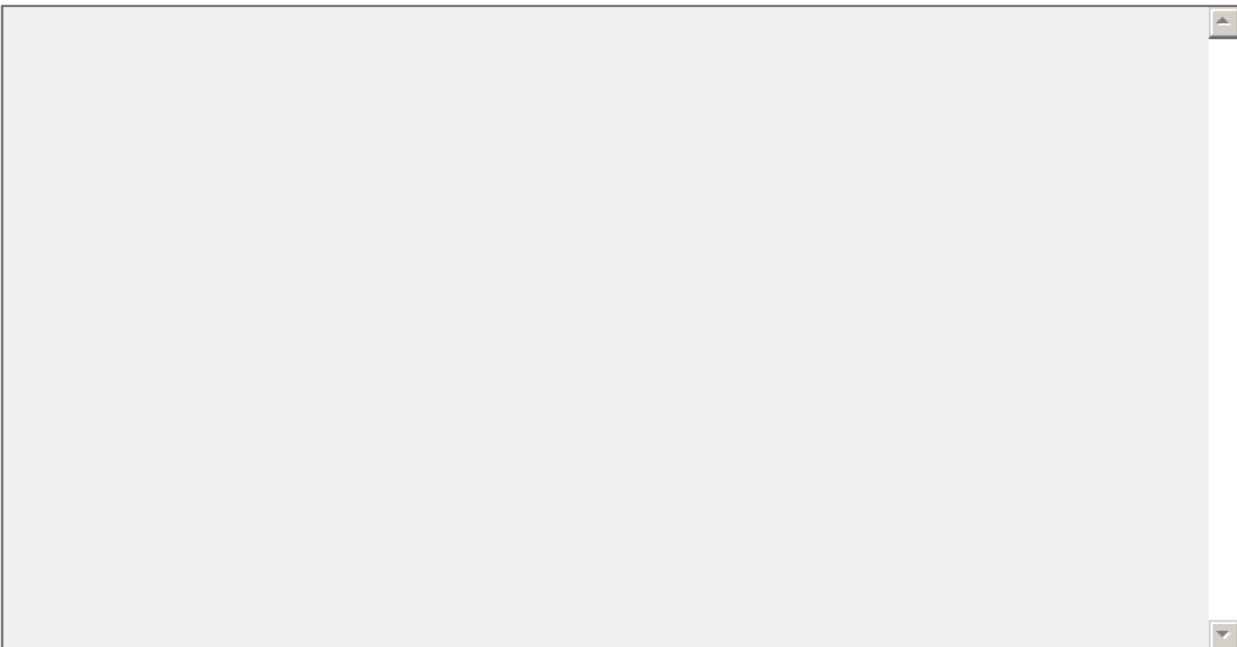
If yes, what was your experience during this period?

A large, empty rectangular text area with a light gray background and a thin black border. It has a vertical scrollbar on the right side, indicating it is a scrollable input field for a text response.

7. Should the exemptions for schools be continued?

- Yes
- No

If you answered no, please tell us why

A large, empty rectangular text area with a light gray background and a thin black border. It has a vertical scrollbar on the right side, indicating it is a scrollable input field for a text response.

8. Do you have any further comments?

Attachment 1B Long form survey

Schools Development Approval Exemption Survey

Dear survey respondent,

Division 1.3.6A of the Planning and Development Regulation 2008 (the Regulation) contains provisions that exempt certain school developments from the requirement of a development approval (DA).

The exemption was implemented in March 2009 to support the delivery of the Building the Education Revolution (BER) which was one of the key elements of the Commonwealth Government's economic stimulus package. The schools exemption under the Regulation facilitated infrastructure projects for 'existing schools' in the government, non-government and licensed child care centres.

The planning and land authority is required by law to review these exempt development provisions. We would like to know your experiences, if any, of the exempt development process for schools and your views on whether the exemptions should be continued. The survey results will be collated and presented in a report to the Minister for the Environment and Sustainable Development.

There are 20 exemptions under the Planning and Development Regulation 2008 in regard to existing schools (including existing and licensed child care centres). We welcome your views on each exemption.

1. Are you completing this survey as:

- an individual ACT resident?
- a member of a community council?
- someone who works in the ACT building industry (e.g. builder/architect/planner)?
- a representative of an existing ACT Government school?
- a representative of an existing ACT non-government school?
- a representative of a licensed child care centre in the ACT?

Other (please specify)

2. Were the exemptions easy to understand?

- Yes
- No

Other, please specify

For Practitioners

Schools Development Approval Exemption Survey

3. How did you find out about these exemptions?

- | | |
|---|---|
| <input type="checkbox"/> industry publication | <input type="checkbox"/> ACT Government advertising |
| <input type="checkbox"/> industry association | <input type="checkbox"/> ACT Government briefings |
| <input type="checkbox"/> ACT Government publication | <input type="checkbox"/> media |

Other (please specify)

4. Were the exemptions effective in helping to achieve your outcomes?

- Yes
- No

Other, please specify

5. Would Fact Sheets be helpful to better understand the exemptions?

- Yes
- No

Comment

6. Should the DA exemptions for schools be continued?

- Yes, as the exemptions currently stand (please move on to question 25)
- Yes, but I would like to comment on a particular exemption
- No, DA exemptions should not be continued (please move on to question 26)

Other (please specify)

Schools Development Approval Exemption Survey

7. Exemption 1.99C: Development of new buildings or alterations to an existing building. Examples include building a hall, auditorium, gymnasium, library, classroom, environmental learning centre, dormitory.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

8. Exemption 1.99D: Minor alterations to a building where the development will not increase the gross floor area of the building by more than 5%. Examples include alterations, an air lock, or a small utility room.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

9. Exemption 1.99E: Development of a school entrance i.e. a means a public entrance to the school whether freestanding or part of a building, including any associated structure such as a portico, awning, canopy, landing, access ramp

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

10. Exemption 1.99F: Building or installing a verandah (i.e. includes a balcony, awning, portico or landing)

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

11. Exemption 1.99G: Putting up, attaching or displaying a sign or altering or removing a sign if the sign displays, or is intended to display, only school information. The height of the sign is not more than 3.6m above existing ground level; is not both illuminated and animated.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

12. Exemption 1.99H: Development for building or installing playground and exercise equipment i.e. playground and exercise equipment includes swings, monkey bars, slippery dips, cubby houses, ropes and nets.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

13. Exemption 1.99I: Building or installing a fence where the height of the fence is not more than 4 metres above a playing field, or 2.4 metres in other cases.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

14. Exemptions 1.99J & K: Building or installing shade structures or covered external walkways. The shade structure is not more than 10 metres above the existing ground level; and the area of the shade structure is not more than 200 square metres. A covered walkway where the height of the walkway is not more than 6 metres above existing ground level within 30m of the boundary of a block in a residential zone; and in any other case 12 metres above existing ground level; and the walkway is unenclosed on at least one side.

- Do you agree with these exemptions being continued?
- Do you disagree with these exemptions being continued?

If you disagree, please tell us why

15. Exemption 1.99L: Building or installing a flag pole where the height is not more than 10 metres above the existing ground level.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

16. Exemption 1.99M: Building or installing a water tank where the tank has a diameter of 8 metres or less.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

17. Exemption 1.99N: Developing landscape gardening (other than the construction of a retaining wall), and carrying out any related earthworks or other construction work on or under the land, 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.**

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

18. Exemptions 1.99O & R: Building or installing car parks or driveways. A designated car park (and carrying out any related earthworks or other construction work on or under the land) is to be on the existing ground level if the car park does not reduce the area of a playing field. Sealing or resealing a driveway (and carrying out any related earthworks or other construction work on or under the land) if one or more of. concrete (including coloured or patterned concrete), bitumen; pavers, timber, and grass, including stabilising treatment is used.

- Do you agree with these exemptions being continued?
- Do you disagree with these exemptions being continued?

If you disagree, please tell us why

19. Exemption 1.99P: Building or installing a bicycle enclosure.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

20. Exemption 1.99Q: Building or installing a toilet or change room facility where the facility is not within 6 metres of a block in a residential zone.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

21. Exemption 1.99S: Installing a security camera.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

22. Exemption 1.99T: Installing external lighting including security lighting, and flood lighting (other than for a playing field).

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

23. Exemption 1.99U: Building or installing a demountable or transportable building where the facility is not within 6 metres of a block in a residential zone.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

Schools Development Approval Exemption Survey

24. Exemption 1.99V: Building or installing a Class 10b structure (e.g. a retaining or freestanding wall, mast or antenna or swimming pool) where the facility is not within 6 metres of a block in a residential zone.

- Do you agree with this exemption being continued?
- Do you disagree with this exemption being continued?

If you disagree, please tell us why

25. Are there any additional development exemptions that would be beneficial to existing schools or child care centres?

- No
- Yes

If you answered yes, please tell us what they are

26. Would you like to make any additional comments?

Attachment 2 List of Stakeholders

Stakeholder	Date of Consultation	Type of Consultation	Comments
Licensed childcare sector operator groups			
▪ Australian Community Children's Services	24/06/2012	Survey (long form)	Direct email communication and reminder follow up
▪ ACT Children's Services Association	24/06/2012	Survey (long form)	Direct email communication and reminder follow up
▪ Australian Children's Education & Care Quality Authority	24/06/2012	Survey (long form)	Direct email communication and reminder follow up
▪ Early Childhood Australia	24/06/2012	Survey (long form)	Direct email communication and reminder follow up
ACT Directorates, Agencies and Divisions			
Environment & Sustainable Development Directorate			
▪ ACTPLA Merit Assessment	17 May 2012	Multi stakeholder meeting Survey (long form)	Direct email communication and reminder follow up
▪ ACTPLA	17 May 2012	Multi stakeholder meeting Survey (long form)	Direct email communication and reminder follow up
▪ Conservator Liaison Officer (Conservator of Flora and Fauna)	29 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
▪ ACT Heritage Unit	15 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
▪ Environment Protection Authority	5 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
Education & Training Directorate			
▪ School Capital Works	17 May 2012	Meeting Survey (long form)	Direct email communication and reminder follow up Written submission on behalf of ETD received 17 August 2012
▪ Government schools	17 May 2012	Meeting Survey (long form)	Direct email communication and reminder follow up Written submission on behalf of ETD received 17 August 2012

Stakeholder	Date of Consultation	Type of Consultation	Comments
<ul style="list-style-type: none"> Children's Policy and Education Unit 		Survey (long form)	Direct email communication and reminder follow up Written submission on behalf of ETD received 17 August 2012
Community Services Directorate			
<ul style="list-style-type: none"> Housing and Community Services 	17 May 2012	Multi stakeholder meeting Survey (long form)	Direct email communication and reminder follow up
Territory & Municipal Services Directorate			
<ul style="list-style-type: none"> Asset Acceptance 	5 June 2012	Telephone meeting Survey (long form)	Direct email communication and reminder follow up
<ul style="list-style-type: none"> Urban Treescapes 	14 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
Economic Development Directorate			
<ul style="list-style-type: none"> Coordinator General's Office 	14 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
Treasury Directorate			
<ul style="list-style-type: none"> Shared Services Procurement 	4 June 2012	Telephone meeting Survey (long form)	Direct email communication and reminder follow up
Associations			
<ul style="list-style-type: none"> Master Builders Association 	17 July 2012	Meeting Survey (long form)	Met with MBA officers and builder representatives Direct email communication and reminder follow up
<ul style="list-style-type: none"> Institute of Architects 	31 July 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
<ul style="list-style-type: none"> Canberra Business Council 	5 July 2012	Meeting Survey (long form)	Met with Planning, Infrastructure and Environment Taskforce representatives Direct email communication and reminder follow up
<ul style="list-style-type: none"> Planning Institute of Australia 	29 June 2012	Meeting Survey (long form)	Direct email communication and reminder follow up
<ul style="list-style-type: none"> Property Council of Australia 	25 June 2012	No meeting occurred following offer to meet Survey (long form)	Direct email communication and reminder follow up

Stakeholder	Date of Consultation	Type of Consultation	Comments
School Associations			
▪ Association of Independent (non-government) Schools	25 June 2012	Survey (long form)	Direct email communication and reminder follow up Written submission received 3 August 2012
▪ Catholic Education Office	25 June 2012	Survey (long form)	Direct email communication and reminder follow up
▪ Associations of School Principals (secondary)	25 June 2012	Survey (long form)	Direct email communication and reminder follow up
▪ Australian Primary Principals Association	25 June 2012	Survey (long form)	Direct email communication and reminder follow up
Community Councils			
▪ Inner South Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ North Canberra Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ Tuggeranong Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ Gungahlin Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ Woden Valley Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ Weston Creek Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
▪ Belconnen Community Council	25 June 2012	Survey (short and long) and offer to brief	Direct email communication and reminder follow up
Utility providers			
▪ Actew and ActewAGL	25 June 2012	Survey (long form)	Direct email communication and reminder follow up
▪ Icon	25 June 2012	Survey (long form)	Direct email communication and reminder follow up
▪ Telstra	25 June 2012	Survey (long form)	Direct email communication and reminder follow up

Endnotes

¹ Capital works definition - capital works is development that relates to the improvement or creation of an asset, and not to the maintenance of an asset.

² <http://www.economicstimulusplan.gov.au/pages/theplan.aspx>

³ Australian Government, *BER Guidelines*, Version 6 dated 15 March 2011, page 2 and http://www.det.act.gov.au/about_us/building_the_education_revolution

⁴ Australian Government, *BER Guidelines*, Version 6 dated 15 March 2011, page 9

⁵ *ibid*, page 2

⁶ *ibid*, pages 2&3

⁷ *ibid*, page 8

⁸ *ibid*, pages 15-16

⁹ *ibid*

¹⁰ Australian Government, *Building the Education Revolution Implementation Taskforce, Final Report*, July 2011, page 79

¹¹ *2011-12 Budget Paper No. 3*, ACT Treasury, page 129

¹² Adapted from instructions received by Tania Parkes Consulting from ESDD, April 2012

¹³ *ibid*

¹⁴ Explanatory Statement *Planning and Development Amendment Regulation 2009 (No 2)* (page 2) http://www.austlii.edu.au/au/legis/act/num_reg_es/padar200928o2009480.html

¹⁵ Section 1.99B, Planning and Development Regulation 2008 (ACT)

¹⁶ Adapted from Division 1.3.6A of the Planning and Development Regulation 2008 (refer <http://www.legislation.act.gov.au/sl/2008-2/current/pdf/2008-2.pdf>), and included in *Schools Development Application Exemption Survey* (practitioners survey), Tania Parkes Consulting 2012

¹⁷ Brief prepared by ESDD on analysis of the BERIT Final Report

¹⁸ Education and Training Directorate email dated 8 August 2012 from John Wynants, Senior Manager Strategy and School Improvement

¹⁹ ACT Government, *Engaging Canberrans – A Guide to Community Engagement*, page 13

²⁰ <http://www.iap2.org.au/>

²¹ Community Services Directorate email dated 8 August 2012 from Peter Johns, Senior Manager, Housing and Community Services

²² Education and Training Directorate letter to the School Development Approval Exemption Review dated 17 August signed by Mark Whybrow, Executive Director Corporate Services (pages 2-3)

²³ Education and Training Directorate letter to the School Development Approval Exemption Review dated 17 August signed by Mark Whybrow, Executive Director Corporate Services (page 3)

²⁴ ACT Government, *Canberra Social Plan 2011*, ACT Government, page 26