Regulatory Impact Statement

Planning and Development Amendment Regulation 2012 (No 1)

Subordinate Law 2012-18

Prepared in accordance with the *Legislation Act 2001*, section 34

Circulated by authority of

Simon Corbell MLA

Minister for the Environment and Sustainable Development

This Regulatory Impact Statement relates to substantive elements of *the Planning and Development Amendment Regulation 2012 (No M)* (the proposed law). This regulatory impat statement (RIS) is intended to guide policy formation on reforms to the *Planning and Development Regulation 2008* (the regulation).

This regulatory impact statement is in 3 parts:

(1) Executive summary

(2) Information required under section 35 of the Legislation Act 2001

(3) Conclusion

(1) EXECUTIVE SUMMARY

General

The most important proposed amendments to the regulation are a response to the challenges of improving environmental outcomes in the ACT.

The insertion of development approval (DA) exemption criteria for community gardens in schedule 1 demonstrates the Government's commitment to fostering community gardens in the ACT. For those wanting to establish a community garden on unleased land, the proposed law provides a 'one stop shop' approval process based on the existing Territory and Municipal Services (TAMS) licensing process and an exemption from the development approval (DA) process.

The proposed law also promotes good environmental outcomes by facilitating the implementation of car charging facilities for electric vehicles and improving the regulation of solar panel technology in the Territory. The proposed law inserts DA exemption criteria for electric car charging points in schedule 1 and clarifies and refines the existing exemption criteria for solar panels (s1.27).

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

There are a number of other provisions in the proposed law that do not meet the criteria for requiring a regulatory impact statement. These amendments are consequential or for clarification purposes. They are as follows:

- a clarification of the definition of "dwelling" in section 5 of the regulation to make it clear there must be at least 1 but not more than 2 kitchens
- an amendment to section 201 of the regulation for clarification reasons
- a clarification of general exemption criteria 4, s1.14 by including a reference to the *Environment Protection Act 1997* and consequential amendments as a result of this amendment
- an amendment of the DA exemptions for retaining walls and decks to restore the exemptions to the same policy position as it was under the previous *Land (Planning and Environment) Act 1991*. The exemption was inadvertently narrowed when it was transferred into the regulation.
- a clarification of the exemption for public works to make it clear public works include a kiosk and public amenities

A regulatory impact statement was prepared and tabled for the regulation and authorising law.

Common terms:

Community garden **–** defined in Part B of the Territory Plan as "the use of land for the cultivation of produce primarily for personal use by those people undertaking the gardening, including demonstration gardening or other environmental activities which encourage the involvement of schools, youth groups and citizens in gardening activities".

Vehicle charging point – a fixture which allows for the electric charging of a vehicle, which is attached to a building or structure and has a vertical area of not more than 0.5 metres squared; or is attached to a free standing column or bollard that is not more than 1.8m high and the plan area is not more than 1 metre squared.

Solar panel – an externally mounted photovoltaic panel on a block of land

Community Gardens

Defining the issues

The community's value of community gardens was stressed in the *Sustainable Future* workshops held by the ACT Planning and Land Authority in 2009-2010 and in the *Time to Talk 2030* workshops held by the Chief Minister's Department in 2010-2011, as one of the highest priority short and medium term actions. Advantages of community gardens include the potential to grow food locally,

improve food security, reduce greenhouse gas emissions, improve physical and mental health, support active living and foster a spirit of community co-operation.

From these workshops, it was apparent that prospective community gardeners were unsure how to establish a community garden in the ACT and whether a development approval (DA) was required. While there is currently the option for a community group to apply to the land custodian, namely the Territory and Municipal Services Directorate (TaMS), for a licence over unleased land there appears to be some uncertainty about the process, and ambiguity about the need for a development application.

Options to address the issues

- Maintain the status quo. This means people would need to research schedule 1 of the regulation to determine if what they planning for the community garden is an exempt thing or requires development approval.
- Expand the existing licensing system which is currently managed by TaMs. This option would not be as accessible, transparent or "black and white" as a well drafted regulation.
- Provide "black and white" DA exemptions in schedule 1 of the regulation (a 'one-stop shop')

The Government's commitment in 2011 to establishing a 'one stop shop' for community gardens was tabled in the Legislative Assembly as '*Response to Resolution of 9 March 2011 relating to Community Gardens'* on 28 June 2011 by Simon Corbell MLA Minister for Environment and Sustainable Development. The response which was prepared by an interagency working group confirmed the Government's support for the establishment and operation of community gardens. The key initiatives set out in the response were:

- the concept of a "one stop shop" approval process for community gardens on unleased land via a TaMs licensing process
- the exemption of community gardens on unleased land from development approval; and
- the insertion of a definition of 'community garden" in the territory plan (this was done by Approved Technical Amendment 2011-23 commencement date 7 October 2011)

Costs and benefits

Benefits

The gardens will improve the amenity of urban land, and encourage community participation and social cohesion. The growth of sustainable local produce has a positive effect on nutrition, reduces food miles and promotes food security. Community gardens have many benefits including:

* Health and well being – gardening as a form of physical activity, access to fresh food

* Social connectedness – enhancement of social life by increasing social cohesion and bringing together people from different ethnic and cultural backgrounds

* Food and economic security – access to locally grown food, reduction of household food costs, sale of surplus produce, the creation of food cooperatives and markets

* Psychological – sense of purpose and comfort as well as peace and relaxation

* Education - sharing of skills, knowledge and practices

* Environment/sustainability – access to land by utilising public open spaces

* Management of public space – contribute to the protection and use of public open space. The development of unused spaces adds value to the land and increases the amount of functional green spaces

Costs

The proposed waiver of the $1,243 licence application fee will mean a loss of income to the Territory. However, it is the Government's view that the substantial environmental, social and health benefits of community gardens significantly outweigh this cost. In the past 5 years only one license has been given and that was given to the Canberra Organic Growers Society (COGS). In order to reduce the financial impact, eight COGS managed gardens were included on the one license with only one application fee. The intention is to simply add new COGS gardens as a variation to the existing license without requiring an additional application fee.

People will need to apply for membership of a community organisation to access the garden. As the community garden lots will be fenced off and gated, they may be seen as less inclusive and limiting access to unleased land. However, all members of the community are entitled to apply for membership of the community organisation. In addition to this, the fence will be mesh, so that the garden can still be seen and potentially enjoyed by the public.

Exemption from DA means there is no public notification of the proposed development through the DA process. However, this disadvantage is overcome by the fact that community consultation is required by TaMs as part of the licensing process for a community garden. Members of the community who may be impacted by a proposed community garden will be provided with details of the project and will have the opportunity to make comments to TaMS on the proposal.

The following table provides a summary of advantages and disadvantages.

Sector	Costs	Benefits
Business/ Industry		Greater opportunities for business eg construction of infrastructure on gardens – garden beds, soil, sheds, provision of plants and gardening equipment
Government	Proposed waiver of licence application fee is a loss of $1,243 per application; loss of DA application fee	Clearer approval processes for unleased land; community gardens as a purposeful common space connecting with people and groups in the wider community
Community	Some loss of access to public land because the gardens may be accessible only to members of the garden (however, membership is open to anyone to apply to join a garden organisation); fencing of public open space Loss of ability to comment on the development through the DA process	Less “red tape” and less cost to establish a garden; social (eg friendships, interests), cultural (eg refugee programs), health (eg exercise, active ageing, fresh food) environmental, educational, psychological and economic benefits for gardeners; community engagement and strengthening; skills exchange

Environment		Reduction of greenhouse gas emissions from transport with locally produced fruit & vegetables for personal use Gardens may improve the amenity of public land

Consultation

Community gardens were identified as an important initiative in *Time to Talk 2030* community forums conducted by the Chief Minister and Cabinet Directorate. A conference on community gardens was hosted by the University of Canberra in October 2010 with funding support from the Land Development Agency and the former DECCEW. An interagency working group established in February 2011[1] undertook research into government policies and initiatives for community gardens in Australia and overseas. The May 2011 background paper "*A Community Gardens Policy for the ACT: Towards a new Garden City*"[2] outlined the many social and environmental benefits of community gardens.

Consultation with key stakeholders and user groups, such as the Canberra Organic Growers Society, has been undertaken on an on-going basis with the development of these initiatives.

A discussion paper on draft site selection criteria for community gardens in the ACT is currently being prepared by ESDD and is due for release in April 2012.

As indicated above, TaMS undertake community consultation as part of the licence application process.

Electric car charging points

Defining the issues

The Government's 2011-2021 Infrastructure Plan identified a transport system that integrates sustainable urban development, which supports the environmental and economic goals of the ACT,

[1] The community gardens inter-agency working group was comprised of officers from the former ACTPLA, TAMS, LAPS, LDA, ACT Health, Treasury, Education and Training, Housing and Community Services, Sport and Recreation, and Department of Environment, Climate Change, Energy and Water.

[2] ACTPLA on behalf of the Community Gardens Interagency Working Group, "*A Community Gardens Policy for the ACT: Towards a new Garden City*", background paper, May 2011

and supports efficient and sustainable freight transport, as a significant priority. It was proposed that this be achieved through an investigation of opportunities to introduce electric vehicle technology in the Territory within two years, and providing infrastructure to support new vehicle technology like electric vehicles within five years (pp32 and 64).

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

> "The ACT Government supports the use of electric vehicles as one way of promoting a clean and sustainable future for Canberra and helping to achieve a 40% reduction in greenhouse gas emissions from 1990 levels by 2020. The ACT Government is also a foundation member of the Better Place Australia electric car network which is being rolled out across Canberra and will play a key role in the transition from petrol to electric driving in the region. This trial will also be used to inform our use of that network."

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

One of the main obstacles for people interested in electric vehicles is the lack of charging points outside the home. The lack of recharge points out on the road limits the range and length of possible trips and also discourages the use of electric cars because of an anxiety about running out of battery charge whilst away from the home. In order to ensure the car can continue to operate whilst out on the road for reasonable lengths of time, there needs to be a network of recharging points in the same way (but for the moment not on the same scale) as petrol stations provide refuelling places for fuel driven vehicles.

Exempting the car charging points from the development approval process will remove a costly disincentive in both time and money to installing the charging points.

The company, Better Place Australia, has chosen the ACT as a suitable place for the roll out of a public electric vehicle support infrastructure. The infrastructure will include battery change and plug in facilities. Better Place Australia is a company set up with the aim of promoting electric car ownership via a revolutionary battery switch model. The company will provide a network of charge points to keep electric cars topped up, at home and on a journey. For longer journeys, Better Place

will provide Battery Switch Stations which use a robotic system to exchange depleted batteries for fully charged ones. Better Place supply the battery, so the car costs less to buy. The car owner pays a low monthly membership fee that covers battery and energy use. This reduces the upfront cost of an electric vehicle and ensures that drivers will always have access to a high performance battery. Better Place provides only 100% renewable energy to power the electric cars. The company's website is www.betterplace.com.au

Options to address the issues

- Maintain the status quo – no government involvement, wait for the technology to be adopted in its own time, delay installation of charging points by requiring the full development application process. Does not facilitate the uptake of electric vehicles in the community, impending environmental issues such as peak oil and climate change are not addressed, requires private and public resources to be applied to regulating, through a DA, essentially something that is a minor capital work

- ACT Government subsidies for electric vehicle technology. Does not solve current infrastructure issues, expensive, hard to do this in a small jurisdiction

- Provide incentives for transition to electric, such as DA exemptions for car charging points. Helps provide infrastructure. Current arrangement with Better Place Australia means that Canberra can lead the country on electric vehicle technology (PREFERRED OPTION)

Costs and benefits

A summary of costs and benefits is set out in the table below.

Sector	Costs	Benefits
Industry/business	Increase in use of electric cars may impact on car industry which is presently petrol based	Promotes sale of electric cars and building of associated infrastructure eg stations to replace batteries; encourages research, development and building of environmentally beneficial technology and infrastructure

Government	Loss of DA application fee	Helps meet Government's environmental goals; infrastructure provided at less cost to the Government and less of a drain on Government resources
Community	Loss of ability to comment on development proposals; loss of amenity caused by the built form of renewable energy sources	Facilitates the uptake of electric cars; reduces anxiety about running out of battery power; cleaner environment eg air pollution reduced; employment opportunities
Environment		Reduction of greenhouse gases emissions; use of 100% renewable energy supply encourages production of these types of energy sources

Consultation

Electric vehicles have been endorsed by the NRMA as key stakeholder and identified as a significant target in the Government's Infrastructure Plan (a result of consultation with stakeholders etc). The Canberra branch of the Australian Electric Vehicle Association has provided comments on ACT Government's energy policy.

Solar panels

Defining the issues

Existing section 1.27 of Schedule 1 of the regulation sets out parameters for DA exemption for external photovoltaic panels, heaters and coolers. The present exemption has been in place since 2008, and has been embraced by the community, with many new solar panels being installed in the Territory. The present exemption covers solar panels, external heaters and coolers.

Operational experience, improvements in technology, an increased interest and uptake of solar technology and a developing government policy of promoting solar energy in Canberra prompted a review of the section. The review determined that the exemption as presently drafted was too wide and needed refinement to ensure development applications were required in appropriate circumstances. The criteria for the exemption of solar panels from development approval required revision to ensure that solar panels that will have significant impacts on the solar access of neighbouring premises are subject to a development application.

Options to address the issues

- Maintain the status quo. While this option maintains the current solar panel exemption, it does not answer community concerns re amenity of adjacent blocks. May result in inappropriate solar panel installations.
- Repeal the current DA exemption and require development applications. Will hinder the uptake of solar panel technology, a backwards step in transitioning the ACT to renewable energy sources.
- Refine the current DA exemption, separating solar panels from external heaters and coolers and making the parameters for solar panels stricter to ensure public amenity is maintained.

Costs and benefits

The benefits of refining the current DA exemption include:

(1) it builds upon an existing process that generally is working well
(2) it provides greater clarity to community and industry on what exactly is covered by the exemption
(3) it recognises the special status of solar panels by separating them from heaters/coolers
(4) it ensures that the solar amenity of adjacent blocks is preserved whilst still allowing for some installations to occur without the regulatory burden of the development approval process, that is, it provides a better balance between encouraging renewable energy sources and the protection of community amenity
(5) there are no additional costs to those already existing under the exemption for solar panels, heaters and coolers

A summary of costs and benefits of maintaining the DA exemption for solar panels is set out in the table below.

Sector	Costs	Benefits
Industry/Business		Increase in the number of installations of solar panels
Government	Loss of DA application fee	Helps meet Government's environmental goals
Community	Loss of ability to comment on proposed developments	Fosters the use of sustainable renewable energy; ensures amenity and solar access remains adequate
Environment	Production and disposal of solar panels	Renewable low carbon source of power

Consultation

The proposed amendment is a response to feedback from the community and industry on the existing exemption.

(2) INFORMATION ABOUT THE PROPOSED LAW AS REQUIRED BY SECTION 35 OF THE *LEGISLATION ACT 2001*.

(a) The authorising law

Subsection 133(a)(iii) of the *Planning and Development Act 2007* provides that development may be made exempt from requiring development approval under a regulation.

(b) Policy objectives of the proposed law and the reasons for them

The policy objectives of the proposed law are to:

1. Promote good environmental outcomes in the Territory.
2. Simplify the administrative processes for electric car charging points and creating community gardens, to ensure that these options are accessible to the Canberra community.
3. Ensure that the solar panel DA exemption continues to meet the needs of the Canberra community.

Furthermore, the policy objectives of the proposed law are, in part, to further the policy objective behind the Act, that is, a planning system that is simpler, faster, and more effective. The Act has now been in operation since 31 March 2008 and through monitoring of the operation of the Act and in consultation with industry it is evident that greater efficiencies can be achieved ahead of broader DA exemptions. The proposed law introduces changes that enhance the operation of the existing DA exempt process. For a more complete discussion of this subject please refer to Appendix A.

(c) Achieving the policy objectives

The proposed law achieves the policy objectives by creating exemptions from development approval for community gardens and electric car charging points, and refining the solar panels DA exemption.

Community gardens

The proposed law achieves the policy objective of facilitating the establishment of new community gardens by providing a 'one stop shop', in which prospective gardeners apply to TaMS for a licence over unleased land, and can build their gardens including any infrastructure without a development application provided they meet the criteria in the new DA exemption for community gardens and the provisions of the Territory Plan. The proposed law exempts community gardens on unleased land from the requirement of development approval subject to the grant of a licence to be administered by Territory and Municipal Services (TaMS) under Part 9.11 of the Planning and Development Act or where the community garden is on an existing school campus and where the

community garden meets the stated general exemption criteria. The requirement of a licence from TaMs provides a mechanism for overseeing the location and size of gardens. For gardens on school campuses the lessee (Education) and the lease itself provide the overseeing mechanism. The definition of community garden in the proposed law also caters for the establishment of what is commonly known as "kitchen gardens" on school campuses. These gardens are cultivated by the students to provide fresh food for the school canteen and for educational purposes.

New Division 1.3.3A (Exempt developments – community gardens) contains comprehensive provisions that define a community garden and outline the criteria for structures which may be included in a community garden without the need for development approval. The new division helps to establish a 'one stop shop' for setting up community gardens. Rather than having to look through all the provisions of schedule 1 to see if what they are planning is exempt development, a person setting up a community garden can go straight to the new division which contains clear and comprehensive criteria for what garden infrastructure is exempt from development approval.

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

It is still possible for a person to make use of other relevant DA exemptions in schedule 1 if that item is not mentioned in the new division - for instance, there is no criteria for retaining walls in the new division and so the existing exemption in schedule 1 for retaining walls can be used when building a retaining wall in the community garden.

Electric car charging points

The proposed law will allow the installation of electric vehicle charging points without the need for a development approval. It is intended that the exemption will facilitate the provision of infrastructure to accommodate electric vehicle technology in Canberra and provide an incentive to use electric vehicles. The DA exemption sends a clear policy message about the importance of electric vehicles to the Territory, and provides a simpler process for the installation of car charging points, which is user-friendly and avoids the delays often associated with government red tape. The installation of vehicle charging points will provide a network to keep electric vehicles 'topped up' and ensure that vehicles can continue to operate whilst out on the road for reasonable lengths of time. It is anticipated this will encourage and promote community use of electric vehicles.

The charging points are basically small structures and of low impact and may already be exempt structures. The purpose of the proposed law is, therefore, to remove any doubt and to make it clear that the structures are exempt development provided they are built within the parameters set out in the exemption.

Solar panels

By refining the DA exemption for solar panels, the ACT Government continues to demonstrate its commitment to fostering renewable, environmentally friendly energy, while at the same time being responsive to the needs of the community.

New section 1.27A of the Planning and Development Regulation stipulates the following exemption criteria for an externally mounted solar panel:

1. No part of the panel is within 1.5m of a side boundary or rear boundary of the block
2. If the panel is a protruding panel, no part of the panel is more than 300mm above the closest point of the roof; or no part of the panel restricts solar access to another block
3. If the panel is mounted on the ground, no part of the panel is between a front boundary and a building line for the block; and
4. the designated development complies with the general exemption criteria, other than criterion 8

These restrictions provide clarity for industry and preserves amenity for neighbours who are concerned about large panels limiting their solar access.

(d) Consistency of the proposed law with the authorising law

The authorising law, section 133(c) of the Act (What is an exempt development?), entitles the regulation to prescribe development that is exempt from requiring development approval.

Under s133 of the Act, section 20 of the regulation (Exempt developments—Act, s 133, def exempt development, par (c)), specifies development that is DA exempt. In summary, under s20 of the regulation, schedule 1 lists exempt development. Development may also be exempt notwithstanding non-compliance with schedule 1 provided the non-compliance meets criteria in schedule 1A. Note the development tables of the Territory Plan may also specify development that is DA exempt (refer s133) and development specified in s134 of the Act is also DA exempt.

The proposed law is within the parameters of the authorising law, section 133 of the Act. It is relevant to note that the proposed law does not create entirely new categories of DA exemptions but

instead broadens the circumstances in which current DA exemptions can apply. This is achieved by adding a new division 1.3.3A (Community gardens) and new section 1.113 (Vehicle charging point) to Schedule 1, and amending existing section 1.27. As pointed out above, the criteria for the things in the community gardens division are based on the criteria for similar things already in schedule 1 with some variations to cater for certain special requirements for community gardens.

As indicated in Appendix A, the proposed law is also consistent with the Government objectives behind the making of the Act and the objects stated in section 6 of the Act.

(e) The proposed law is not inconsistent with the policy objectives of another Territory law

The proposed law is not inconsistent with the policy objectives of another Territory law.

(f) Mutual recognition issues

Solar panels

Other jurisdictions have taken a similar approach to the proposed law – exempting solar panels from council approval if certain specifications are met. In early 2009, South Australia began exempting solar panels from building or planning approval if the weight of the array of panels was less than 100kilograms. The Minister for Urban Development and Planning at the time indicated South Australia had about 40% of the nation's grid connected solar panels and five times the number of household installations of the next highest state. In NSW solar panels are exempt development if the requirements in clauses 20(2) and 39 of *State Environment Planning Policy (Infrastructure) 2007* are met. They include certain limits on the protrusion of the panels from buildings and the generating capacity of the panels.

Community gardens

The challenge when regulating community gardens is that no two community gardens are identical with each garden being structured to reflect the aspirations of the particular group managing and cultivating it. This challenge is reflected in the various approaches taken in other jurisdictions to regulating community gardens. The table below summarises some of the approaches.

It is apparent that other jurisdictions have taken a similar approach to that envisaged by the proposed law. Government's increased interest in promoting and facilitating community gardens is reflected in the development of a policy document which provides clear information for the community about how to set up a garden. Some jurisdictions still require a development approval. However, others do not – for instance, the City of Sydney does not require development approval

provided applicants go through the application process set out in its policy document and common elements of a community garden such as rainwater tanks, fences and solar panels are exempt if already listed as exempt development.

The proposed law takes a similar approach to the City of Sydney – applicants need to go through the licensing process with TaMs and ACTPLA to be DA exempt and then structures on the garden may be exempt if they meet the required specifications. The proposed law goes one step further by placing most of these things in the one place in the regulation and providing the community with a "one stop shop". This approach provides clear direction to community members wanting to set up a community garden. Clarity and certainty about the process is likely to encourage the establishment of more gardens by community members.

Overall, the proposed law seems comparable with other jurisdictions based on a model of government input in to the setting up of the garden in conjunction with a clear framework for gardeners that assists them to know what is required of them and which facilitates the establishment of a garden by reducing unnecessary regulatory burdens such as development approvals where appropriate.

Name of Council	**Policy**	**Agreement type**	**Development approval required?**
Wollongong NSW	Land Management Policy	Licence	Yes
City of Sydney NSW	City of Sydney Community Gardens Policy 2010	Licence since 2010 (previously informal agreement)	Garden exempt, structures exempt if comply with other NSW exemption legislation
Woollahra NSW	Community Garden policy 2011	Licence	Yes but not for garden beds
Randwick NSW	Comm Gardns Policy 2010	Licence	Yes
Marrickville	Com Gardens Policy Direction	Lease	May be required

NSW			
Willoughby NSW	Community gardens Policy 2010		May be required
Byron Shire NSW	Community Gardens Policy 2010	Licence/permit	Exempt under SEPP clause 65(3)
Adelaide City		Lease/licence	No
Maroochy Shire Queensland	Community Gardens Policy and Guidelines 2011	Lease	
Auckland City Council New Zealand	Enabler of community gardens rather than provider	Garden to comply with City's District Plan and Local Government Act	

(g) Reasonable alternatives to the proposed law

There are no reasonable alternatives that will respond to each of the policy objectives identified.

The options have been discussed at the beginning of this RIS.

(h) Brief assessments of benefits and costs of the proposed law

Some of the benefits and costs of the proposed law and individual items have been discussed at the beginning of this RIS. In addition to these key costs and benefits, the following is also relevant.

Development approvals have statutory timeframes, may require public notification, referral to other agencies and formal amendment if there is an existing DA. The proposed law reduces timeframes by removing the need for a DA and reduces costs, including the application fee and costs other than the application fee. For example:

- for a DA that requires public notification, fees are levied to cover the public notification process. Public notification fees range from $215 for *minor* notification to $830 for *major* notification. The proposed law removes the need for these fees for development proposals that will no longer require development approval.
- to amend an existing Merit track DA attracts a fee of $550 for the first five amendments then $70 per amendment in addition to public notification costs.

The proposed law removes unnecessary regulatory burdens and broadens the circumstances in which DA exempt development can occur and ensures consistency in the application of the exempt development framework. This means that if a development is an exempt development, it is always an exempt development irrespective of whether it is done as part of other development or separately. The consistency provided by the proposed law will greatly assist home-owners, builders and developers to understand when a DA is required therefore delivering the core objectives of the planning system, that is, greater certainty, transparency and clarity.

Further, the proposed law, by ensuring greater certainty provides an opportunity for the planning and land authority to direct limited resources to the assessment of more complex development proposals. This has a flow-on benefit of delivering greater efficiencies in relation to those developments that require development approval thus allowing building to commence sooner and costs to be kept to a minimum. More efficient use of government funds and resources has obvious benefits for the public in general.

There are no significant whole of Government budget implications in respect to this regulation.

The original regulatory impact statement (for the Planning and Development Act) identified the potential for a progressive loss of income as the reforms were rolled-out. Consequently, a loss of fee income to the authority, due to the reduced number of DA applications lodged for developments that are to be DA exempt, was flagged in Government decisions on these reforms.

(i) Brief assessment of the consistency of the proposed law with Scrutiny of Bills Committee principles

The legislative reform introduced by the Planning and Development Act was comprehensive and the Act and regulations formed an integral part of a single package of planning reforms. The regulation, which is to be amended by the proposed law, was developed more or less concurrently with the Act and gave effect to matters the Act allows to be prescribed by regulation.

The proposed law refines the regulation, made under the Act, without making substantive changes, except for the matters discussed below. The discussion below demonstrates that the proposed law is consistent with the Committee's principles.

Furthermore, general principles of the authorising law have been assessed by the Human Rights Commissioner and all issues responded to.

The matter that needs to be addressed by this Regulatory Impact Statement in terms of consistency with the Committee's principles is the reduction in the ability to comment on proposed development.

Development in the merit and impact tracks must be publicly notified and open to public comment (see section 121 and 130 of the Act). Public notification can be either *minor* or *major*, depending on the particular development proposal.

The proposed law, in some cases by broadening the circumstances in which development may occur without development approval, will impact on the ability to comment on such development. Further, there is no public notification process for DA exempt development as it does not require development approval.

There may be some concern that more exempt development is being allowed and this could be perceived as an erosion of community opportunity to comment. However, there has been limited public complaint about DA exemptions and the types of things which are exempt, and industry (that works daily with exempt developments) has acknowledged the benefits that DA exempt development offers.

The exemptions in the new division for community gardens are based on exemptions for similar things elsewhere in schedule 1 and as such are not new. The purpose of the division is to create a "one stop shop" for those wishing to set up a community garden. The exemption for solar panels which is being refined by the proposed law has been in existence since 2008 and car charging points can be regarded as small scale infrastructure which are unlikely to attract public comment or have any significant impact on the amenity of the environment. Furthermore, the community will continue to have the opportunity to comment on proposed community gardens as part of the licensing process through TaMs.

The impacts of the proposed law are minimal and justified because the range of things prescribed in Schedule 1 has now been successfully used within the community since 31 March 2008. During this time, the authority has been monitoring the performance of the exempt development process and

no significant compliance issues have been identified. Further the authority, in proposing these changes, is acknowledging operational experience, responding to industry feedback, and ensuring that the DA exemption framework is consistent in its approach and application.

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

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

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

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

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

Schedule 1 of the *Planning and Development Act 2007*, item 4, column 2, par (b) creates a power to make regulations to exempt specified matters in the merit assessment track from being subject to third party ACAT merit review. Regulations have been made to exempt certain matters from third

party ACAT merit review. These include sections 350 and 351 of the regulation and also schedule 3 of the regulation which exempts third party appeals for all development in industrial areas and within the geographic areas of Civic and the town centres of Gungahlin, Belconnen, Woden and Tuggeranong and in some specific commercial areas.

The proposed law is justified on the basis that it continues the Government's ongoing policy of improving the development assessment process within town centres, Civic and industrial areas by increasing certainty and reducing delays and costs. Persons that may be affected by particular development applications in these areas continue to have the ability to make submissions on individual development applications as well as territory plan variations that establish the overall planning policy for these areas.

(3) CONCLUSION

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the *Legislation Act 2001*. An Explanatory Statement for the proposed law has been prepared for tabling.

Appendix A

Policy objectives of the proposed law

The substantive changes proposed to the regulation by the proposed law extend reforms implemented through the planning system reform project. The main aim of the reform project was to improve timeliness, transparency and efficiency in the planning process.

One of the ways the Act achieves this aim is by allowing straightforward developments to be exempt from requiring a development approval (DA). Under the Act, section 133 and 135, the *Planning and Development Regulation 2008* may prescribe those things that do not require development approval (refer section 20 and Schedule 1). Development that does not require development approval is DA exempt development. Section 20 and Schedule 1 of the regulation exempt specified development from requiring a development approval.

The types of development prescribed in Schedule 1 include such things as single dwellings and small structures such as sheds, garages and pergolas. In the majority, the range of things prescribed in Schedule 1 has now been successfully used within the community since 31 March 2008. During this time, the authority has been monitoring the performance of the exempt development process and no significant compliance issues have been identified.

The original regulatory impact statement (for the Act) identified the potential for a progressive loss of income as the reforms were rolled-out. Consequently, a loss of fee income to the authority, due to the reduced number of DA applications lodged for developments that are to be DA exempt, was flagged in Government decisions on these reforms.

As the proposed law enacts the policy objectives of the Act, a brief summary of the pertinent policy objectives behind the Act is provided.

Policy objectives behind the Act

One of the key policy objectives of the Government in the development of the Act was to make the planning system simpler, faster and more effective. Pages 2-3 of the Revised Explanatory Statement for the Act states that:

> "The Bill is intended to make the Australian Capital Territory's (ACT's) planning system simpler, faster and more effective. The Bill will replace the existing *Land (Planning and Environment) Act 1991* (the Land Act) and the *Planning and Land Act 2002*.

The objective of the Bill is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT in a way that is consistent with the social, environmental and economic aspirations of the people of the ACT, and which is in accordance with sound financial principles.

The most significant change under the Bill is simplified development assessment through a track system that matches the level of assessment and process to the impact of the proposed development. As well as being simpler, more consistent, and easier to use, this system is a move towards national leading practice in development assessment …

The Government wishes to reform the planning system to save homeowners and industry time and money and give them greater certainty about what they need to do if they require development approval. …

The new system will have less red tape and more appropriate levels of assessment, notification and appeal rights. This will make it easier to understand what does and does not need approval, what is required for a development application and how it will be assessed. …"

One of the methods for achieving a simpler, faster, more effective planning system was for the law to permit more developments to proceed without having to go through the development approval process. This approach was noted on page 3 of the Revised Explanatory Statement for the Act:

"The proposed reforms are:

* ***More developments that do not need development approval*** [emphasis added]

* Improved procedures for notification of applications and third party appeal processes that reduce uncertainty

* Clearer assessment methods for different types of development

* Simplified land uses as set out in the territory plan

* Consolidated codes that regulate development

* Clearer delineation of leases and territory plan in regulating land use and development

* Enhanced compliance powers. …"

The objective for a simpler, faster, more effective planning system is relevant to concepts of "orderly development" and "economic aspirations of the people of the ACT" which are embedded in the object of the Act (section 6):

> **"6 Object of Act**
>
> The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—
>
> (a) consistent with the social, environmental and economic aspirations of the people of the ACT; and
>
> (b) in accordance with sound financial principles."

The policy objectives of the proposed law are to further the policy objective behind the Act, that is, a planning system that is simpler, faster, and more effective. The Act has now been in operation since 31 March 2008 and through monitoring of the operation of the Act and in consultation with industry, it is evident that greater efficiencies can be achieved. The proposed law, as well as clarifying certain provisions of the regulation, introduces changes that enhance the operation of the existing DA exempt process. The proposed law extends the things that can be DA exempt as well as clarifying existing exemptions.

The proposed law is also consistent with related objectives as indicated in section 6 of the Act, that is, of a land system that contributes to "the orderly and sustainable development of the ACT consistent with the social, environmental and economic aspirations of the people of the ACT". This is because the proposed law does not remove any significant categories of development from the development application and approval system. Instead, the law extends the circumstances in which current DA exemptions can apply.

In summary, the proposed law is consistent with one of the principal aims behind the authorising law, which was to create a planning and development assessment system that is simpler, faster and more effective. The exempt category offers significant savings in time, effort and costs