



Australian Capital Territory

Planning and Development Regulation 2008

SL2008-2

made under the

Planning and Development Act 2007

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About this republication

The republished law

This is a republication of the *Planning and Development Regulation 2008*, made under the *Planning and Development Act 2007* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 25 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 25 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Planning and Development Regulation 2008

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Chapter 1 Preliminary

1 Name of regulation

This regulation is the *Planning and Development Regulation 2008*.

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*community use*—see the territory plan (13 Definitions).' means that the term 'community use' is defined in the territory plan and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Meaning of *dwelling*—regulation

(1) In this regulation:

dwelling—

(a) means a class 1 building, or a self-contained part of a class 2 building, that—

(i) includes the following that are accessible from within the building, or the self-contained part of the building:

(A) not more than 2 kitchens;

- (B) at least 1 bath or shower;
 - (C) at least 1 toilet pan; and
 - (ii) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and
 - (b) includes any ancillary parts of the building and any class 10a buildings associated with the building.
- (2) In this section:
- kitchen*** does not include—
- (a) outdoor cooking facilities; or
 - (b) a barbeque in an enclosed garden room.

Chapter 2 Strategic environmental assessments

10 Meaning of *proposal*—ch 2

In this chapter:

proposal, for a strategic environmental assessment, means—

- (a) for an assessment prepared under the Act, section 100 (Preparation of strategic environmental assessments)—the matter to which the assessment relates; or
- (b) for an assessment prepared under the Act, section 103 (2) (Review of territory plan)—the review of the territory plan to which the assessment relates.

11 Development of strategic environmental assessments—Act, s 101 (a)

- (1) A person developing a strategic environmental assessment must complete each of the following stages:
 - stage A—setting context and establishing baseline
 - stage B—developing alternatives and deciding scope
 - stage C—assessing environmental benefits and impacts
 - stage D—consultation
 - stage E—monitoring, if a decision is made at stage C that monitoring is required.

(2) To remove any doubt—

- (a) the person does not have to complete the stages in any particular order; and
- (b) the person may complete more than 1 stage at a time.

Example

A person may carry out consultation (stage D) during the course of considering alternatives (stage B) and again when assessing environmental benefits and impact (stage C).

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Stage A—setting context and establishing baseline

A person developing a strategic environmental assessment must, in completing stage A, set the context for the proposal and establish the baseline for the strategic environmental assessment by—

- (a) screening the proposal; and
- (b) establishing the environmental baseline; and
- (c) identifying the environmental issues; and
- (d) setting the objectives for the strategic environmental assessment.

13 Stage B—developing alternatives and deciding scope

- (1) A person developing a strategic environmental assessment must, in completing stage B, develop alternatives for the proposal and decide the scope of the strategic environmental assessment by—

- (a) considering alternatives to the proposal; and

Examples—alternatives

- 1 alternative siting within the proposed location or at another location
- 2 alternative uses of the site
- 3 alternative designs

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) deciding and finalising the scope of the strategic environmental assessment; and
- (c) preparing a document about the scope of the strategic environmental assessment (a ***SEA scoping document***).

- (2) The SEA scoping document must contain the following:

- (a) the aims and objectives of the strategic environmental assessment;
- (b) the relevant policies, plans and programs to be considered in the strategic environmental assessment;
- (c) the methods to be used in the strategic environmental assessment, including—
- (i) assessment requirements; and
 - (ii) indicators to be used; and
 - (iii) data requirements; and
 - (iv) the range of supporting studies to be considered, or to be commissioned;

- (d) the key environmental issues to be addressed in the strategic environmental assessment.

14 **Stage C—assessing environmental benefits and impacts**

A person developing a strategic environmental assessment must, in completing stage C, assess the environmental benefits and impacts of the proposal by—

- (a) assessing the effects of the proposal against the SEA scoping document having regard to the following:

Note The SEA scoping document is prepared in stage B (see s 13).

- (i) the probability, duration, frequency and reversibility of the effects of the proposal;
- (ii) the cumulative nature of the effects of the proposal, both positive and negative, and any identified alternatives to the proposal;
- (iii) whether the effects of the proposal are likely to extend outside the ACT;
- (iv) the risks to any identified environmental values;

Examples—identified environment values

- 1 environmental values identified in the SEA scoping document
- 2 environmental values identified or targeted in relevant:
 - plans (eg *The Canberra Spatial Plan*)
 - strategies (eg *The Climate Change Strategy 2007-2025*)
 - threatened species management plans

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (v) the magnitude and spatial extent of the effects of the proposal;

- (vi) the effects of the proposal on areas or landscapes that have a recognised local, regional or national protection status; and
- (b) considering how the environmental impacts can be managed through mitigation, offsetting, avoidance or another way.

15 Stage D—consultation

- (1) A person developing a strategic environmental assessment must, in completing stage D, carry out consultation about the strategic environmental assessment by—
 - (a) preparing a plan (a **consultation plan**) for the consultation; and
 - Note* The consultation plan must be agreed to by either the Minister or chief planning executive (see s (3)).
 - (b) carrying out consultation in accordance with the consultation plan; and
 - (c) after consultation is complete, preparing a report (a **consultation report**) about the consultation that includes comments received during consultation.
- (2) The consultation plan must—
 - (a) identify the approach to be taken for public consultation; and
 - (b) include a list of stakeholders.
- (3) Before carrying out the consultation, the person must have the following person's agreement to the consultation plan:
 - (a) for a strategic environmental assessment prepared at the Minister's direction under the Act, section 100 (1) (Preparation of strategic environmental assessments)—the Minister;
 - (b) for a strategic environmental assessment prepared under the Act, section 100 (2) or section 103 (2) (Review of territory plan)—the chief planning executive.

16 Stage E—monitoring

A person developing a strategic environmental assessment must, in completing stage E, monitor the strategic environmental assessment by—

- (a) developing a monitoring plan; and
- (b) if required by the monitoring plan—establishing a monitoring regime; and
- (c) if appropriate—carrying out remedial action.

Note This stage is required only if a decision is made at stage C that monitoring is required (see s 11).

**17 Contents of strategic environmental assessments—
Act, s 101 (b)**

- (1) A strategic environmental assessment must contain the following:
 - (a) a non-technical summary of the strategic environmental assessment, including a summary of the recommendations;
 - (b) an outline of—
 - (i) the content of the proposal; and
 - (ii) the main objectives of the proposal; and
 - (iii) the proposal's relationship (if any) with any relevant plans (for example, *The Canberra Spatial Plan*) or planning policies;

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) a description, including a description of the environmental, social and economic characteristics of—
 - (i) the area covered by the proposal; and
 - (ii) the region around the area covered by the proposal;

- (d) a description of the environmental characteristics of any area likely to be significantly affected by the proposal, including—
 - (i) any existing environmental issues that are relevant to the proposal, including those relating to any areas of particular environmental importance; and
 - (ii) any plans to improve environmental management objectives relating to territory and national legislation and agreed policies;

Examples—policies

- 1 climate change policy
- 2 COAG climate change adaptation framework

- (e) details of all processes and methods used in the strategic environmental assessment;
- (f) an assessment of the likely environmental effects of the proposal, including the results and findings of the matters identified in the SEA scoping document;

Note The SEA scoping document is prepared in stage B (see s 13). Assessment of environmental benefits and impacts is carried out in stage C (see s 14).

- (g) a discussion of the alternatives for the proposal including—
 - (i) an outline of the reasons for selecting, or not selecting, the alternatives; and
 - (ii) a description of how the alternatives were assessed; and
 - (iii) details of any difficulties in assessing the alternatives;

Examples—difficulties

- 1 technical deficiencies
- 2 lack of expertise

Note Development of alternatives is carried out in stage B (see s 13).

- (h) the measures proposed to avoid or manage any significant adverse environmental effects of implementing the proposal, including a description of any measures required for monitoring;
 - (i) recommendations about how conclusions of the strategic environmental assessment should be considered in future planning.
- (2) The following documents must be attached to the strategic environmental assessment:
 - (a) the SEA scoping document;
 - (b) the consultation plan;
 - (c) the consultation report.

Note The SEA scoping document is prepared in stage B (see s 13). The consultation plan and consultation report are prepared in stage D (see s 15).

Chapter 3 Development approvals

Part 3.1 Exemptions from requirement for development approval

20 Exempt developments—Act, s 133, def *exempt development*, par (c)

- (1) Development that complies with schedule 1 (Exemptions from requirement for development approval) is exempt from requiring development approval.

Note For other exemptions, see the Act, div 7.2.6 (Exempt development).

- (2) Also, development is exempt from requiring development approval if—

- (a) the development would comply with schedule 1, or would be exempt from requiring development approval under the relevant development table for the development, other than for a matter (the *relevant matter*) to which schedule 1A (Permitted variations to approved and exempt developments) applies; and
- (b) the relevant matter complies with the criteria for the matter in schedule 1A; and
- (c) a designated development for the development, as changed by the relevant matter, complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see sch 1, s 1.2.

Note 2 **General exemption criteria**—see sch 1, s 1.10.

Note 3 **Relevant development table**—see the Act, dictionary.

Note 4 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 5 The development must also comply with the lease for the land on which it is carried out.

- (3) Also, development that is exempt under this section does not require development approval for a modification of the development if—
- (a) the development has not been completed; and
 - (b) the modification would not need development approval if the modification were made after completion of the development.

Example—exemption

Construction of a dwelling that is an exempt development is in progress. The developer wishes to change the slope of the roof by less than 2° (see sch 1, s 1.24). The developer may construct the dwelling with the changed roofslope (the *modification*) without seeking approval for the modification.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Also, development that is exempt under this section does not require development approval for a variation of the development if—
- (a) the development has not been completed; and
 - (b) the variation consists of adding an exempt development to the development.

Example—exemption

Construction of a dwelling that is an exempt development is in progress. The developer wishes to incorporate a skylight that complies with the conditions in sch 1, s 1.26, and so is an exempt development. The developer may construct the dwelling with the skylight (the *variation*) without seeking approval for the variation.

- (5) Also, a development (the *composite development*) is exempt from requiring development approval if the development can be notionally separated into components, each of which is an exempt development.

Example—composite development

A development consists of a dwelling with a garage, windows, doors, chimney and an aerial (the *components*). As each of the components is an exempt development, the composite development is an exempt development.

- (6) However, subsections (3), (4) and (5) do not apply in relation to a development if the modification, variation or composite development results in non-compliance with 1 or more of the following:
- (a) schedule 1, section 1.17 (Criterion 7—no multiple occupancy dwellings);
 - (b) the requirement under schedule 1, section 1.41 that there be not more than 2 exempt class 10 buildings in a boundary clearance area in conjunction with schedule 1, section 1.18 (Criterion 8—compliance with other applicable exemption criteria);
 - (c) the requirement under schedule 1, section 1.100 (Single dwellings—new residential land) that there be not more than 1 dwelling on a block.

Part 3.2 Development applications

25 When survey certificate not required for development applications—Act, s 139 (2) (j)

- (1) A survey certificate need not accompany a development application if the proposed development is—

- (a) the demolition only of a building or structure; or

Note **Structure**—see the Act, dictionary.

- (b) public works on unleased land, or land leased to the Territory, if the works are—

- (i) at least 50m from land in a residential zone; and

Note **Zone** means a zone identified in the territory plan (see Act, dict).

- (ii) a new building, or structure, with a plan area of not more than 75m² and a height of not more than 5m above finished ground level; or

Note **Finished ground level**—see the territory plan (13 Definitions).

- (c) a sign located completely within a lease; or

- (d) the installation of an attachment to the roof of an existing building or structure if the attachment—

- (i) does not extend more than 600mm beyond the existing building's or structure's plan area; and

- (ii) is completely within the lease on which the existing building or structure stands.

Note 1 **Attachment**—see s (4).

Note 2 **Plan area**—see the dictionary.

- (2) A survey certificate need not accompany a development application for land leased for residential development if the proposed

development is an addition to an existing building or structure and the addition—

- (a) has a plan area of not more than 75m²; and
 - (b) is located completely within the lease on which the existing building or structure stands.
- (3) A survey certificate need not accompany a development application for land leased for commercial or industrial development if the proposed development is an addition to an existing building or structure and the addition—
- (a) has a plan area of not more than 150m²; and
 - (b) is located completely within the lease on which the existing building or structure stands.

- (4) In this section:

attachment—

- (a) means a structure; and

Note ***Structure***—see the Act, dictionary.

- (b) includes a chimney, flue, vent, satellite dish, air conditioning unit, solar panel or similar installation.

26 Referral of certain development applications— Act, s 148 (1)

- (1) The following entities are prescribed for a development application in the impact track:
- (a) ACTEW Corporation Limited;
 - (b) ActewAGL Distribution;
 - (c) the conservator of flora and fauna;
 - (d) the emergency services commissioner;

- (e) the environment protection authority;
- (f) the heritage council;
- (g) the chief executive of the administrative units responsible for the following matters:
 - (i) health policy;
 - (ii) municipal services;
- (h) if the application relates to unleased land or public land—the custodian of the land.

Note **Custodian**—see the Act, s 333.

- (2) The following entities are prescribed for a development application in the merit track:
 - (a) if the application relates to any part of a declared site within the meaning of the *Tree Protection Act 2005*—the conservator of flora and fauna;
 - (b) if the application relates to unleased land or public land—the custodian of the land.

- (3) If the territory plan requires a development application to be referred to an entity, the entity is prescribed.

Note **Entity** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

- (4) In this section:

ActewAGL Distribution means ACTEW Distribution Ltd ABN 83 073 025 224 and Alinta GCA Pty Ltd ABN 24 008 552 663 working in partnership as ActewAGL Distribution ABN 76 670 568 688.

27 Public notification of merit track development applications—Act, s 152 (1) (a) and (2)

- (1) An application mentioned in subsections (2) and (3) is prescribed for the Act, section 152 (1) (a).
- (2) An application for a development proposal in the merit track for an estate development plan in a future urban area must be notified in accordance with the Act, section 152 (2) (a).
- (3) An application for a development proposal in the merit track mentioned in schedule 2 (Limited public notification of certain merit track development applications) must be notified in accordance with the Act, section 152 (2) (b).

28 Public consultation period—Act, s 157, def *public consultation period*, par (a)

The following periods are prescribed:

- (a) for a development application notified in accordance with the Act, section 152 (1) (a)—10 working days after the day the application is notified;
- (b) for a development application notified in accordance with the Act, section 152 (1) (b)—15 working days after the day the application is notified.

29 Conditions for code track proposals—Act, s 165 (4)

The following conditions are prescribed:

- (a) that information relating to compliance with stated conditions be given to the planning and land authority;
- (b) that the development be carried out within a stated period;
- (c) that stated action be taken to manage the impact of the development, whether on or off the development site, including—

- (i) storing and disposing of waste; and
- (ii) managing hazardous material; and
- (iii) protecting trees; and
- (iv) minimising erosion;
- (d) that a bond be entered into securing performance against the conditions of the approval;
- (e) that stated documents be maintained and kept at the development site;
- (f) that an approval under another Act be given;
- (g) that a stated thing be registered under the *Land Titles Act 1925*;
- (h) that a licence under the Act, or permit under the *Roads and Public Places Act 1937*, is granted in relation to the occupation or use of the land;
- (i) that stated conditions be complied with within a stated period.

Part 3.3 Development approvals—when amendment not required

35 When development approvals do not require amendment—Act, s 198C (2)

- (1) Development in accordance with the changed development proposal is taken to be in accordance with the development approval if—
 - (a) the change relates only to a matter (the *relevant matter*) to which schedule 1A (Permitted variations to approved and exempt developments) applies; and
 - (b) the change complies with the criteria for the relevant matter in schedule 1A; and
 - (c) a designated development for the development, as changed by the relevant matter, complies with the general exemption criteria that are applicable to the development except to the extent that the development approval allows the development to not comply with the criteria.

Note 1 **Designated development**—see sch 1, s 1.2.

Note 2 **General exemption criteria**—see sch 1, s 1.10.

Note 3 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 4 The development must also comply with the lease for the land on which it is carried out.

- (2) Also, development in accordance with the changed development proposal is taken to be in accordance with the development approval if the change would not need development approval if the change were made after completion of the development.

Example—change

Construction of a dwelling has development approval. The developer wishes to change the slope of the roof by less than 2° (see sch 1, s 1.24). The developer may

construct the dwelling with the changed roofslope without seeking approval for the change.

Note 1 The change may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Also, development in accordance with the changed development proposal is taken to be in accordance with the development approval if the change consists of adding an exempt development to the development.

Example—change

Construction of a dwelling has development approval. The developer wishes to incorporate a skylight that complies with the conditions in sch 1, s 1.26, and so is an exempt development. The developer may construct the dwelling with the skylight without seeking approval for the skylight.

- (4) However, subsections (2) and (3) do not apply if the change results in non-compliance with 1 or more of the following:
- (a) schedule 1, section 1.17 (Criterion 7—no multiple occupancy dwellings);
 - (b) the requirement under schedule 1, section 1.41 that there be not more than 2 exempt class 10 buildings in a boundary clearance area in conjunction with schedule 1, section 1.18 (Criterion 8—compliance with other applicable exemption criteria);
 - (c) the requirement under schedule 1, section 1.100 (Single dwellings—new residential land) that there be not more than 1 dwelling on a block.

36 Expiry—pt 3.3

This part expires on 31 March 2010.

Chapter 4 Environmental impact statements and inquiries

Part 4.1 Environmental impact statements

50 Preparation of EIS—Act, s 208 (1)

- (1) An EIS in relation to a development proposal that is to be assessed by the Territory in accordance with a bilateral agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) must address the matters mentioned in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cwlth), schedule 4.
- (2) An EIS in relation to a development proposal (including a proposal to which subsection (1) applies) must include the following:
 - (a) a non-technical summary of the EIS, including a summary of its recommendations;
 - (b) a glossary of technical terms and any abbreviations and acronyms used in the EIS;
 - (c) a description of the proposal, including—
 - (i) the location of the land to which the proposal relates; and
 - (ii) if the land is leased—the lessee’s name; and
 - (iii) if the land is unleased land or public land—the custodian of the land; and

Note **Custodian**—see the Act, s 333.

 - (iv) the purposes for which the land may be used; and

- (v) if the land is leased—
 - (A) the division name, and block and section number, of the land under the *Districts Act 2002*; and
 - (B) the volume and folio of the lease in the register under the *Land Titles Act 1925*; and
- (vi) a statement of the proposal's objectives; and
- (vii) the time for implementation of the proposal, including for any stage; and
- (viii) details of any action that has been, or is being, taken by the proponent, or any other entity, in relation to the land to which the proposal relates; and

Note **Entity** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

- (ix) details of any alternatives to the proposal considered in developing the proposal;

Examples—alternatives

- 1 alternative siting within the land to which the proposal relates
- 2 alternative designs, methods of construction, materials and sources of materials
- 3 alternative locations for the development
- 4 alternative uses of the land to which the proposal relates

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) a description of the EIS process, including—
 - (i) any statutory approval obtained or required for the proposal; and

- (ii) the base information used for predicting each potentially significant environmental impact identified in the scoping document for the EIS; and
 - (iii) the criteria used for assessing the significance of each environmental impact and the performance of any alternative to the proposal considered under paragraph (c) (ix);
- (e) a statement about the proposal's compatibility with the principles for environmental sustainability in the territory plan (2 Strategic Direction);
- (f) for each potentially significant environmental impact identified in the scoping document for the development proposal—
 - (i) an identification of the relevant environmental values; and
 - (ii) an identification of the findings and results of any environmental investigation in relation to the land to which the proposal relates; and
 - (iii) a description of the effects of the environmental impact (including cumulative and indirect effects) on physical and ecological systems and human communities; and
 - (iv) an analysis of the significance of the potential environmental impact of the development; and
 - (v) a statement of the approach proposed to be taken to the environmental management of the land to which the proposal relates, including any proposed impact prevention, mitigation or offsetting measures to deal with the environmental impact of the proposal;

Note An EIS must also address each matter raised in the scoping document for the development proposal, see the Act, s 216 (2) (a) and s 221 (3) (a).

- (g) a description of consultation undertaken for the EIS;

- (h) for a revised EIS—a summary of the representations made within the public consultation period;

Note For other requirements in relation to the representations, see the Act, s 221 (3) (b).

- (i) the EIS's recommendations.

- (3) For subsection (2) (f), each potentially significant environmental impact identified in the scoping document for the EIS must be addressed in its own part of the EIS.
- (4) For subsection (2) (f) (v), the approach proposed to be taken to the environmental management of the land may be set out in a management plan for the land.
- (5) An EIS must be prepared in accordance with any requirement set out in the scoping document for the EIS.
- (6) In this section:

EIS means an environmental impact statement proposed to be prepared for the Act.

51 Entities relevant for preparation of scoping documents— Act, s 212 (3)

- (1) In preparing a scoping document for a development proposal, the planning and land authority must consult with the entities prescribed by section 26 (1) (Referral of certain development applications—Act, s 148 (1)).
- (2) However, if an entity to which subsection (1) applies is the proponent of the development proposal, the planning and land authority must not consult the entity.
- (3) The planning and land authority may also consult with the following in preparing a scoping document for a development proposal:
 - (a) the ACT community (including a part of the community);

- (b) an entity that the authority is not required to consult with under subsection (1).

Examples—entities

- 1 a territory-owned corporation
- 2 the chief executive of an administrative unit not mentioned in s 26 (1)
- 3 a NSW local council
- 4 a government department or body established under a Commonwealth or NSW Act
- 5 a non-government organisation
- 6 an expert in a relevant environmental matter

Note 1 **Entity** includes an unincorporated body and a person (including a person occupying a position) (see Legislation Act, dict, pt 1).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

52 Time for consulting entities on preparation of scoping documents

- (1) This section applies if the planning and land authority receives an application under the Act, section 212 (Scoping of EIS) in relation to a development proposal.
- (2) Within 5 working days after the day the planning and land authority receives the application, the authority must, as far as practicable, give each entity that must be consulted under section 51, and any other entity the authority considers appropriate—
 - (a) the scoping documentation for the development proposal; and
 - (b) a written notice that—
 - (i) invites written comments on the scoping documentation; and
 - (ii) gives the entity 15 working days after the day the entity receives the notice to make written comments to the authority on the scoping documentation.

- (3) An entity given the scoping documentation is taken to have made no comments on the proposal to which the scoping documentation relates if the entity fails to give the planning and land authority comments on the scoping documentation within—
 - (a) the 15-working day period under subsection (2) (b) (ii); or
 - (b) if the period is extended under section 53—the extended period.
- (4) In this section:
scoping documentation, in relation to an application, means—
 - (a) the application; and
 - (b) a draft of the scoping document for the development proposal to which the application relates; and
 - (c) any other documents the planning and land authority considers are relevant to the proposal.

53 Extension of time for giving comments on scoping documentation

- (1) An entity given scoping documentation under section 52 may, before the end of the 15-working day period mentioned in a notice under section 52 (2), apply to the chief planning executive for the period to be extended.
- (2) The application must—
 - (a) be in writing; and
 - (b) state the reasons for making the application; and
 - (c) state the additional period the entity considers necessary for making comments.

- (3) If the chief planning executive allows an extension of the period, the planning and land authority must tell each entity given the documentation under section 52 about the extended period for giving comments.

Note *Scoping documentation*—see s 52 (4).

54 Content of scoping documents—Act, s 213 (1)

- (1) A scoping document for an EIS must contain the following:
- (a) the name, address, telephone number and email address of the people who prepared the document;
 - (b) a list of the entities that provided comments in accordance with an invitation under section 52 (Time for consulting entities on preparation of scoping documents) for the preparation of the scoping document;
 - (c) a list of entities that the proponent must consult in preparing the EIS;
 - (d) each potentially significant environmental impact that must be addressed in the EIS;
 - (e) if the scoping document relates to a development proposal to vary a lease to change its concessional status—the issues that must be addressed in the EIS in relation to the social impact of the proposal;
 - (f) if the scoping document relates to a s 125-related EIS—the issues that must be addressed in the EIS in relation to the public health impact of the development proposal to which the EIS relates;

Note For *s 125-related EIS*, see the Act, s 208.

- (g) any current relevant information held by the Territory, of which the planning and land authority is aware, that would be of use in preparing the EIS;

- (h) the requirements for the form and format of the EIS;

Examples—requirements about format of EIS

- 1 the structure of the EIS
- 2 how factual information is to be referenced in the EIS

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (i) the number of copies of the EIS to be given to the planning and land authority.
- (2) For subsection (1) (c), the scoping document may include requirements that affected groups with particular communication needs have adequate opportunity to comment on the EIS.
- (3) For subsection (1) (e), the planning and land authority must have regard to the matters mentioned in the Act, section 261 (2) (No decision on application unless consideration in public interest) in preparing the scoping document.
- (4) A scoping document for an EIS may also include any of the following:
- (a) requirements in relation to the methods of assessment to be used in the EIS;
 - (b) for each potentially significant environmental impact identified in the scoping document—a requirement that the proponent of the development proposal to which the scoping document relates consider ongoing management, monitoring or reporting regimes;

- (c) a list of impacts that are not significant environmental impacts that can be addressed through an altered design or in some other way.

Note The planning and land authority may, in a scoping document for a development proposal, require the proponent to engage a consultant who satisfies the criteria prescribed by regulation to help prepare an EIS for the proposal (see Act, s 213 (2) and (3), def *consultant*).

55 Criteria for consultants—Act, s 213 (3), def *consultant*

The criteria are that the planning and land authority is satisfied the person holds relevant professional qualifications in relation to the preparation of environmental impact statements and has—

- (a) experience in the preparation of environmental impact statements; or
- (b) the capacity to prepare environmental impact statements.

Part 4.2 Inquiry panels

70 Definitions—pt 4.2

In this part:

member means a member of an inquiry panel.

presiding member, of an inquiry panel, means the member nominated under the Act, section 229 (2) as the presiding member of the panel.

71 List of experts for inquiry panels

- (1) The planning and land authority may keep a list of people who may be appointed to an inquiry panel.
- (2) A person may, in writing, apply to the planning and land authority to be included on the list.
- (3) The planning and land authority may include a person on the list if satisfied the person—
 - (a) holds professional qualifications relevant to inquiries; or
 - (b) has expertise in an area relevant to inquiries.

Examples—areas of expertise

- environmental science
- urban, transport and landscape planning
- infrastructure planning and management
- economics

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The planning and land authority must review the list at least once every 3 years.

72 Conflict of interests to be considered in appointing panel members

The Minister may appoint a person as a member of an inquiry panel for an EIS only if the Minister has received a declaration from the person whether—

- (a) the person has a direct or indirect financial or personal interest in a matter to which the EIS to be considered by the panel relates; and
- (b) the interest could conflict with the proper exercise of the person's functions as a member of the panel in relation to the panel's consideration of the EIS.

73 Disclosure of interests by panel members

- (1) This section applies if—
 - (a) a member of an inquiry panel has a direct or indirect financial or personal interest in an issue being considered, or to be considered, by the panel; and
 - (b) the interest could conflict with the proper exercise of the member's functions in relation to the panel's consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must—
 - (a) disclose the nature of the interest to a meeting of the inquiry panel; and
 - (b) tell the parties to the inquiry about the interest; and
 - (c) not take part, or continue to take part, in the inquiry, or exercise any function in relation to the inquiry, unless each party consents to the person taking part, or continuing to take part, in the inquiry.

- (3) If the presiding member becomes aware that a member of an inquiry panel has an interest mentioned in subsection (1) (b) in relation to the inquiry, the presiding member must direct the person not to take part, or continue to take part, in the inquiry unless each party to the inquiry gives its consent in accordance with subsection (2) (c).
- (4) Within 14 days after the day an interest is disclosed to the presiding member under this section, the presiding member must give the Minister a statement of the disclosure.

74 Presiding member's functions

The presiding member of an inquiry panel has the following functions:

- (a) managing the affairs of the panel, including ensuring the expeditious conduct of the inquiry and issuing directions in relation to the conduct of the inquiry;
- (b) ensuring, as far as practicable, that there is a good working relationship between the panel and all relevant parties;
- (c) ensuring the Minister is kept informed about the operations of the panel.

75 Constitution of inquiry panels

- (1) An inquiry panel must not exercise its functions unless—
 - (a) all members of the panel are present; or
 - (b) the panel is reconstituted in accordance with this section.
- (2) If, before the inquiry panel has completed its inquiry, 1 of the members stops being a member of the panel or is unable to continue to be a member of the panel, the Minister must, in writing—
 - (a) end the inquiry by the panel and appoint a new panel to conduct the inquiry afresh; or
 - (b) appoint a new member to reconstitute the panel.

- (3) If the inquiry panel is reconstituted, the panel may, for the purposes of the inquiry, have regard to any record of the inquiry before the panel as previously constituted, including a record of any evidence taken.

76 Inquiries to be public

- (1) An inquiry panel must conduct its inquiry in public.
- (2) However, an inquiry panel may—
 - (a) direct that the inquiry or any part of it be conducted in private, and give directions about who may be present during any private hearing; or
 - (b) give directions prohibiting or restricting the publication of information given to the inquiry, or of matters contained in documents lodged with the inquiry.
- (3) In making a direction under subsection (2), an inquiry panel must consider—
 - (a) the principle that it is desirable that the inquiry should be conducted in public, and that information given to the inquiry, and documents lodged with the inquiry, should be available to interested people and to the public; and
 - (b) in the circumstances, whether confidentiality is required.
- (4) A person must not contravene a direction under subsection (2).
Maximum penalty: 10 penalty units.
- (5) An offence against this section is a strict liability offence.

77 General procedure for inquiry panels

(1) In this section:

interested person, for an inquiry in relation to an EIS, means each of the following:

- (a) the proponent of the development proposal to which the EIS relates;
- (b) an owner or prospective owner of land located near the land to which the EIS relates;
- (c) anyone who made a representation about the EIS under the Act, section 219 (Representations about draft EIS);
- (d) anyone else who has, in the inquiry panel's opinion, a proper interest in the inquiry.

(2) An inquiry panel—

- (a) must conduct the inquiry as informally as practicable; and
- (b) is not bound by the rules of evidence, and may inform itself—
 - (i) in any way it considers appropriate; and
 - (ii) without notice to any person who has made a submission to the inquiry; and
- (c) may consider submissions by an interested person without hearing the person who made the submission if the person is not present or represented at the time the inquiry is considering the submission; and
- (d) may refuse to hear anyone who has failed to comply with a direction given by the presiding member of the panel; and

Note **Fail** includes refuse (see Legislation Act, dict, pt 1).

- (e) subject to this part, may otherwise decide its own procedures.

- (3) The presiding member of an inquiry panel may, in writing, request a person to produce to the panel documents relating to an inquiry by the panel that it reasonably requires for the exercise of its functions.
- (4) Unless otherwise required by an inquiry panel, an interested person may make a submission to the panel orally or in writing or partly orally and partly in writing.
- (5) An interested person may appear and be heard by an inquiry panel in person or may be represented by another person.
- (6) Meetings of an inquiry panel are to be held when and where the presiding member decides in consultation with the other members of the panel.

78 Arrangements for the use of staff and facilities

- (1) An inquiry panel may make arrangements with the planning and land authority for the use of the following:
 - (a) the services of public servants in the authority;
 - (b) facilities of the authority.
- (2) While a public servant is exercising functions for an inquiry panel, he or she must exercise the functions in accordance with the directions of the presiding member of the panel.

Chapter 5 Leases generally

Part 5.1 Direct sale of leases

Division 5.1.1 Interpretation—pt 5.1

100 Definitions—pt 5.1

In this part:

allocated land, in relation to the housing commissioner, means land that has been placed under the commissioner's control under the *Housing Assistance Act 2007*, section 32 (Placing unleased land under housing commissioner's control).

Australian National University means the Australian National University under the *Australian National University Act 1991* (Cwlth).

business-case criteria, in relation to the direct sale of a lease to a person—see section 101.

business-case documentation, in relation to a proposed development by a person—see section 101.

City West precinct—see section 102.

City West precinct deed means the precinct deed between the Territory and the Australian National University dated 21 December 2004.

Commonwealth entity means—

- (a) a body established under a Commonwealth Act; or
- (b) a corporation established for a public purpose under a Commonwealth Act; or

(c) a company in which a controlling interest is held by either of the following, or by both of the following together:

- (i) the Commonwealth;
- (ii) a corporation mentioned in paragraph (b).

constitution, for a corporation (other than an incorporated association under the *Associations Incorporation Act 1991*)—see the Corporations Act, dictionary.

Note For an incorporated association, see the definition of **rules**.

direct sale, in relation to a lease, means the grant of the lease under the Act, section 238 (1) (d).

educational establishment—see the territory plan (13 Definitions).

rules, for an incorporated association—see the *Associations Incorporation Act 1991*, dictionary.

supportive accommodation means any of the following within the meaning of the territory plan (13 Definitions):

- (a) a retirement complex;
- (b) residential care accommodation;
- (c) supportive housing.

territory entity means—

- (a) a territory authority (other than the housing commissioner); or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

Note 1 **Territory authority, territory instrumentality** and **territory-owned corporation**—see the Legislation Act, dictionary, part 1.

Note 2 For direct sales to the housing commissioner, see s 109 and s 130.

101 Meaning of *business-case criteria* and *business-case documentation*—pt 5.1

In this part:

business-case criteria—the following are the *business-case criteria* in relation to the direct sale of a lease to a person:

- (a) the person has the financial capacity, and relevant experience, qualifications, expertise and other resources, to develop and manage the land;
- (b) the community has a genuine need for the proposed use of the land;
- (c) the person has a genuine need for the land.

business-case documentation, in relation to a proposed development by a person, means the following:

- (a) a plan that outlines the nature and scale of the development that includes (but is not limited to) the following:
 - (i) how the land will be developed and used, including any staging requirements for the proposed development;
 - (ii) details of the proposed buildings and car parking facilities for the land;
 - (iii) details of the proposed public access to the land;
- (b) a business plan for the land that includes (but is not limited to) the following:
 - (i) the proposed strategies for the successful development and use of the land;
 - (ii) an estimate of the development costs for the land;

- (iii) details of the goods or services to be provided from the land;
 - (c) a list of all land in the ACT in which the person has an interest or that is occupied by the person;
- Note* **Interest**—see the Legislation Act, dictionary, part 1.
- (d) if the person is a corporation—proof of its incorporation and a copy of its constitution or rules.

102 Meaning of *City West precinct*—pt 5.1

- (1) In this part:

City West precinct means the following land:

- (a) district of Acton, section 63, block 6;
- (b) the following in the district of City:
 - (i) section 4, blocks 2 and 7;
 - (ii) section 20, blocks 2 and 3;
 - (iii) section 21, blocks 1 and 2;
 - (iv) section 28, blocks 5, 10 and 15;
 - (v) section 30, block 3;
 - (vi) section 68, blocks, 2, 4 and 5.
- (2) However, ***City West precinct*** does not include land mentioned in subsection (1) if the land ceases to form part of the City West precinct in accordance with the City West precinct deed.

Note For the expiry of this section and related provisions, see s 402.

Division 5.1.2 Direct sales approved by Executive

105 Direct sales requiring approval by Executive— Act, s 240 (1) (a)

The following leases are prescribed:

(a) a lease granted to any of the following:

(i) a territory entity;

Note **Territory entity**—see s 100.

(ii) a Commonwealth entity;

Note **Commonwealth entity**—see s 100.

(iii) a non-government educational establishment;

(b) a lease to the housing commissioner if the land is not allocated land;

Note **Allocated land**—see s 100.

(c) a lease of public land to the lessee of a contiguous lease;

(d) a lease of land in the City West precinct to the Australian National University;

(e) a lease for community use;

Note **Community use**—see the territory plan (13 Definitions).

(f) a lease for supportive accommodation;

Note **Supportive accommodation**—see s 100.

(g) a rural lease.

Note The Executive may also approve the direct sale of a lease under the Act, s 240 (2).

**106 Direct sale criteria for territory entities—
Act, s 240 (1) (a) (i)**

The criteria for the direct sale of a lease to a territory entity are—

- (a) there is no other land available to the entity suitable for the proposed use of the land; and
- (b) an amount has been appropriated, or is otherwise available, to develop and manage the land; and
- (c) the proposed use of the land by the entity is consistent with the entity's operations.

Note **Territory entity**—see s 100.

**107 Direct sale criteria for Commonwealth entities—
Act, s 240 (1) (a) (i)**

- (1) The criteria for the direct sale of a lease to a Commonwealth entity are—
 - (a) there is no other land available to the entity suitable for the proposed use of the land; and
 - (b) an amount has been appropriated, or is otherwise available, to develop and manage the land; and
 - (c) the proposed use of the land by the entity is consistent with the entity's operations.

Note **Commonwealth entity**—see s 100.

- (2) This section does not apply to the direct sale to the Australian National University of a lease of land in the City West precinct.

108 Direct sale criteria for non-government educational establishments—Act, s 240 (1) (a) (i)

- (1) The criteria for the direct sale of a lease to a person for an educational establishment are—

- (a) the person is—

- (i) a registered non-government school; or

Note **Registered non-government school**—see the *Education Act 2004*, dictionary (see s (5)).

- (ii) if the land is for an additional campus for a registered non-government school—registered under the *Education Act 2004*, section 88B (Registration at additional campus); or

- (iii) registered under the *Training and Tertiary Education Act 2003*; or

- (iv) authorised to operate a university; and

Note **Authorised**—see s (5).

- (b) the planning and land authority is satisfied that the person meets the business-case criteria in relation to the proposed development and—

- (i) the use of the land for an educational establishment will promote any ACT or Commonwealth government policies in relation to educational services; or

- (ii) the educational establishment will meet an education need in the ACT that is not being met by existing education providers by providing—

- (A) opportunities for education or training in an area of shortage of appropriately qualified or skilled people in the ACT; or

- (B) education to people who, because of a group to which they belong, may suffer disadvantage in the provision of educational services unless their special needs are met.

Examples of groups—s (1) (b) (ii) (B)

- 1 aboriginals or Torres Strait Islanders
- 2 people with a physical or medical disability
- 3 people who are socially or financially disadvantaged
- 4 people who cannot communicate, or who have difficulty communicating, in English

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For subsection (1) (b), the person must give the planning and land authority the business-case documentation for the proposed development.
- (3) For subsection (1) (b) (ii), the person must give the planning and land authority details of how the development and use of the land will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including (but not limited to) written evidence of the following:
 - (a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;
 - (b) if the person is eligible for funding by an ACT or Commonwealth government agency—the person's eligibility.
- (4) This section does not apply to the direct sale to the Australian National University of a lease of land in the City West precinct.

(5) In this section:

authorised—a person is **authorised** to operate a university if the operation of the university by the person will not contravene the *Training and Tertiary Education Act 2003*, section 81 (Universities to be established, recognised or approved).

registered non-government school—see the *Education Act 2004*, dictionary.

university—see the *Training and Tertiary Education Act 2003*, dictionary.

109 Direct sale criterion for unallocated land for housing commissioner—Act, s 240 (1) (a) (i)

The criterion for the direct sale of a lease of land that is not allocated land to the housing commissioner is that the commissioner requires the land for housing within the meaning of the *Housing Assistance Act 2007*.

Note **Allocated land**—see s 100.

110 Direct sale criteria for leases of contiguous unleased land that is public land—Act, s 240 (1) (a) (i)

(1) The criteria for the direct sale of a lease of public land (the **proposed lease**) to the lessee of a lease (the **existing lease**) that is contiguous with the proposed lease are that the planning and land authority is satisfied that—

(a) the grant of the proposed lease will—

(i) rectify an existing encroachment on the proposed lease by a building or structure on the existing lease for the purpose of consolidating the proposed and existing leases for subdivision under the *Unit Titles Act 2001*; or

- (ii) facilitate the achievement of a good planning outcome; and

Example—good planning outcome

the incorporation of several small areas of unleased land into an existing lease to improve the use and maintenance of the land and to rationalise the land custodian's responsibilities in relation to land in areas near the lease

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) because of the size, location or configuration of the proposed lease, it is not reasonable or viable to grant the proposed lease as a separate independent lease; and
- (c) the grant of the proposed lease—
- (i) will not detract from the amenity of the surrounding area; and
 - (ii) will promote better land management; and
 - (iii) will not unreasonably restrict public access to other land.

Note **Public land**—see the Act, dictionary.

- (2) In this section:

encroachment includes a projection at, above or below ground level.

111 Direct sale criteria for City West precinct land for Australian National University—Act, s 240 (1) (a) (i)

- (1) The criteria for the direct sale of a lease of land in the City West precinct to the Australian National University are—
- (a) a development deed for the land has been entered into between the university and the land agency; and
 - (b) the university has given the planning and land authority a development proposal for the land; and

(c) the planning and land authority is satisfied that the university has the financial capacity, and relevant experience, qualifications, expertise and other resources, to develop and manage the land.

(2) In this section:

development deed—see the City West precinct deed, clause 1.1.

development proposal—see the City West precinct deed, clause 1.1.

Note For the expiry of this section and related provisions, see s 402.

112 Direct sale criteria for community uses— Act, s 240 (1) (a) (i)

(1) The criteria for the direct sale of a lease for community use are—

- (a) the proposed lessee is a community organisation; and
- (b) the planning and land authority is satisfied that the proposed lessee meets the business-case criteria in relation to the proposed development; and
- (c) the planning and land authority is satisfied that the proposed use of the land is—
 - (i) consistent with the proposed lessee’s constitution or rules; and
 - (ii) compatible with ACT or Commonwealth government policies applicable to the proposed use.

Note 1 **Community organisation**—see the dictionary.

Note 2 **Community use**—see the territory plan (13 Definitions).

- (2) For subsection (1) (b), the proposed lessee must give the planning and land authority the business-case documentation for the proposed development.
- (3) For subsection (1) (c) (ii), the proposed lessee must give the planning and land authority details of how the development and use of the land

will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including (but not limited to) written evidence of the following:

- (a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;
- (b) if the person is eligible for funding by an ACT or Commonwealth government agency—the person’s eligibility.

**113 Direct sale criteria for supportive accommodation—
Act, s 240 (1) (a) (i)**

- (1) The criteria for the direct sale of a lease for supportive accommodation are—

- (a) the proposed lessee is a community organisation; and

Note **Community organisation**—see the dictionary.

- (b) if the proposed lessee requires an approval (however described) under a territory law or Commonwealth law to provide the supportive accommodation to which the proposed use of the land relates—the proposed lessee holds the approval; and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (c) the planning and land authority is satisfied that the proposed lessee meets the business-case criteria in relation to the proposed development; and

- (d) the planning and land authority is satisfied that the proposed use of the land—

(i) is consistent with the proposed lessee’s constitution or rules; and

(ii) will promote any ACT or Commonwealth government policies in relation to supportive accommodation; or

- (iii) will meet a need for additional supportive accommodation in the ACT.

Note **Supportive accommodation**—see s 100.

- (2) For subsection (1) (c), the proposed lessee must give the planning and land authority the business-case documentation for the proposed development.
- (3) For subsection (1) (d) (ii), the proposed lessee must give the planning and land authority details of how the development and use of the land will meet any relevant ACT or Commonwealth government policies applicable to the proposed use of the land, including (but not limited to) written evidence of the following:
- (a) the support of any ACT or Commonwealth government agency responsible for implementing policy in relation to the land use;
 - (b) if the person is eligible for funding by an ACT or Commonwealth government agency—the person’s eligibility.

114 Direct sale criteria for rural leases—Act, s 240 (1) (a) (i)

- (1) The criteria for the direct sale of a rural lease to a person are—
- (a) for at least 5 years before applying for the direct sale, the person has—
 - (i) lawfully occupied the land; or
 - (ii) been the occupier (whether as lessee, sublessee or licence-holder) of contiguous land; and
 - (b) the land’s custodian agrees to the grant.
- (2) For subsection (1) (b), the person must give the planning and land authority written evidence that the land’s custodian agrees to the grant.

Note The person must have also signed a land management agreement in relation to the land, see the Act, s 283.

Division 5.1.3 Direct sales approved by Minister

120 Direct sales requiring approval by Minister— Act, s 240 (1) (b)

The following leases are prescribed:

- (a) a lease granted to the Territory, other than a lease to which section 130 (1) (f) (Certain direct sales not requiring approval—Act, s 240 (1) (d)) applies;
- (b) a lease of unleased land, other than public land, to the lessee of a contiguous lease.

121 Direct sale criteria for Territory—Act, s 240 (1) (b) (i)

The criteria for the direct sale of a lease to the Territory are—

- (a) the planning and land authority is satisfied that the land is suitable for the proposed use; and
- (b) an amount has been appropriated to develop and manage the land.

122 Direct sale criteria for leases of contiguous unleased land other than public land—Act, s 240 (1) (b) (i)

- (1) The criteria for the direct sale of a lease of unleased land other than public land (the *proposed lease*) to the lessee of a lease (the *existing lease*) that is contiguous with the proposed lease are that the planning and land authority is satisfied that—
 - (a) the grant of the proposed lease will—
 - (i) rectify an existing encroachment on the proposed lease by a building or structure on the existing lease for the purpose of consolidating the proposed and existing leases for subdivision under the *Unit Titles Act 2001*; or

- (ii) facilitate the achievement of a good planning outcome; and

Example—good planning outcome

the incorporation of several small areas of unleased land into an existing lease to improve the use and maintenance of the land and to rationalise the land custodian's responsibilities in relation to land in areas near the lease

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) because of the size, location or configuration of the proposed lease, it is not reasonable or viable to grant the proposed lease as a separate independent lease; and
- (c) the grant of the proposed lease—
- (i) will not detract from the amenity of the surrounding area; and
 - (ii) will promote better land management; and
 - (iii) will not unreasonably restrict public access to other land.

Note **Public land**—see the Act, dictionary.

- (2) In this section:

encroachment includes a projection at, above or below ground level.

Division 5.1.4 Certain direct sales not requiring approval

Note For other direct sales not requiring approval, see the Act, s 240 (1) (e) to (g).

130 Certain direct sales not requiring approval—Act, s 240 (1) (d)

- (1) The direct sale of the following leases is prescribed:
- (a) a lease offered at auction but not sold;

- (b) a lease offered at ballot but not sold;
- (c) a lease sold at ballot but the contract of sale is rescinded or otherwise ended before the lease is granted under the contract;
- (d) a lease of allocated land to the housing commissioner;

Note **Allocated land**—see s 100.

- (e) a lease to Community Housing Canberra Limited, ACN 081 354 752;
- (f) a lease of land to the Territory if the land is used or occupied by the Territory.

(2) In this section:

auction, in relation to a lease, means an auction of the lease under the Act, section 238 (1) (a).

ballot, in relation to a lease, means a ballot of the lease under the Act, section 238 (1) (c).

Part 5.2 Grants of leases generally

140 Period for failure to accept and execute lease—Act, s 250 (1)

The period is 20 working days after the day when the planning and land authority notifies the person who is entitled to the grant of the lease that the lease is available for execution.

141 Exemptions from restrictions on dealings with certain single dwelling house leases—Act, s 251 (1) (c) (ii)

A single dwelling house lease is prescribed if the lease provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority.

Note *Single dwelling house lease* means a lease granted under the Act, s 240 (1) (e) (see Act, s 234).

142 Exemptions from restrictions on dealings with certain leases—Act, s 251 (3)

- (1) The following leases are exempt from the Act, section 251 (1) (a), (b) and (c):

- (a) a concessional lease;
- (b) a rural lease.

Note For restrictions on dealings with concessional leases and rural leases, see the Act, s 265 and s 284.

- (2) The following leases are exempt from the Act, section 251 (1) (b) and (c):

- (a) a lease to Community Housing Canberra Limited, ACN 081 354 752;

- (b) a lease granted under the Act, section 238 (1) by auction, tender or ballot if—
 - (i) the class of people eligible or ineligible for the grant was restricted under the Act, section 239; and
 - (ii) the lease is sold for market value; and
 - (iii) the Act, section 251 (1) (a) or (d) does not apply to the lease;
- (c) a lease granted under the Act, section 241 if—
 - (i) the lease is sold for market value; and
 - (ii) the Act, section 251 (1) (a) or (d) does not apply to the lease.

Part 5.3 Grants of further leases

150 Criteria for grant of further leases for unit title schemes— Act, s 254 (1) (f)

- (1) The following are the criteria for a further lease of a unit or the common property in a units plan:
 - (a) the application for the further lease is made by the owners corporation for the units plan;
 - (b) the application is supported by an ordinary resolution of the owners corporation;
 - (c) a certificate under the *Unit Titles Act 2001*, section 109 about the resolution is attached to the application;
 - (d) the planning and land authority is granting further leases for all the units and the common property in the units plan;
 - (e) the further leases are all granted for the same term.

- (2) In this section:

ordinary resolution—see the *Unit Titles Act 2001*, dictionary.

owners corporation—see the *Unit Titles Act 2001*, dictionary.

unit—see the *Unit Titles Act 2001*, section 9.

units plan—see the *Unit Titles Act 2001*, dictionary.

151 Criteria for grant of further leases for community title schemes—Act, s 254 (1) (f)

- (1) The following are the criteria for a further lease of a lot in a community title scheme:
 - (a) the application is made by the body corporate for the scheme;
 - (b) the application is supported by an ordinary resolution of the body corporate;

- (c) attached to the application is a certificate under the seal of the body corporate stating that at a general meeting of the body corporate held on a stated day a resolution was passed for paragraph (b) in the terms set out in the certificate;
- (d) the planning and land authority is granting further leases for all the lots in the scheme;
- (e) the further leases are all granted for the same term.

(2) In this section:

body corporate—see the *Community Title Act 2001*, dictionary.

community title scheme—see the *Community Title Act 2001*, dictionary.

lot—see the *Community Title Act 2001*, dictionary.

ordinary resolution—see the *Community Title Act 2001*, dictionary.

Part 5.4 Lease variations

160 Lease classes for variation to pay out rent— Act, s 272A (1)

The classes of lease are as follows:

- (a) rental leases granted for the full market rental value of the lease;

Note **Rental lease**—see the Act, s 234.

- (b) concessional leases, other than a concessional lease—

- (i) that is a recently commenced lease within the meaning of section 180 (Meaning of *recently commenced lease*—div 5.5.3); or

- (ii) granted to a community organisation under the *Land (Planning and Environment) Act 1991*, section 163 (Leases to community organisations).

161 Decision on rent payout lease variation application— Act, s 272B (1)

The period of 20 working days is prescribed.

Part 5.5 Change of use charges

Division 5.5.1 Added value

170 Meaning of *added value*—pt 5.5

- (1) In this part:

added value, for the variation of a lease, means the amount worked out as follows:

$$V_1 - V_2$$

- (2) In this section:

V1—see the Act, section 277 (2).

V2—see the Act, section 277 (2).

Division 5.5.2 Remission of change of use charges

175 Remission of change of use charges generally—Act, s 278 (1) and (2)

- (1) The planning and land authority must remit all or part of a change of use charge for a variation of a lease in the following circumstances:
- (a) the variation of the lease is necessary and desirable to—
 - (i) promote development in an area; or
 - (ii) change the purposes for which land or buildings, or parts of land or buildings, in an area may be used; or
 - (iii) promote the construction of well designed or constructed housing; or
 - (iv) promote the construction of attached houses, apartments or 2 or more detached houses on a single lease; or

- (v) promote the construction of housing that is suitable for frail or disabled people; or
 - (vi) provide land for the exclusive use of a community organisation; or
 - (vii) assist occupiers of premises affected by the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, part 2 (Smoking prohibited in enclosed public places) to provide additional facilities at the premises;
- (b) a circumstance stated in a policy direction.
- (2) The amount of the change of use charge to be remitted is—
 - (a) if a policy direction applies to the circumstance—the amount worked out in accordance with the policy direction; or
 - (b) in any other case—the amount (if any) that the planning and land authority decides is appropriate in the circumstances.
- (3) Subsection (1) (a) (vii) applies only if the application for a variation of the lease is made before 1 December 2009.
- (4) In this section:
policy direction means a policy direction under section 177.
- (5) Subsection (1) (a) (vii), subsection (3) and this subsection expire on 1 December 2010.

176 Remission of change of use charges for housing commissioner—Act, s 278 (1) and (2)

The amount of the change of use charge to be remitted for the variation of a lease granted to the housing commissioner for a term beginning before 17 December 1987 is an amount equal to 25% of the added value for the variation.

177 Policy directions about remission of change of use charges—Act, s 278 (1) and (2)

- (1) The Minister may make a policy direction for section 175 (1) (b) or (2) (a).
- (2) A policy direction is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Division 5.5.3 Increase of change of use charge

180 Meaning of *recently commenced lease*—div 5.5.3

- (1) In this division:

recently commenced lease, in relation to the variation of a lease, means—

- (a) a lease that commenced not more than 5 years before the application for the variation is made; or
- (b) a further lease granted under the Act, section 254 following the surrender of a lease that commenced not more than 5 years before the application for the variation is made; or
- (c) a lease regranted following the surrender of a lease if—
 - (i) the regranted lease includes all or part of the land comprised in the surrendered lease and is not in an area identified in the territory plan as a future urban area; and
 - (ii) the surrendered lease commenced not more than 5 years before the application for the variation is made; or
- (d) a market value lease granted following the surrender of a concessional lease if—
 - (i) the market value lease is granted to the same lessee as the surrendered lease; and

- (ii) the surrendered lease commenced not more than 5 years before the application for the variation is made; or
- (e) a lease granted following the surrender of 2 or more leases of the same size if any of the leases commenced not more than 5 years before the application for the variation is made; or
- (f) a lease granted following the surrender of 2 or more leases of at least 2 different sizes if the largest lease commenced not more than 5 years before the application for the variation is made.

(2) In this section:

largest lease, of the surrendered leases, means the lease, or any of the leases, with the largest area.

regrant, of a surrendered lease, means the grant of a new lease, subject to different provisions, to the same lessee as the surrendered lease.

181 Increase of change of use charge for concessional leases—Act, s 279 (1) and (2)

- (1) The variation of a concessional lease is prescribed if—
- (a) the variation is for a use other than a community use; or
Note ***Community use***—see the territory plan (13 Definitions).
 - (b) the lease was not granted to the housing commissioner for a term beginning before 17 December 1987; or
 - (c) if the lease as varied is a consolidated or subdivided concessional lease—
 - (i) the lease is a recently commenced lease; and
 - (ii) the amount payable under section 182 in relation to the variation is less than the amount payable under this section for the variation.

(2) The change of use charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

(3) In this section:

consolidated or subdivided concessional lease—see the Act, section 235 (3).

182 Increase of change of use charge for recently commenced leases—Act, s 279 (1) and (2)

(1) The variation of a recently commenced lease is prescribed if—

- (a) the variation is not only to correct an error in the surrendered lease; or
- (b) the lease is a concessional lease and the amount payable under section 181 in relation to the variation is less than the amount payable under this section for the variation.

Note *Concessional lease*—see the Act, s 235.

(2) The change of use charge for the variation must be increased by an amount equal to 25% of the added value for the variation.

Part 5.6 Discharge amounts for rural leases

190 Definitions—pt 5.6

In this part:

earlier index number, in relation to a lease, means—

- (a) the index number published before the lease commenced; or
- (b) if the Australian statistician changes the reference base for the consumer price index after the lease commenced but before the calculation under this part of the later index number for the lease—the index number that would have been applicable if the new reference base had been in effect when the lease commenced.

Note ***Australian statistician***—see the Legislation Act, dict, pt 1.

excluded amount, in relation to a lease, means the value of any lessee-owned improvements to the land comprised in the lease.

index number—

- (a) means the *All Groups Consumer Price Index* number published by the Australian statistician from time to time; but
- (b) does not include a substituted index number published by the Australian statistician if the substituted index number for a period has been recalculated for a reason other than a change in the reference base for the *All Groups Consumer Price Index*.

special Pialligo lease means a lease of the district of Majura, section 2, block 6, 12, 13, 14, 15, 19, 20 or 52.

**191 Discharge amount for rural leases other than special
Pialligo leases—Act, s 282, def *discharge amount***

- (1) The discharge amount in relation to a dealing with a rural lease, other than a special Pialligo lease, is the amount worked out as follows:

$$\frac{\text{last amount} - \text{indexed first amount}}{2} + \text{owed amount}$$

Note *Deal* with a lease—see the Act, s 234.

- (2) In this section:

first amount means—

- (a) for a nominal rent lease—the consideration for the lease when it was granted less the excluded amount; or
- (b) for a lease granted with a term of not longer than 21 years—the value of the lease when it was granted less the excluded amount; or
- (c) for any other lease—the consideration for the lease when it was granted plus any amount to be paid under the lease less the excluded amount.

indexed first amount means the amount worked out as follows:

$$\text{first amount} \times \frac{\text{later index number}}{\text{earlier index number}}$$

last amount, in relation to a dealing with a lease, means—

- (a) the market value of the lease less the excluded amount if—
 - (i) there is no consideration for the dealing; or
 - (ii) the dealing relates only to part of the land in the lease; or

- (iii) the consideration for the dealing is less than the market value of the lease; or
- (b) in any other case—the consideration for the dealing less the excluded amount.

later index number, in relation to a lease, means the last index number published before the last amount is worked out for the lease.

owed amount, in relation to a dealing with a lease, means—

- (a) for a lease with a term of less than 21 years—any rent plus interest payable under the lease on the day of the dealing with the lease; or
- (b) for a lease with a term of at least 21 years—any amount remaining to be paid under the lease, even if the amount is not yet owing.

192 Discharge amount for special Pialligo leases—Act, s 282, def *discharge amount*

- (1) The discharge amount for a special Pialligo lease that commenced less than 1 year before the discharge amount is paid is the amount worked out as follows:

amount paid + owed amount

- (2) The discharge amount for a special Pialligo lease that commenced at least 1 year before the discharge amount is paid is the amount worked out as follows:

amount paid - (cpi adjusted amount $\times \frac{\text{whole years}}{10}$) + owed amount

- (3) In this section:

amount paid means—

- (a) for a nominal rent lease—the consideration for the lease when it was granted less the excluded amount; or

- (b) for any other lease—the consideration for the lease when it was granted plus any amount to be paid under the lease less the excluded amount.

cpi adjusted amount means the amount worked out as follows:

$$\text{amount paid} \times \frac{\text{later index number}}{\text{earlier index number}}$$

later index number, in relation to a lease, means the last index number published before the discharge amount for the lease is paid.

owed amount, in relation to a lease, means any amount remaining to be paid under the lease, even if the amount is not yet owing.

whole years, in relation to a lease, means the number of whole years since the lease commenced.

Part 5.7

Transfer or assignment of leases subject to building and development provision

Division 5.7.1

Transfer of land subject to building and development provision

200

Personal reasons for noncompliance with building and development provision—Act, s 298 (2) (b) (i)

- (1) The following are prescribed:
- (a) mental or physical illness or trauma to the lessee, or a member of the lessee's immediate family, after the purchase of the lease that has a demonstrable effect on the lessee's ability to develop the lease;
 - (b) the lessee moving to a place interstate or overseas because the lessee's or the lessee's domestic partner's employment is or will be at the place;

Note **Domestic partner**—see the Legislation Act, s 169 (1).

- (c) the lessee, or the lessee's domestic partner, has been unemployed for at least 3 months before the request for the assignment or transfer of the lease is made, if the lessee satisfies the planning and land authority that reasonable attempts have been made to obtain alternative employment.
- (2) For subsection (1) (a), the planning and land authority must consider any medical certificate by a doctor about the mental or physical illness or trauma.

- (3) In this section:

immediate family, of a lessee, means—

- (a) the lessee's domestic partner; or

- (b) a parent or sibling of the lessee; or
- (c) an adult child of the lessee; or
- (d) another relative of the lessee who is a member of the same household as the lessee; or
- (e) a sole or primary carer who is living with a person mentioned in paragraph (a) to (d).

201 Matters for transfer or assignment of leases—Act, s 298 (5)

The following matters are prescribed:

- (a) the proposed transferee's or assignee's financial ability to comply with the lease's building and development provision;
- (b) the proposed transferee's or assignee's history of compliance with building and development provisions in relation to leases in which the proposed assignee or transferee has, or has had, an interest;

Note **Interest**—see the Legislation Act, dictionary, part 1.

- (c) the lessee's history of compliance with building and development provisions in relation to leases in which the lessee has, or has had, an interest;
- (d) the time remaining for compliance with the lease's building and development provision when the application to the planning and land authority for its consent to the transfer or assignment of the lease is made;
- (e) a written undertaking from the proposed transferee that the transferee will comply with the lease's building and development provision.

Division 5.7.2 Applications for extension of time to commence or complete required works

202 Meaning of *period of extension*—div 5.7.2

- (1) For this division, *period of extension*, in relation to a lease with a building and development provision, means—
- (a) the period of extension sought in an application for an extension of time in relation to the lease; or
 - (b) if 1 or more extensions of time have previously been approved in relation to the lease—the total of the period of extension sought in the application and the period of the previous extension or extensions (other than an extension of time mentioned in section 205, section 206 or section 207) for the lease.

Example

An extension for 1 year is approved and a later application for an extension for 2 years is made. The period of extension for the 2nd application is 3 years.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If an application seeks extensions for 2 or more building and development provisions in a lease, only the longest of the extensions sought or granted under the application is to be counted in working out the period of extension under subsection (1).

203 Application for extension of time—general rule—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease (other than an application to which section 204, section 205, section 206 or section 207 applies).

- (2) The prescribed figure for the application is the figure mentioned in table 203, column 3 in relation to the period of extension mentioned in column 2.

Table 203 General rule

| column 1 item | column 2 period of extension | column 3 figure |
|------------------|-------------------------------------|--------------------|
| 1 | Up to 1 year | 1 |
| 2 | More than 1 year and up to 2 years | 2 |
| 3 | More than 2 years and up to 3 years | 3 |
| 4 | More than 3 years and up to 4 years | 4 |

Note The Act, s 298A (5) defines **A** to be 5 if a lower figure is not prescribed.

204 Application for extension of time—hardship reason—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a single dwelling house lease or a lease granted to a community organisation for community use (other than an application to which section 205 or section 206 applies) if the planning and land authority is satisfied that—
- (a) a hardship reason applies in relation to the lessee; and
 - (b) the extension sought is necessary because of the hardship reason.

Note **Single dwelling house lease** means a lease granted under the Act, s 240 (1) (e) (see Act, s 234).

- (2) The prescribed figure for the application is the figure mentioned in table 204, column 3 in relation to the period of extension mentioned in column 2.

Table 204 Hardship reasons

| column 1 item | column 2 period of extension | column 3 figure |
|------------------|-------------------------------------|--------------------|
| 1 | Up to 2 years | 0 |
| 2 | More than 2 years and up to 3 years | 2 |
| 3 | More than 3 years and up to 4 years | 3 |
| 4 | More than 4 years | 4 |

- (3) However, this section does not apply to an application for an extension of time in relation to a single dwelling house lease if the lessee—
- (a) is the lessee of another lease; and
 - (b) has applied for, or been granted, an extension of time to commence or complete development in relation to that lease.
- (4) In this section:
- hardship reason***, in relation to a lessee, means—
- (a) if the lessee is an individual—a reason mentioned in the Act, section 298 (2) (b) (i), (ii) or (iii); and
 - (b) in any other case—a reason mentioned in the Act, section 298 (2) (b) (ii) or (iii).

205 Application for extension of time—external reason—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease if the planning and land authority is satisfied that—
- (a) an external reason applies in relation to the lessee; and
 - (b) the extension sought is necessary because of the external reason.
- (2) The prescribed figure for the application is 0.
- (3) In this section:

external reason—each of the following is an ***external reason*** in relation to a lessee:

- (a) the lessee is unable to commence or complete the works required under the building and development provision for the lease because—
 - (i) road or traffic infrastructure to be provided by the Territory is not complete; or
 - (ii) a sewerage, electricity, water or gas service to be provided by the Territory is not installed or connected;
- (b) the lessee is unable to commence or complete the works required under the building and development provision for the lease because of a delay in obtaining a statutory approval required for the works, other than a delay caused in whole or part by—
 - (i) the lessee; or
 - (ii) a decision to refuse, or impose a condition on, a statutory approval required for the works.

206 Application for extension of time—lease transferred or assigned in special circumstances—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease if—
 - (a) the lease was transferred or assigned in circumstances mentioned in subsection (3); and
 - (b) the extension sought is for a period that—
 - (i) starts on or after the day of the transfer or assignment; and
 - (ii) is not longer than the period allowed under the building and development provision when the lease was granted.
- (2) The prescribed figure for the application is 0.

- (3) For subsection (1) (a), the circumstances are that—
- (a) the lessee has died; or
 - (b) the transfer or assignment is made under any of the following orders:
 - (i) an order of the Family Court;
 - (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);
 - (iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship; or
 - (c) the transfer or assignment happened by operation of, or under, bankruptcy or insolvency; or
 - (d) the transfer or assignment happened in the exercise by an authorised deposit taking institution or finance company of a power of sale under the *Land Titles Act 1925*, section 94 that arose from a default in payment by the lessee.

207 Application for extension of time—certain leases granted before 31 March 2008—Act, s 298A (5), def A, par (b)

- (1) This section applies to an application for an extension of time in relation to a lease (other than a single dwelling lease or a lease granted to a community organisation for community use) if—
- (a) the lease was granted before 31 March 2008; and
 - (b) the planning and land authority is satisfied that the time for commencing or completing the works required under the building and development provision was not sufficient when the lease was granted; and
 - (c) the period of extension sought is—

- (i) for an application to commence the required works—not more than 1 year after the end of the period allowed under the building and development provision when the lease was granted; or
 - (ii) for an application to complete the required works—not more than 2 years after the end of the period allowed under the building and development provision when the lease was granted.
- (2) The prescribed figure for the application is 0.

Part 5.8 Surrendering and terminating leases

210 Amount of refund on surrender or termination of certain leases—Act, s 300 (2)

- (1) This section applies to the following leases:
 - (a) a residential lease granted for not more than 3 residential dwellings;
 - (b) a lease granted to a community organisation for community use;
Note 1 Community organisation—see the dictionary.
Note 2 Community use—see the territory plan (13 Definitions).
 - (c) a lease terminated for breach of a building and development provision.
Note Building and development provision—see the Act, s 234.
- (2) The prescribed amount is the lesser of the following amounts:
 - (a) the amount paid for the grant or transfer of the lease to the lessee less any amount payable to, or incurred by, the Territory under section 211;
 - (b) the market value of the lease less any amount payable to, or incurred by, the Territory under section 211.
- (3) Despite subsection (2), the prescribed amount is the amount paid for the grant of the lease if—
 - (a) the person surrendering the lease, or the person whose lease has been terminated, is the person to whom the lease was originally granted; and
 - (b) the lease was granted before 1 November 2004.
- (4) Subsection (3) and this subsection expire on 1 November 2011.

211 Limitations for refund on surrender or termination of leases—Act, s 300 (3)

- (1) This section applies to the following leases:
 - (a) a residential lease granted for not more than 3 residential dwellings;
 - (b) a lease granted to a community organisation for community use;
 - (c) a lease terminated for breach of a building and development provision.
- (2) The planning and land authority may pay an amount mentioned in section 210 if—
 - (a) the application for payment is made by the lessee—
 - (i) before the period for the lease's building and development provision has ended; or
 - (ii) because the lease has been terminated; and
 - (b) the planning and land authority is satisfied that it is not appropriate to consent to a transfer of the lease under the Act, section 298; and
 - (c) all outstanding amounts payable to the Territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid; and

Note Any application fee must also have been paid, see the Legislation Act, s 57 (2).

 - (d) all amounts incurred by the Territory in relation to the surrender or termination of the lease have been paid.

Part 5.9 Subletting of leases

220 Criteria for approving subletting of land—Act, s 308 (2)

- (1) The following are prescribed:
 - (a) the sublease must be for a use authorised by the lease;
 - (b) if the land is not leased to the Territory—the sublease must include a condition that a designated development that requires development approval must be started on the subleased land within—
 - (i) 2 years after the day the sublease commences; or
 - (ii) if the planning and land authority extends, in writing, the 2-year period—the extended period.

- (2) In this section:

designated development means the building of a building or structure.

Chapter 6 Concessional leases

240 Concessional lease exclusions—Act, s 235 (1), def *concessional lease*, par (c) (v)

The following leases are prescribed:

- (a) a residential lease;

Note **Residential lease**—see the Act, s 234.

- (b) a lease granted to a territory-owned corporation;

- (c) a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out—

- (i) in accordance with a law in force in the territory; or
 - (ii) by agreement between the Commonwealth or Territory and the lessee;

Examples of commercial purposes—par (c)

- 1 industrial
- 2 business

Note 1 **Rental lease**—see the Act, s 234.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) a lease (the *individual lease*) granted for no consideration if—
 - (i) the individual lease is granted following the subdivision of a lease (the *head lease*) held by the person to whom the individual lease is granted; and
 - (ii) the person has provided infrastructure on the land leased under the head lease;

- (e) a lease granted under the *City Area Leases Act 1936* before 1 January 1971 if the lease was not subject to a restriction on dealing with the lease—
 - (i) under the lease when granted; or
 - (ii) under that Act immediately before its repeal.

Note **Deal**—see the Act, s 234.

Chapter 7 Controlled activities

300 Period for deemed refusal of application for controlled activity order—Act, s 351 (4)

The period is 20 working days after the day the planning and land authority receives the application under the Act, section 350.

301 Time for deemed decision not to make controlled activity order—Act, s 354 (1) (b)

The time is 20 working days after the day the planning and land authority has given a show cause notice under the Act, division 11.3.2 (Controlled activity orders on authority's initiative).

Chapter 8 Reviewable decisions

350 Merit track decisions exempt from third-party ACAT review—Act, sch 1, item 4, col 2, par (b)

A development application in relation to a matter mentioned in schedule 3 (Matters exempt from third-party ACAT review), part 3.2 (Merit track matters exempt from third-party ACAT review) is exempt.

351 Impact track decisions exempt from third-party ACAT review—Act, sch 1, item 6, col 2

A development application in relation to a matter mentioned in schedule 3 (Matters exempt from third-party ACAT review), part 3.3 (Impact track matters exempt from third-party ACAT review) is exempt.

Chapter 9 Bushfire emergency rebuilding

370 Main object—ch 9

The main object of this chapter is to assist people who suffered property damage because of fires that happened during the bushfire emergency to redevelop their land.

371 Definitions—ch 9

- (1) In this part:

bushfire emergency—see section 372.

height, for a building or structure, means the reduced level of the building's or structure's highest point.

fire-caused rebuilding development—see section 373.

previously approved—see section 374.

- (2) In this section:

reduced level—see the territory plan (13 Definitions).

372 Meaning of *bushfire emergency*—ch 9

For this chapter, the *bushfire emergency* is the period that began on 18 January 2003 and ended on 28 January 2003.

373 Fire-caused rebuilding developments—ch 9

- (1) For this chapter, a *fire-caused rebuilding development* is a development consisting of the construction or alteration of 1 or more buildings or structures on land mentioned in the applicable land declaration if—
- (a) any building or structure to be constructed replaces a building or structure of the same kind that was located on the land immediately before the beginning of the bushfire emergency, and that was damaged during the bushfire emergency; and
 - (b) any building or structure to be altered was damaged during the bushfire emergency.

- (2) In this section:

applicable land declaration means the *Land (Planning and Environment) Bushfire Emergency (Applicable Land) Declaration 2003 (No 2)* (NI2003-114).

374 Previous approval—ch 9

- (1) For this chapter, a development, or a design or siting feature of a building or structure, is *previously approved* if, before the beginning of the bushfire emergency, it had been approved under the Land Act, division 6.2 (Approvals) or the *Buildings (Design and Siting) Act 1964*.
- (2) However, a development, or a design or siting feature, is not *previously approved* if—
- (a) the approval was given under the Land Act, division 6.2 for the development or feature before the beginning of the bushfire emergency; and

- (b) immediately before the beginning of the bushfire emergency—
 - (i) the period for applying to the administrative appeals tribunal for a review of a decision in relation to the approval under the Land Act, section 276 (3) (Review of decisions—objectors and third parties to approvals) had not ended; or
 - (ii) an application to the tribunal for a review of the decision had been made and the application had not been finally disposed of by the tribunal.
- (3) In this section:
 - design or siting feature***, of a building or structure, means—
 - (a) its height or gross floor area; or
 - (b) a dwelling or dwellings for which it is used; or
 - (c) its setbacks.

Note ***Gross floor area*** and ***setback***—see the territory plan (13 Definitions).

Land Act means the *Land (Planning and Development) Act 1991*.

**375 Rebuilding in accordance with previous approvals—
Act, s 133, def *exempt development*, par (c)**

- (1) A fire-caused rebuilding development is an exempt development if—
 - (a) the development has been previously approved, whether or not any development in accordance with the approval has ever been undertaken; and
 - (b) the development would not result in any of the following:
 - (i) the height of any new or altered building or structure being greater than the previously approved height of the building or structure that is replaced or altered;

- (ii) the gross floor area of any new or altered building or structure being more than 15% greater than the previously approved gross floor area of the building or structure that is replaced or altered;
- (iii) any new or altered building or structure being used for a greater number of dwellings than were previously approved;
- (iv) the setbacks for any new or altered building or structure not complying with the lesser of the following:
 - (A) the setbacks under Residential Zones—Single Dwelling Housing Development Code;
 - (B) any setbacks that were previously approved for the building or structure that is replaced or altered; and
- (c) the lessee of the land to which the development relates is the lessee of the land at the beginning of the bushfire emergency; and
- (d) before the development commences, the lessee gives the following to the planning and land authority:
 - (i) notice in writing of when the development will commence;
 - (ii) a plan of the development;
 - (iii) a written statement by a certifier that the development shown on the plan will not result in any of the matters mentioned in paragraph (b); and
- (e) at the completion of the development, a certifier gives the planning and land authority a written statement that the development as constructed is in accordance with the plan given to the planning and land authority under paragraph (d).

(2) In this section:

certifier means a certifier within the meaning of the *Building Act 2004*.

lessee, of land at the beginning of the bushfire emergency, includes a person who, before the beginning of the bushfire emergency, had entered into an agreement with the lessee of the land giving the person a right to the transfer of the lease but to whom, at the beginning of the emergency, no transfer had been registered under the *Land Titles Act 1925* in accordance with the agreement.

Chapter 10 Miscellaneous

400 Disapplication of Legislation Act, s 47 (5) and (6)—regulation

- (1) The Legislation Act, section 47 (5) does not apply to the following:
 - (a) the City West precinct deed;
 - (b) the street furniture agreement.
- (2) The Legislation Act, section 47 (6) does not apply to the following:
 - (a) *All Groups Consumer Price Index*;
 - (b) AS 1742 (*Manual of Uniform Traffic Control Devices*);
 - (c) AS/NZS 3500 (*Plumbing and Drainage Set*);
 - (d) AS/NZS 3845 (*Road Safety Barrier Systems*);
 - (e) a technical code under the *Utilities Act 2000*;
 - (f) a utility rule.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (3) In this section:

City West precinct deed—see section 100.

street furniture agreement—see schedule 1 (Exemptions from requirement for development approval), section 1.90 (2).

utility rule—see schedule 1 (Exemptions from requirement for development approval), section 1.11.

401 Disapplication of Legislation Act, s 47 (6) for certain territory plan instruments—Act, s 422A (1)

An instrument mentioned in schedule 4 (Prescribed territory plan instruments) is prescribed.

402 Expiry of City West precinct provisions

This section and the following provisions expire on 5 April 2015:

- (a) section 100, definitions of *Australian National University*, *City West precinct* and *City West precinct deed*;
- (b) section 102 (Meaning of *City West precinct*—pt 5.1);
- (c) section 105 (d) (Direct sales requiring approval by Executive—Act, s 240 (1) (a));
- (d) section 107 (2) (Direct sale criteria for Commonwealth entities—Act, s 240 (1) (a) (i));
- (e) section 108 (4) (Direct sale criteria for non-government educational establishments—Act, s 240 (1) (a) (i));
- (f) section 111 (Direct sale criteria for City West precinct land for Australian National University—Act, s 240 (1) (a) (i));
- (g) section 400 (1) (a) and (3);
- (h) dictionary, definitions of *Australian National University*, *City West precinct* and *City West precinct deed*.

403 Securing things seized under the Act, pt 12.3

- (1) This section applies to a thing seized by an inspector under the Act, part 12.3 (Powers of inspectors).
- (2) The inspector may—
 - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or

- (b) leave the thing at the place of seizure but restrict access to it.
- (3) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (2); and
 - (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 10 penalty units.

- (4) An offence against this section is a strict liability offence.

404 Application of Planning and Development Amendment Regulation 2008 (No 5) and Planning and Development Amendment Regulation 2009 (No 1)

This regulation, as amended by the *Planning and Development Amendment Regulation 2008 (No 5)* and the *Planning and Development Amendment Regulation 2009 (No 1)*, applies to developments that are started, and development applications that are made, before or after the commencement of the *Planning and Development Amendment Regulation 2008 (No 5)*.

410 Modification of Act, ch 15—Act, s 429

- (1) The Act, chapter 15 is modified by schedule 20.
- (2) This section, and schedule 20, expire on 31 March 2010.

Schedule 1 Exemptions from requirement for development approval

(see s 20 (1))

Part 1.1 Preliminary

1.1 Definitions—sch 1

In this schedule:

basic paling fence—see the Act, section 416A.

building line—see the territory plan (13 Definitions).

carport—see the territory plan (13 Definitions).

clearing, of native vegetation—see the *Nature Conservation Act 1980*, section 74.

native vegetation—see the *Nature Conservation Act 1980*, section 73.

open space boundary—see the Act, section 416A.

type, for a sign, means the sign type for the sign in the Signs General Code, appendix A.

1.2 Meaning of *designated development*—sch 1

In this schedule:

designated development, in relation to land, means—

- (a) building, altering or demolishing of a building or structure on the land; or
- (b) carrying out earthworks or other construction work on or under the land; or
- (c) carrying out work that would affect the landscape of the land.

1.3 Inconsistency between codes and this schedule

- (1) This section applies if—
 - (a) this schedule applies to a development; and
 - (b) the schedule applies a code in relation to the development; and
 - (c) there is an inconsistency between the code and the schedule.
- (2) This schedule prevails over the code to the extent of the inconsistency unless the code provides otherwise.

1.4 Exemption does not affect other territory laws

- (1) An exemption under this schedule in relation to a development does not affect the operation of any other territory law relating to land use or the provision of services for the development.

Examples—laws not affected

- *Building Act 2004*
- *Electricity Safety Act 1971*
- *Environment Protection Act 1997*
- *Nature Conservation Act 1980*
- *Scaffolding and Lifts Act 1912*
- *Utilities Act 2000*
- *Water and Sewerage Act 2000*

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) To remove any doubt, the following provisions of this schedule do not limit the operation of subsection (1):
 - (a) section 1.14 (Criterion 4—heritage and tree protection);
 - (b) section 1.15 (Criterion 5—compliance with lease and other development approvals).

Part 1.2 General exemption criteria

1.10 Exempt developments—general criteria

The following are the *general exemption criteria* for a development:

- (a) section 1.11 (Criterion 1—easement and other access clearances);
- (b) section 1.12 (Criterion 2—plumbing and drainage clearances);
- (c) section 1.13 (Criterion 3—metallic, white and off-white exterior finishes in residential zones);
- (d) section 1.14 (Criterion 4—heritage and tree protection);
- (e) section 1.15 (Criterion 5—compliance with lease and other development approvals);
- (f) section 1.17 (Criterion 7—no multiple occupancy dwellings);
- (g) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

1.11 Criterion 1—easement and other access clearances

- (1) A development must not cause any part of a building or structure to be located in—
 - (a) an easement or proposed easement; or
 - (b) a utility infrastructure access or protection space.
- (2) In this section:

easement means an easement registered, or shown on a certificate of title, under the *Land Titles Act 1925*.

proposed easement means a proposed easement shown on a deposited plan under the *Districts Act 2002* or units plan under the *Unit Titles Act 2001*.

utility infrastructure access or protection space means the space required under a utility rule—

- (a) for a utility operator to have access to its infrastructure; or
- (b) to protect or maintain clearances from utility infrastructure such as water supply pipes, sewerage systems, gas pipes and electricity conductors.

Examples

- 1 The electricity service and installation rules made under the *Utilities Act 2000* require buildings or other structures to be kept clear of power lines by a stated dimension, to protect the powerlines from damage or to protect the electricity supply from interruption.
- 2 The water and sewerage service and installation rules made under the *Utilities Act 2000* require access to stated utility infrastructure at the rear of a block to not be impeded by structures and an unhindered access route to the infrastructure of a stated width to be provided down at least one side of the block.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

utility rule means a rule, as in force from time to time, made under a technical code, as in force from time to time, made under the *Utilities Act 2000*.

1.12 Criterion 2—plumbing and drainage clearances

A development must not cause a clearance for a pipe fitting opening or pipe fitting outlet to contravene AS/NZS 3500 (*Plumbing and Drainage Set*), as in force from time to time.

Example

A sewer vent must be above the surrounding surface. A development must not create a situation where surface water can flow into the vent.

Note 1 ***Surface water***—see the *Water Resources Act 2007*, s 8.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.13 Criterion 3—metallic, white and off-white exterior finishes in residential zones

- (1) The building or alteration of an external wall or roof of a building or structure must not cause any part of the exterior of any metal lining sheet for the wall, or metal roofing sheet, to have a metallic, white or off-white finish.
- (2) A development in a residential zone that involves the building of a fence, other than a fence for an open space boundary, must not cause any part of the exterior of any metal sheet for the fence to have a metallic, white or off-white finish.
- (3) In this section:

white or off-white, for a finish—see the territory plan (3.2 Residential Zones—Single Dwelling Housing Development Code, R33).

1.14 Criterion 4—heritage and tree protection

A development must not contravene—

- (a) the *Heritage Act 2004*; or
- (b) the *Tree Protection Act 2005*.

Note Other applicable laws must also be complied with (see s 1.4).

1.15 Criterion 5—compliance with lease and other development approvals

- (1) A development (the *relevant development*) must not be inconsistent with—
 - (a) a condition of a development approval for another development on the block to which the relevant development relates; or
 - (b) a provision of the lease to which the relevant development relates; or

- (c) an agreement collateral to the grant of a lease to which the relevant development relates.

Example

a land management agreement (see Act, s 283)

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For subsection (1) (a), a provision of a development approval is taken to be a condition of the approval only if the approval is expressed to be given on the condition that the provision is complied with.

Example—condition

Development plans do not include windows in the front wall. The approval is expressed to be subject to the condition that the front wall not have windows.

Example—not a condition

Development plans do not include windows in the front wall. The approval is given without explicit mention of windows in the front wall being a condition of the approval.

Note An approval may be given subject to conditions, see the Act, s 165 (Conditional approvals).

1.17 Criterion 7—no multiple occupancy dwellings

A development must not increase the number of dwellings on a block to 2 or more dwellings.

1.18 Criterion 8—compliance with other applicable exemption criteria

A development must comply with any other criteria in part 1.3 (Exempt developments) that apply to the development.

Examples—other criteria applying to development

- 1 changing a house roof from metal sheet to tiles (see s 1.22) must also comply with the criteria in section 1.24 (Buildings—roof slope changes)
- 2 the replacement of a roof flue for a building (see s 1.22) must also comply with section 1.25 (Buildings—chimneys, flues and vents)

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 1.3 Exempt developments

Division 1.3.1 Exempt developments—minor building works

1.20 Internal alterations of buildings

- (1) In this section:

non-residential building means a building, or part of a building, that is—

- (a) not used for residential purposes; and
- (b) not a class 10 building associated with a building used for residential purposes.

prescribed general exemption criteria means the general exemption criteria, other than section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

Note ***General exemption criteria***—see s 1.10.

- (2) A designated development for the internal alteration of a building if—

- (a) the alteration does not do either of the following:
 - (i) change the building's class under the building code;
Note ***Class***, for a building—see the dictionary.
 - (ii) increase the gross floor area of a non-residential building;
and
- (b) the designated development complies with the prescribed general exemption criteria that are applicable to the development.

Note ***Designated development***—see s 1.2.

1.21 Installation, alteration and removal of low impact external doors and windows in buildings

A designated development for the installation, alteration or removal (the *relevant change*) of an external door or window in a building if—

- (a) the height of the building’s finished floor level, or other trafficable surface, immediately adjacent to the relevant change is not more than 1m above natural ground level; and

Example—trafficable surface

paving

Note 1 **Natural ground level**—see the territory plan (13 Definitions).

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) if the relevant change is to an existing door or window—the relevant change involves no more than the following:
 - (i) replacing the door or window with either a door or a window without changing the width of the opening in the wall;
 - (ii) increasing the width of the door or window by not more than 340mm;
 - (iii) increasing the height of the door or window by not more than 340mm;
 - (iv) reducing the height or width, or both, of the window or door;

- (v) installing a wall instead of the door or window or a part of the door or window; and

Example—par (b)

an existing window is replaced by a door that is 200mm higher and 300mm wider than the window

Note The change in relation to the door or window need not involve all of the matters mentioned in par (b).

- (c) if the relevant change is not to an existing door or window—the relevant change involves no more than removing part of a wall and installing a door or window with an external horizontal opening of not more than 2m; and
- (d) no part of the relevant change is less than either of the following for the block on which the building is located:
 - (i) 1.5m from a side boundary;
 - (ii) 3m from a rear boundary; and
- (e) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Changing the external appearance, material or finish of a building or structure may be subject to other laws, including heritage laws and energy efficiency provisions of building laws.

1.21A Installation, alteration and removal of high impact external doors and windows in buildings

A designated development for the installation, alteration or removal (the **relevant change**) of an external door or window in a building if—

- (a) the height of the building's finished floor level, or other trafficable surface, immediately adjacent to the relevant change is 1m or more above natural ground level; and

Note See the example and notes to s 1.21 (a).

- (b) the relevant change involves no more than the following:
- (i) replacing the door or window with either a door or a window without changing the width of the opening in the wall;
 - (ii) increasing the width of the door or window by not more than 340mm;
 - (iii) increasing the height of the door or window by not more than 340mm;
 - (iv) reducing the height or width, or both, of the window or door;
 - (v) installing a wall instead of the door or window or a part of the door or window; and

Note The change in relation to the door or window need not involve all of the matters mentioned in par (b).

- (c) no part of the relevant change is less than either of the following for the block on which the building is located:
- (i) 1.5m from a side boundary;
 - (ii) 3m from a rear boundary; and
- (d) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Changing the external appearance, material or finish of a building or structure may be subject to other laws, including heritage laws and energy efficiency provisions of building laws.

1.22 Exterior refinishing of buildings and structures

- (1) In this section:

excluded item means—

- (a) an external door or window; or
- (b) a skylight for a building.

Note For external doors and windows, see s 1.21 and s 1.21A and for skylights, see s 1.26.

exterior item means any of the following on the exterior of a building or structure:

- (a) a wall, sill or fascia or an eave lining;
- (b) a downpipe or flashing or guttering;
- (c) trim;
- (d) roofing or a roof duct, flue, gutter or vent;
- (e) a vent pipe;
- (f) a step or landing;
- (g) a handrail or balustrade or other barrier that functions as a balustrade.

structure does not include a fence for an open space boundary.

Note For external doors and windows, see s 1.21 and 1.21A and for skylights, see s 1.26.

- (2) A designated development for altering the exterior material or finish of a building or structure if—
- (a) the alteration involves—
 - (i) painting the exterior of the building or structure to change its appearance, other than—

(A) painting a design or sign on the exterior of the building or structure; or

(B) painting the building for maintenance; or

Note For maintenance, see s 1.23.

(ii) replacing or covering an exterior item (other than an excluded item) of the building or structure with the same or a different material; and

Examples

- 1 changing a house roof from metal sheet to tile
- 2 changing weatherboard cladding to brick-veneer
- 3 rendering exterior brickwork with cement render

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Changing the external appearance, material or finish of a building or structure may be subject to other laws, including heritage laws and energy efficiency provisions of building laws.

1.23 Maintenance of buildings and structures

A designated development for the maintenance of a building or structure if—

(a) the maintenance does not involve changing the kind of material used for the part of the building or structure to which the maintenance relates; and

Examples—maintenance

- 1 replacing a building's rotted timber window frames to maintain the building's appearance and to weatherproof the building

- 2 replacing broken roof tiles to prevent water damage to the building
- 3 repairing a building's plant and equipment

Note 1 Replacing items such as windows or roofs might be subject to other laws, including heritage laws.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Changing the external appearance, material or finish of a building or structure may be subject to other laws, including heritage laws and energy efficiency provisions of building laws.

1.24 Buildings—roof slope changes

- (1) A designated development for changing the slope of all or part of a building's roof if—

- (a) the change does not do any of the following:

- (i) change the slope by more than 2°;
- (ii) increase the volume or floor area of an existing attic;
- (iii) create a new attic; and

- (b) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

attic—see the territory plan (13 Definitions).

1.25 Buildings—chimneys, flues and vents

A designated development for a chimney, flue or vent for a building if—

- (a) the chimney, flue or vent—
 - (i) penetrates, or is attached to, the building's roof; and
 - (ii) does not extend more than 1.5m above the lowest point of the roof where the chimney, flue or vent penetrates, or attaches to, the roof; and
- (b) the designated development complies with the general exemption criteria that are applicable to the development.

Example—chimney that is an exempt development

A chimney penetrates a sloping roof. The vertical distance from the top of the chimney to the point where the chimney emerges from the roof's surface, on the downhill side of the chimney, is 1.45m.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1.26 Buildings—skylights

A designated development for a skylight in the roof of a building if—

- (a) the external area of the skylight is not more than 2m²; and
- (b) the skylight does not project more than 150mm above the surface of the roof adjacent to the skylight; and

- (c) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Changing the external appearance, material or finish of a building or structure may be subject to other laws, including heritage laws and energy efficiency provisions of building laws.

1.27 External photovoltaic panels, heaters and coolers

- (1) A designated development for an externally mounted service for a block if—
- (a) no part of the service is within 1.5m of a side boundary or rear boundary of the block; and
 - (b) if the service is mounted on a roof—the distance from the top of the service to the closest point of the roof is not more than 1.5m; and
 - (c) if the service is mounted on the ground—no part of the service is between a front boundary and a building line for the block; and
 - (d) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

service—

- (a) means a photovoltaic panel, solar water heater, air conditioner or evaporative cooler; and
- (b) includes the support structures (if any) for the panel, heater, air conditioner or evaporative cooler.

solar water heater—see the *Building (General) Regulation 2008*, schedule 1, section 1.1.

1.28 Buildings—external switchboards

A designated development for a switchboard on the exterior of a building if the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.29 Buildings—external area lighting

- (1) A designated development for area lighting on the exterior of a building if the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Other laws, including the *Environment Protection Act 1997* (see dict, def *pollutant*, par (d)), apply in relation to the emission of electromagnetic radiation, including light.

- (2) In this section:

area lighting means lighting to assist people to avoid obstacles while moving around the exterior of a building.

1.30 Residential leases—driveway crossings of road verges

- (1) A designated development for a driveway across a road verge for a residential lease granted for a single dwelling if—
- (a) only 1 dwelling has been built on the lease and a development application for another dwelling has not been made in relation to the lease; and
 - (b) the construction of the driveway will result in not more than 2 driveways for the lease; and

- (c) the chief executive of the administrative unit responsible for municipal services has agreed, in writing, to the provision of the driveway; and
- (d) the driveway is constructed in accordance with the consent; and
- (e) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 **Residential lease**—see the Act, s 234.

- (2) In this section:

road verge means the area between the trafficable part of a road and the boundary of a lease adjacent to the road.

Note This item does not apply to that part of a driveway that is on the residential lease, but other provisions in this schedule might apply to that part of a driveway.

1.31 Temporary buildings and structures

- (1) In this section:

event means a fair, circus, carnival, celebration, market, show, concert, display, exhibition, competition, training event, recreational event or publicity event or similar activity.

prescribed general exemption criteria means the general exemption criteria, other than the following:

- (a) section 1.13 (Criterion 3—metallic, white and off-white exterior finishes in residential zones);
- (b) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

Note **General exemption criteria**—see s 1.10.

- (2) A designated development for a temporary, portable or demountable building or structure if—
- (a) the building or structure is for use at the site of another development or an event; and
 - (b) if the building or structure is for use at the site of another development—the building or structure is associated with carrying out the other development; and
 - (c) the building or structure is removed before the end of the longer of the following periods:
 - (i) 1 year after the day the designated development for the building or structure begins;
 - (ii) if the planning and land authority extends, in writing, the 1-year period—the period as extended; and
 - (d) the designated development complies with the prescribed general exemption criteria that are applicable to the development.

Note **Designated development**—see s 1.2.

Division 1.3.2 Exempt developments—non-habitable buildings and structures

Subdivision 1.3.2.1 Preliminary

1.40 Meaning of *class 10a building*—div 1.3.2

In this division:

class 10a building includes the following:

- (a) a garage, carport or shed;
- (b) a conservatory, greenhouse, gazebo, pergola, shelter, shade structure or hail protection structure, studio, workshop or cubbyhouse;

- (c) a stable, storeroom or other outbuilding;
- (d) a deck, verandah, porch, landing, stairs or ramp.

Note 1 **Class**, for a building or structure, means the class of building or structure under the building code (see dict).

Note 2 A swimming pool is not a class 10a building (see building code).

1.41 Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area

- (1) In this section:

boundary clearance area, for a side boundary or rear boundary of a block, means the area between the boundary and a line drawn 1.5m inside the block and parallel to the boundary.

class 10 building or structure does not include a sign installed on land.

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

- (2) A designated development for a class 10 building or structure (the **2nd thing**) in a boundary clearance area of a block if—
- (a) an existing class 10 building or structure (the **1st thing**) is partially or fully in a boundary clearance area of the block; and
 - (b) the 2nd thing would be exempt under another section of this schedule if the 1st building were not located partially or fully within the boundary clearance area; and
 - (c) the 2nd thing is not a boundary fence; and
 - (d) the 1st thing and 2nd thing—

- (i) are the only class 10 buildings or structures (other than a boundary fence) that are partially or fully within the boundary clearance area; and
 - (ii) have a combined relevant cross-section area above natural ground level of not more than 30m²; and
- (e) the designated development complies with the general exemption criteria that are applicable to the development.

Example—par (d) (ii)

A regular-shaped, flat-roofed, garden shed faces parallel to and is 1m from the boundary of a block. Its relevant cross-section area is the area of the rectangles bounded by the shed wall that faces the boundary and the edge of its roof, a total area of 15m².

The block's owner proposes to build a 2nd class 10a building which is a circular rotunda with a domed roof. Its relevant cross-section area is the largest cross-section of the rotunda at any point in the boundary clearance area when measured in a plane parallel to the boundary, an area of 18m².

Because the combined relevant cross-section areas of shed and rotunda are more than 30m², the rotunda does not comply with this section and is not exempt from a development application.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) To remove any doubt, this section applies in relation to the boundary clearance area of each side boundary and rear boundary of a block.

Subdivision 1.3.2.2 Class 10a buildings

1.45 Roofed class 10a buildings—enclosed or open on 1 side

- (1) A designated development for a class 10a building on a block if—
- (a) the building is not an external deck or external verandah; and
 - Note* For external decks, see s 1.48 and for external verandahs, see s 1.49.
 - (b) the building is enclosed by a roof and has walls on—
 - (i) each of its sides; or
 - (ii) each of its sides except for 1 side; and
 - (c) the height of the building is not more than 3m above natural ground level; and
 - Note* **Natural ground level**—see the territory plan (13 Definitions).
 - (d) the building does not exceed the size limitation for the block; and
 - (e) the building complies with the setback requirement for the block; and
 - (f) if any part of the building is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the building is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the building; and

- (g) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

setback requirement, for a building in relation to a block, means—

- (a) if the building has a plan area of not more than 10m²—the building is behind the building line for the block; or
- (b) if the building has a plan area of more than 10m²—the building is behind the building line for the block and at least 15m from the block's front boundary

Note 1 **Building line** and **front boundary**—see the territory plan (13 Definitions).

Note 2 **Plan area**—see the dictionary.

size limitation, for a building in relation to a block, means—

- (a) if the size of the block is not more than 500m²—the building has a plan area of not more than 10m²; or
- (b) if the size of the block is 500m² or more but less than 600 m²—the building has a plan area of not more than 25m²; or
- (c) if the size of the block is 600m² or more—the building has a plan area of not more than 36m².

1.46 **Roofed class 10a buildings—unenclosed or partially open**

A designated development for a class 10a building on a block if—

- (a) the building is not an external deck or external verandah; and

Note For external decks, see s 1.48 and for external verandahs, see s 1.49.

- (b) the height of the building is not more than 3m above natural ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (c) the building—

- (i) is enclosed by a roof which has a plan area of not more than 25m²; and

Note **Plan area**—see the dictionary.

- (ii) has walls on not more than 2 of its sides; and

- (d) the building is behind the building line for the block; and

Note **Building line**—see the territory plan (13 Definitions).

- (e) if the building has a floor—the height of the finished floor level is not more than—

- (i) for any part of the building that is within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level; and

- (ii) in any other case—1m above finished ground level; and

- (f) if any part of the building is within 1.5m of a side boundary or rear boundary of the block—

- (i) the building is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or

- (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the building; and

- (g) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.47 Class 10a buildings—unroofed and unenclosed

A designated development for a building on a block if—

- (a) the building is not an external deck or external verandah; and

Note For external decks, see s 1.48 and for external verandahs, see s 1.49.

- (b) the building does not have a roof or any walls; and

- (c) the height of the building is not more than 3m above natural ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (d) if the building has a floor—the height of the finished floor level is not more than—

- (i) for any part of the building that is within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level; and

- (ii) in any other case—1m above finished ground level; and

- (e) the building is behind the building line for the block; and

Note **Building line**—see the territory plan (13 Definitions).

- (f) if any part of the building is within 1.5m of a side boundary or rear boundary of the block—

- (i) the building is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or

- (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the building; and

- (g) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.48 Class 10a buildings—external decks

- (1) In this section:

balustrade includes a barrier that acts as a balustrade.

deck includes any of the following for the deck:

- (a) external stairs or ramp;
- (b) an external landing;
- (c) a retaining wall.

- (2) A designated development for an external deck on a block if—

- (a) the deck does not have a roof; and
- (b) the height of the finished floor level of the deck is not more than—
 - (i) for any part of the deck that is either between a front boundary and a building line for the block or within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level; and
 - (ii) in any other case—1m above finished ground level; and

Note **Building line**, **front boundary** and **natural ground level**—see the territory plan (13 Definitions).

- (c) if any part of the deck is between a front boundary and a building line for the block—that part of the deck does not have a balustrade; and

- (d) if any part of the deck is behind a building line for the block—the height of any balustrade for that part of the deck is not more than 1.2m above the finished floor level for the deck; and
- (e) if any part of the deck is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the deck is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the deck; and
- (f) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.49 Class 10a buildings—external verandahs

- (1) In this section:
verandah includes any of the following for the verandah:
 - (a) external stairs or ramp;
 - (b) an external landing;
 - (c) a retaining wall.
- (2) A designated development for an external verandah on a block if—
 - (a) the verandah is attached to, or immediately adjacent to, a dwelling on the block; and
 - (b) the plan area of the verandah is not more than 10m²; and

Note **Plan area**—see the dictionary.

 - (c) no part of the verandah is—

- (i) higher than 3m above natural ground level; or

Note **Natural ground level**—see the territory plan (13 Definitions).

- (ii) within 5.5m from the front boundary of the block; or
(iii) within 1.5m of a side boundary or rear boundary of the block; and

- (d) if the verandah has a floor—the height of the finished floor level is not more than 1m above finished ground level; and
(e) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Subdivision 1.3.2.3 Class 10b structures

1.50 Class 10b structures—plan area not more than 2m²

Note Class 10b structures include the following:

- a fence, retaining wall or freestanding wall
- a mast or antenna
- a swimming pool.

- (1) A designated development for a class 10b structure, other than a sign, on a block if—

- (a) the plan area of the structure is not more than 2m²; and

Note **Plan area**—see the dictionary.

- (b) the structure is not—

- (i) wider than 2m; or
(ii) higher than 1.85m above natural ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (c) if the structure has a floor—the height of the finished floor level is not more than 0.4m above natural ground level; and
- (d) if the structure is not a single letterbox—no part of the structure is between a front boundary and a building line for the block; and

Note **Building line** and **front boundary**—see the territory plan (13 Definitions).

- (e) the height of any part of the structure that is within 1.5m of a side boundary or rear boundary of the block is not more than 0.4m above natural ground level; and
- (f) if any part of the structure is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the structure is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the structure; and
- (g) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.51 Fences and freestanding walls generally

- (1) In this section:

excluded criteria means any other criteria in division 1.3.2 (Exempt developments—non-habitable buildings and structures), other than section 1.41, that apply to the development.

Note The general exemption criteria include s 1.18 (Criterion 8—compliance with other applicable exemption criteria) which provides that a development must comply with any other criteria in pt 1.3 that apply to the development.

fence—

- (a) includes a gate that forms part of, or functions as, a fence; but
- (b) does not include a fence for an open space boundary.

wall includes a gate that forms part of, or functions as, a wall.

- (2) A designated development for a fence for, or freestanding wall on, a block if—

- (a) the fence or wall is not higher than—
 - (i) for a mesh fence in an industrial zone—2.7m above natural ground level; or
 - (ii) in any other case—
 - (A) for a panel of a fence or wall—2.3m above natural ground level; or
 - (B) for the support post or column of a fence or wall—2.5m above natural ground level; and

Note ***Natural ground level***—see the territory plan (13 Definitions).

- (b) no part of the fence or wall is between a front boundary and a building line for the block; and

Note **Building line** and **front boundary**—see the territory plan (13 Definitions).

- (c) no part of the fence or wall diverts or concentrates the flow of surface water—

(i) in a way that causes ponding; or

(ii) onto other land; and

Note **Surface water**—see the *Water Resources Act 2007*, s 8.

- (d) the designated development complies with the general exemption criteria, other than the excluded criteria, that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 A metal fence must not have a white, off-white or metallic exterior finish (see s 1.13).

1.52 Basic open space boundary fences

Note The Act, s 416A defines **open space boundary** as meaning a boundary between leased and unleased land (see this sch, s 1.1).

- (1) A designated development for a fence for an open space boundary for a block if—

- (a) a development requirement for the block requires the building of a basic paling fence for the boundary; and

Note **Basic paling fence**—see the Act, s 416A.

- (b) the fence—

(i) is not higher than 1.85m above natural ground level; and

(ii) is a basic paling fence or complies with subsection (2); and

(c) no part of the fence diverts or concentrates the flow of surface water—

- (i) in a way that causes ponding; or
- (ii) onto other land; and

Note **Surface water**—see the *Water Resources Act 2007*, s 8.

(d) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

(2) A fence for an open space boundary for a block complies with this subsection if—

(a) the fence's panels and support structure are—

- (i) made of unperforated metal; and
- (ii) finished in a precoloured proprietary finish; and
- (iii) used in accordance with the manufacturer's relevant written instructions; and

(b) all sharp edges of metal sheets are capped; and

(c) for any one side of the fence—

- (i) the panels are of the same material, flatness and corrugation (if any); and
- (ii) all of the visible components (other than fasteners, footings and the cut ends of components) are the same external colour as the panels; and
- (iii) the component's colour is a solid colour that is, or closely matches, a colour from AS 2700 (*Colour Standards for General Purposes*) mentioned in part 1.4 (Permitted open space boundary fence colours); and

- (iv) the form, finish and colour of the fence is the same for the full length of the open space boundary for the block for that side of the fence.

(3) In this section:

development requirement—see the Act, section 416A.

1.53 Retaining walls

- (1) A designated development for a retaining wall on a block if—
 - (a) no part of the retaining wall is between a front boundary and a building line for the block; and
 - Note* **Building line** and **front boundary**—see the territory plan (13 Definitions).
 - (b) the retaining wall is not higher than—
 - (i) if it is a cut-in retaining wall—
 - (A) for any part of the wall that is within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level on the lowest side of the wall; and
 - (B) for any other part of the wall—1.2m above natural ground level on the lowest side of the wall; and
 - (ii) if it is a fill retaining wall—
 - (A) for any part of the wall that is within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level on the lowest side of the wall; and
 - (B) for any other part of the wall—1m above natural ground level on the lowest side of the wall; and
 - (iii) if it is a combination retaining wall—

- (A) for any part of the wall that is within 1.5m of a side boundary or rear boundary of the block—0.4m above natural ground level on the lowest side of the wall; and
- (B) for any other part of the wall—1.2m above natural ground level on the lowest side of the wall; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (c) if any part of the retaining wall is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the retaining wall is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the retaining wall; and
- (d) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

combination retaining wall means a retaining wall that is both a cut-in retaining wall and a fill retaining wall.

cut-in retaining wall means a wall, or that part of a wall, retaining earth below natural ground level.

fill retaining wall means a wall, or that part of a wall, retaining earth above natural ground level.

1.54 Swimming pools

- (1) A designated development for a swimming pool on a block if—

- (a) no part of the pool, or an associated structure, is—
 - (i) between a front boundary and a building line for the block;
or
 - (ii) within 1.5m of a side boundary or rear boundary for the block; and
- (b) if the pool includes an associated structure with an elevated floor—the height of the finished floor level is not more than 1m above finished ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (c) the pool's capacity is not more than 45kL; and
- (d) the height of the pool's reservoir is not more than 1.5m above natural ground level; and
- (e) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

associated structure, in relation to a swimming pool—

- (a) includes a deck, landing, stairs or ramp, for the pool; but
- (b) does not include a retaining wall or landscaping for the pool.

swimming pool—see the *Building (General) Regulation 2008*, schedule 1, section 1.1.

1.55 Water tanks

- (1) In this section:

prescribed general exemption criteria means the general exemption criteria, other than section 1.13 (Criterion 3—metallic, white and off-white exterior finishes in residential zones).

Note ***General exemption criteria***—see s 1.10.

- (2) A designated development for a water tank on a block if—
- (a) the tank does not have a capacity of more than 20kL; and
 - (b) the height of the tank is not more than 2.45m above natural ground level; and

Note ***Natural ground level***—see the territory plan (13 Definitions).

- (c) no part of the tank is located between a front boundary and a building line for the block; and
- (d) if any part of the tank is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the tank is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the tank; and
- (e) the designated development complies with the prescribed general exemption criteria that are applicable to the development.

Note ***Designated development***—see s 1.2.

1.56 External ponds

A designated development for an external pond on a block if—

- (a) the pond is not for, or used for, swimming, wading or bathing; and

- (b) the maximum depth of water the pond can hold is not more than 300mm; and
- (c) the surface area of the water in the pond is not more than 6m² when the pond is filled to its maximum water level (without overtopping effects); and
- (d) no part of the pond is within 1.5m of a side boundary or rear boundary of the block; and
- (e) no part of the pond is located between a front boundary and a building line for the block; and

Note **Building line** and **front boundary**—see the territory plan (13 Definitions).

- (f) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.57 Animal enclosures

- (1) A designated development for an animal enclosure on a block if—
 - (a) the enclosure's plan area is not more than 10m²; and

Note **Plan area**—see the dictionary.

 - (b) the enclosure's height is not more than 3m above natural ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

 - (c) no part of the enclosure is between a front boundary and a building line for the block; and

Note **Building line** and **front boundary**—see the territory plan (13 Definitions).

 - (d) if any part of the enclosure is within 1.5m of a side boundary or rear boundary of the block—

- (i) the enclosure is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
- (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the enclosure; and
- (e) the designated development complies with the general exemption criteria, other than the excluded criteria, that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 Other laws, including animal welfare laws, may be relevant (see s 1.4).

- (2) In this section:

excluded criteria means any other criteria in division 1.3.2 (Exempt developments—non-habitable buildings and structures), other than section 1.41, that apply to the development.

Note The general exemption criteria include s 1.18 (Criterion 8—compliance with other applicable exemption criteria) which provides that a development must comply with any other criteria in pt 1.3 that apply to the development.

1.58 Clothes lines

- (1) A designated development for a clothes line on a block if—
- (a) the clothes line's height (including any extendable part extended) is not more than 3m above natural ground level; and
- Note* **Natural ground level**—see the territory plan (13 Definitions).
- (b) total line length is not more than 60m and the span or cantilever of any support is not more than 3m; and
 - (c) no part of the clothes line is between a front boundary and a building line for the block; and

| | |
|-----------------------|--|
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Note **Building line** and **front boundary**—see the territory plan (13 Definitions).

- (d) if any part of the clothes line is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the clothes line is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the clothes line; and
- (e) the designated development complies with the general exemption criteria, other than the excluded criteria, that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) In this section:

excluded criteria means any other criteria in division 1.3.2 (Exempt developments—non-habitable buildings and structures), other than section 1.41, that apply to the development.

Note The general exemption criteria include s 1.18 (Criterion 8—compliance with other applicable exemption criteria) which provides that a development must comply with any other criteria in pt 1.3 that apply to the development.

1.59 Dish antennas

- (1) In this section:

dish antenna means a parabolic antenna with a solid, wire or mesh dish and includes the support structures for the antenna.

- (2) A designated development for a dish antenna on a block if—

- (a) the antenna is a receiving antenna only or an antenna that can send and receive a signal; and
- (b) if the antenna is mounted on the ground—
 - (i) the diameter of the antenna is not more than 1.55m; and
 - (ii) the height of the antenna is not more than 3m above natural ground level; and

Note **Natural ground level**—see the territory plan (13 Definitions).

- (c) if the antenna is externally mounted on a building in a residential area—
 - (i) the diameter of the antenna is not more than 0.65m; and
 - (ii) if the building is a single dwelling where the closest point of the dwelling's roof to the antenna is lower than the highest point of the antenna—the distance from the highest point of the antenna to the closest point on the roof is not more than 1.5m; and
- (d) if the antenna is externally mounted on a building in a non-residential area—
 - (i) the diameter of the antenna is not more than 1.55m; and
 - (ii) if the closest point of the building's roof to the antenna is lower than the highest point of the antenna—the distance from the highest point of the antenna to the closest point on the roof is not more than 2m; and
 - (iii) the antenna is screened so that it cannot be seen by a 2m tall person standing on the ground less than 100m from the antenna; and
 - (iv) the antenna's colour matches the adjacent colour of the building or is the colour of the antenna as manufactured; and

- (e) if any part of the antenna is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the antenna is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the antenna; and
- (f) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

1.60 Mast antennas

- (1) In this section:
mast antenna means a tower, pole or aerial structure and includes the support structures for the antenna.
- (2) A designated development for a mast antenna on a block if—
 - (a) the antenna is a receiving antenna only or an antenna that can send and receive a signal; and
 - (b) the diameter of the antenna is not more than 0.75m; and
 - (c) if the antenna is mounted on the ground—
 - (i) the height of the antenna is not more than 6m above natural ground level; or
 - (ii) if any part of the antenna is within 1.5m of a side boundary or rear boundary of the block—no part of the antenna is more than 6m above natural ground level; and
 - (d) if the antenna is mounted on a building—

- (i) no part of the antenna is more than 1.5m above the highest point of the building; and
 - (ii) the antenna's colour matches the colour of the building; and
- (e) if any part of the antenna is within 1.5m of a side boundary or rear boundary of the block—
 - (i) the antenna is the only class 10 building or structure (other than a boundary fence) that has any part of it that is within 1.5m of the boundary; or
 - (ii) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area) applies to the antenna; and
- (f) the designated development complies with the general exemption criteria, other than the excluded criteria, that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

(3) In this section:

excluded criteria means any other criteria in division 1.3.2 (Exempt developments—non-habitable buildings and structures), other than section 1.41, that apply to the development.

Note The general exemption criteria include s 1.18 (Criterion 8—compliance with other applicable exemption criteria) which provides that a development must comply with any other criteria in pt 1.3 that apply to the development.

Division 1.3.3 Exempt developments—signs

1.65 Minor public works signs excluded—div 1.3.3

This division does not apply to the putting up, attaching or displaying of a sign that is minor public works within the meaning of section 1.90.

1.66 Meaning of *prescribed general exemption criteria*—div 1.3.3

In this division:

prescribed general exemption criteria means the general exemption criteria, other than the following:

- (a) section 1.13 (Criterion 3—metallic, white and off-white exterior finishes in residential zones);
- (b) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

Note *General exemption criteria*—see s 1.10.

1.67 Signs attached etc to buildings, structures and land

The putting up, attaching or displaying of a sign (whether permanent or temporary) on land, or to a building or structure on land, if—

- (a) the sign is put up, attached or displayed in such a way that the sign cannot be removed without—
 - (i) for a sign attached to or displayed on a building or structure—damaging the sign, building or structure or unfastening the sign; and
 - (ii) for a sign put up or displayed on the ground—disturbing the ground; and
- (b) the sign is of a type mentioned in part 1.5 (Tables of exempt signs) and is located in a zone for which the letter ‘A’ appears

in the column for the zone in which the building, structure or land is located; and

Note **Type**, of sign—see s 1.1.

- (c) the sign complies with the relevant rules of the Signs General Code; and
- (d) the putting up, attaching or displaying of the sign complies with the prescribed general exemption criteria that are applicable to the development.

Note 1 **Prescribed general exemption criteria**—see s 1.66.

Note 2 Fixed signs that encroach into unleased land require a licence under the Act, pt 9.11.

Note 3 Other laws, including the *Roads and Public Places Act 1937*, may regulate the placement of the sign.

1.68 Moveable signs in public places

- (1) The display of a moveable sign in a public place if—
 - (a) the sign does not impede public access to a place (including a public place); and
 - (b) the surface area of any side of the sign is not more than 1.5m²; and
 - (c) the vertical distance from the top of any side of the sign to the bottom of the side is not more than 1.5m; and
 - (d) the display of the sign complies with the prescribed general exemption criteria that are applicable to the development.

Note 1 **Prescribed general exemption criteria**—see s 1.66.

Note 2 Other laws, including the *Roads and Public Places Act 1937*, may regulate the placement of the sign.

- (2) In this section:

moveable sign means a sign that is not fixed to a building or structure.

public place—see the *Roads and Public Places Act 1937*, dictionary.

1.69 Temporary signs

Putting up, attaching or displaying a sign if—

- (a) the sign is of a type mentioned in part 1.5 (Tables of exempt signs) and is located in a zone for which the letter ‘T’ appears in the column for the zone in which the building, structure or land is located; and

Note **Type**, of sign—see s 1.1.

- (b) the sign complies with the requirements (if any) of the Signs General Code in relation to the sign; and
- (c) the sign is put up, attached or displayed for not more than 2 weeks in any 1 calendar year; and
- (d) the putting up, attaching or displaying of the sign complies with the prescribed general exemption criteria that are applicable to the development.

Note 1 **Prescribed general exemption criteria**—see s 1.66.

Note 2 Temporary signs that encroach into unleased land require a licence under the Act, pt 9.11.

Note 3 Other laws, including the *Roads and Public Places Act 1937*, may regulate the placement of the sign.

1.70 Signs—information about future urban areas

Putting up, attaching or displaying a sign containing information about a future urban area if—

- (a) the information on the sign—
 - (i) is approved by the Territory; and
 - (ii) is not about the marketing or sale of the land; and

- (b) neither of the horizontal or vertical dimensions of the sign are longer than 2m; and
- (c) not more than 1 dimension of the sign is longer than 1.5m; and
- (d) the height of the sign is not more than 2.5m above finished ground level; and
- (e) the putting up, attaching or displaying of the sign complies with the prescribed general exemption criteria that are applicable to the development.

Note 1 **Prescribed general exemption criteria**—see s 1.66.

Note 2 **Future urban area**—see the Act, dictionary.

Division 1.3.4 Exempt developments—lease variations

1.75 Lease variations—exempt developments

The variation of a lease for the purpose only of allowing a development that is exempt under another section of this schedule if the variation of the lease complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

1.76 Lease variations—withdrawal of part of land

The variation of a lease for the withdrawal of part of the land comprised in the lease if the variation of the lease complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

1.77 Lease variations—subdivision for unit titles

The variation of a lease for the purpose of subdividing the land under the *Unit Titles Act 2001* if the variation of the lease complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

1.78 Lease variations—other subdivisions

The variation of a lease for the purpose of subdividing the land (other than a subdivision to which section 1.77 applies) if—

- (a) the lease was granted for purposes including development and subdivision; and
- (b) the land over which the lease was granted has been developed in accordance with the lease; and
- (c) the variation of the lease complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

Division 1.3.5 Exempt developments—rural leases

1.85 Rural lease developments generally

- (1) In this section:

prescribed general exemption criteria means the general exemption criteria, other than the following:

- (a) section 1.13 (Criterion 3—metallic, white and off-white exterior finishes in residential zones);
- (b) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

Note **General exemption criteria**—see s 1.10.

- (2) A designated development on a rural lease if—

- (a) if the development is the building or alteration of a building or structure—the development has a plan area of not more than 100m²; and

Note **Plan area**—see the dictionary.

- (b) the development does not result in the clearing of more than 0.5ha of native vegetation; and

Note **Native vegetation**—see the *Nature Conservation Act 1980*, s 73.

- (c) the development is not contrary to a land management agreement; and
- (d) the development does not require any of the following:
 - (i) a licence under the *Water Resources Act 2007*;
 - (ii) an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*;
 - (iii) an approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth); and

Note 1 Under the *Water Resources Act 2007* a licence may be required to do development work for water, including work on a water bore, increasing the quantity of ground water or taking water from a waterway.

Note 2 Under the *Environment Protection Act 1997* an environmental authorisation or environmental protection agreement may be required to do certain development work, including work causing pollution.

Note 3 Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) an approval may be required to do certain development work, including work that reduces the population of certain species.

- (e) the designated development complies with the prescribed general exemption criteria that are applicable to the development.

Note **Designated development**—see s 1.2.

1.86 Rural leases—consolidation of rural leases

The consolidation of rural leases if the consolidation of the leases complies with the general exemption criteria that are applicable to the development.

Note 1 For restrictions on the consolidation of rural leases, see the Act, div 9.7.2 and this regulation, pt 5.6.

Note 2 **General exemption criteria**—see s 1.10.

Division 1.3.6 Exempt developments—Territory developments

1.90 Minor public works

(1) A designated development for minor public works carried out by or for the Territory on unleased land if—

(a) the development does not require an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*; and

(b) if the development is—

(i) the building or alteration of a bicycle parking facility—the building or alteration of the facility is in accordance with the relevant rules in the Bicycle Parking General Code; or

Note **Relevant rules**—see the Act, dictionary.

(ii) the building, alteration or demolition of a bus shelter or bin to which the bus shelter master plan, as in force from time to time, applies—

(A) the bus shelter or bin is in accordance with the master plan; and

(B) if the street furniture agreement applies to the shelter or bin—the shelter or bin is built, altered or demolished in accordance with the agreement; or

(iii) the installation of a parking control sign or traffic control device—the sign or device is of a kind—

(A) to which AS 1742 (*Manual of Uniform Traffic Control Devices*), as in force from time to time, applies; or

(B) approved by the planning and land authority; or

Note An approval is a notifiable instrument (see s (3)).

(iv) the building or alteration of a road safety barrier—the barrier is of a kind to which AS/NZS 3845 (*Road Safety Barrier Systems*), as in force from time to time, applies; and

(c) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

(2) In this section:

bus shelter master plan means a plan for the location of bus shelters prepared by the administrative unit responsible for transport policy that is approved by the planning and land authority.

Note An approval is a notifiable instrument (see s (3)).

minor public works—

(a) means any of the following:

(i) street and park furniture;

Examples

- 1 a bench, table, rubbish bin, barbecue, water fountain, bus shelter, bike rack, bollard, planter box, street tree guard and root cover, guard rail
- 2 playground equipment

- 3 a parking meter, parking ticket machine, street sign, parking control sign, traffic control device or streetlight

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (ii) the surfacing, resurfacing or repair of the trafficable surface of a road, bridge, car park or cycle path; but

- (b) does not include the construction of public toilets.

parking control sign—see the Australian Road Rules, dictionary.

street furniture agreement means the contract between the Territory and Adshel Street Furniture Pty Ltd, contract number C06654 on the ACT Government Contracts Register.

traffic control device—see the Australian Road Rules, dictionary.

- (3) An approval of the following is a notifiable instrument:

- (a) a bus shelter master plan;
(b) a kind of parking control sign or traffic control device.

Note A notifiable instrument must be notified under the Legislation Act.

1.91 Landscape works

Work by or for the Territory that affects the landscape of land if—

- (a) the work does not involve any of the following:
- (i) timber harvesting to produce merchantable timber or products; or
- (ii) clearing native vegetation; or

Note ***Clearing*** native vegetation—see the *Nature Conservation Act 1980*, s 74.

- (iii) clearing a tract of a forest or arboretum; and

- (b) the work complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

1.92 Plantation forestry

- (1) The planting or harvesting of plantation trees by or for the Territory in an area identified as a P4 (Plantation forestry precinct) precinct in the territory plan if the planting or harvesting of the trees complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

- (2) In this section:

plantation tree—

- (a) means a tree cultivated to produce a harvest; and
(b) includes a tree naturally generated by a plantation tree.

1.93 Waterway protection work

- (1) A designated development carried out by or for the Territory for the protection of waterways if—
- (a) the chief executive of the administrative unit responsible for municipal services has agreed, in writing, to the work; and
- (b) the work does not result in the clearing of more than 0.5ha of native vegetation; and

Note **Native vegetation**—see the *Nature Conservation Act 1980*, s 73.

- (c) the work is not contrary to a land management agreement; and
- (d) the work does not require any of the following:
- (i) a licence under the *Water Resources Act 2007*;

(ii) an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*;

(iii) an approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth); and

Note 1 Under the *Water Resources Act 2007* a licence may be required to do development work for water, including work on a water bore, increasing the quantity of ground water or taking water from a waterway.

Note 2 Under the *Environment Protection Act 1997* an environmental authorisation or environmental protection agreement may be required to do certain development work, including work causing pollution.

Note 3 Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) an approval may be required to do certain development work, including work that reduces the population of certain species.

(e) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

(2) In this section:

waterway—see the *Water Resources Act 2007*, section 10.

1.94 Emergencies affecting public health or safety or property

(1) A development carried out by or for the Territory if the development is carried out because of an emergency to protect—

(a) public health or safety; or

(b) property.

Note Other territory laws must be complied with (see s 1.4).

(2) In this section:

emergency—see the *Emergencies Act 2004*, dictionary.

1.95 Temporary flood mitigation measures

A designated development carried out by or for the Territory if the development is carried out for temporary flood mitigation.

Note 1 **Designated development**—see s 1.2.

Note 2 Other territory laws must be complied with (see s 1.4).

Division 1.3.7 Exempt developments—other exemptions

1.100 Compliant single dwellings—new residential land

(1) The building of a single dwelling on a block if—

- (a) another dwelling has not been built on the block; and
- (b) if the block is a preliminary block—the dwelling is built by the lessee of the holding lease; and
- (c) the dwelling complies with—
 - (i) the relevant rules in any relevant precinct code; and
 - (ii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code—the relevant rules in the Residential Zones Single Dwelling House Development Code.

Note 1 **Relevant rules**—see the Act, dictionary. See also s (3).

Note 2 The general exemption criteria are not applied because the relevant rules in the territory plan include requirements to similar effect as the criteria.

Note 3 Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

- (2) For subsection (1) (b), a dwelling is taken to be **built** by the lessee even if some or all of the building work is done by an employee or contractor of the lessee.
- (3) To remove any doubt, a code requirement is not inconsistent with the code requirements of another code only because one code deals with a matter and the other does not.
- (4) In this section:

block includes a preliminary block.

preliminary block—land is taken to be a preliminary block if—

- (a) the land is part of a holding lease; and
- (b) an estate development plan (an **EDP**) has been approved under the Act, section 162 (Deciding development applications) in relation to the lease; and
- (c) the EDP identifies the land as a block; and
- (d) information about the boundaries of, and the distinguishing name or number for the land is recorded in the database maintained by the planning and land authority under the *Districts Act 2002*, section 17 (Digital cadastral database); and
- (e) the land is not otherwise a block under the *Districts Act 2002*.

Note **Estate development plan**—see the Act, s 94.

1.100A Otherwise non-compliant single dwellings—new residential land

- (1) The building of a single dwelling on a block if—
 - (a) another dwelling has not been built on the block; and
 - (b) if the block is a preliminary block—the dwelling is built by the lessee of the holding lease; and
 - (c) the dwelling does not comply with—

- (i) the relevant rules in any relevant precinct code; or
- (ii) the relevant rules in the Residential Zones Single Dwelling House Development Code; and
- (d) each non-compliance relates to the encroachment of the dwelling—
 - (i) beyond the front, side or rear setback required under the rules mentioned in paragraph (c); or
 - (ii) beyond the building envelope that applies, under the rules mentioned in paragraph (c), to the block where the dwelling is being built; or
 - (iii) into the minimum private open space required under the rules mentioned in paragraph (c); and
- (e) the planning and land authority declares (an ***exemption declaration***) that the building of the single dwelling does not stop being an exempt development because of a non-compliance under paragraph (c) identified in the declaration.

Note 1 **Relevant rules**—see the Act, dictionary.

Note 2 The general exemption criteria are not applied because the relevant rules in the territory plan include requirements to similar effect as the criteria.

Note 3 Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

- (2) For subsection (1) (b), a dwelling is taken to be built by the lessee even if some or all of the building work is done by an employee or contractor of the lessee.
- (3) An exemption declaration must state the following distances (each of which is an ***extended distance***):
 - (a) the distance that any element of the dwelling may extend beyond the building envelope that applies, under the rules mentioned in subsection (1) (c), to the block where the dwelling is being built;

- (b) the distance by which any setback for the dwelling, that is required by the rules mentioned in subsection (1) (c), is reduced to allow for the encroachment;
 - (c) the distance by which any element of the dwelling may encroach into the minimum private open space required under the rules mentioned in subsection (1) (c).
- (4) Not later than 10 working days after a person applies to the planning and land authority for an exemption declaration the authority must—
- (a) make the declaration; or
 - (b) refuse to make the declaration.

Note 1 If a form is approved under the Act, s 425 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 424 for this provision.

Note 3 The requirement to make a decision under s (4) does not lapse if the 10-day time limit is not met (see Legislation Act, s 152).

- (5) However, the planning and land authority must not make an exemption declaration in relation to a non-compliant dwelling unless satisfied that—
- (a) the non-compliance is minor; and
 - (b) building the dwelling other than in accordance with the rules mentioned in subsection (1) (c)—
 - (i) will not adversely affect someone other than the applicant; and
 - (ii) will not increase the environmental impact of the dwelling more than minimally.

- (6) In this section:

block—see section 1.100 (4).

preliminary block—see section 1.100 (4).

setback—see the territory plan (13 Definitions).

1.101 Buildings and structures—demolition

The demolition of a building or structure if—

- (a) were the building or structure to be built, it would be an exempt development; and
- (b) the demolition of the building or structure complies with—
 - (i) the relevant rules in the Residential Zones Single Dwelling House Development Code; and

Note **Relevant rules**—see the Act, dictionary.

- (ii) the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

1.102 Temporary use of land for emergency services training etc

- (1) In this section:

authorised entity means—

- (a) the Australian Defence Force; or
- (b) the Australian Federal Police; or
- (c) an emergency service; or

Note **Emergency service**—see the Legislation Act, dictionary, part 1.

- (d) any other Territory, Commonwealth or State entity authorised in writing by the planning and land authority.

notifiable activity, in relation to a block of land, means—

- (a) damaging a building or structure on the land; or
- (b) simulating a violent incident in relation to the land; or

- (c) simulating an emergency response in relation to the land.
- (2) A designated development for the use of land for training or testing of things by an authorised entity if—
 - (a) if the training or testing includes a notifiable activity—
 - (i) the training or testing is carried out on the land during ordinary business hours on not more than 2 consecutive days in any year; and
 - (ii) at least 5 days before the day the training or testing is to be carried out, the authorised entity gives written notice of the following to the occupier of each place (other than unleased land) adjoining the land:
 - (A) when the training or testing will be carried out;
 - (B) the general nature of the training or testing; and
 - Note* For how documents may be given, see the Legislation Act, pt 19.5.
 - (b) the designated development or use complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

Note 3 **Use land**—see the Act, s 8.

1.103 Utility and telecommunications services

- (1) The following developments if the development complies with the general exemption criteria that are applicable to the development:
 - (a) the installation of a connection of not more than 50m connecting a consumer's premises to an electricity, water, sewerage, stormwater, gas or telecommunications service;

- (b) the installation of an electricity, water, sewerage, gas or telecommunications service in accordance with an approved estate development plan;
- (c) maintenance carried out only to maintain an electricity, water, sewerage, stormwater, gas or telecommunications service.

Note 1 **General exemption criteria**—see s 1.10.

Note 2 **Estate development plan**—see the Act, s 94.

- (2) In this section:

premises includes land.

1.104 Landscape gardening

- (1) Landscape gardening, other than the construction of a retaining wall, that affects the landscape of land if—
 - (a) the landscape gardening is—
 - (i) on land leased for residential purposes; or
 - (ii) prescribed landscaping (whether or not the land is leased for residential purposes); and
 - (b) if the landscape gardening affects an existing public pedestrian access way, footpath or bicycle path—the landscape gardening maintains the existing public access to the access way, footpath or bicycle path; and
 - (c) the landscape gardening complies with the general exemption criteria that are applicable to the development.

Note 1 **General exemption criteria**—see s 1.10.

Note 2 For retaining walls generally, see s 1.53. (Other provisions, eg decks (see s 1.48) and swimming pools (see s 1.54) may be relevant.)

Note 3 If unleased land is affected by the landscape gardening, a licence under the Act or a permit under the *Roads and Public Places Act 1937* may be required.

- (2) For subsection (1) (c), section 1.11 (Criterion 1—easement and other access clearances) does not apply to the landscape gardening if it does not involve the construction or installation of a structure.

- (3) In this section:

prescribed landscaping means landscaping in relation to any of the following:

- (a) a footpath;
- (b) a landing;
- (c) any other landscape structure (other than a retaining wall), or earthworks, if the vertical distance from the top of the structure or earthworks to natural ground level is not more than—
 - (i) if the top of the structure or earthworks is above the natural ground level—0.4m; or
 - (ii) if the top of the structure or earthworks is below finished ground level—1.2m.

Note ***Natural ground level*** and ***finished ground level***—see the territory plan (13 Definitions).

1.105 Works under Water Resources Act by non-territory entities

- (1) A designated development if—
- (a) the development is to give effect to a direction under any of the following provisions of the *Water Resources Act 2007*:
 - (i) section 72 (1) (Direction to modify or remove water structure);
 - (ii) section 73 (2) Direction to rectify effect of unauthorised activity etc);
 - (iii) section 74 (2) (Direction to prevent or rectify damage to bed or bank of waterway); and

- (b) the designated development complies with the general exemption criteria that are applicable to the development.

Note 1 **Designated development**—see s 1.2.

Note 2 **General exemption criteria**—see s 1.10.

- (2) To remove any doubt, this section does not apply to a designated development in accordance with the *Water Resources Act 2007*, section 74 (1) (which places a duty on the owner or occupier to take reasonable steps to prevent damage to the bed or banks of the waterway).

1.108 Home businesses conducted from residential leases

- (1) The conduct of a home business from a residential lease if—

Note **Residential lease**—see the Act, s 234.

- (a) not more than 2 people work on the lease at any time; and
- (b) anyone who works on the lease in the business genuinely lives on the lease; and
- (c) all goods and materials relating to the business (other than goods or materials kept on another lease) must be kept—
 - (i) in buildings or structures that are lawfully on the lease; and
 - (ii) in a way that the goods and materials cannot be seen from outside the lease; and

Examples—building or structure lawfully on lease—subpar (i)

- 1 the building or structure is exempt from the *Building Act 2004* or has been certified under that Act, s 48 and has development approval under the *Planning and Development Act 2007* or is an exempt development under that Act
- 2 an ex-government house that did not require building approval for its construction

Example—building not lawfully on lease—subpar (i)

A shed, when constructed, is exempt from the *Building Act 2004* and an exempt development under the *Planning and Development Act 2007*. It is

lawful. However, the shed is subsequently altered in a way that makes it not exempt under 1 of the Acts. The shed is then not lawfully on the lease.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) the area of the lease used for the business (including storage) is not more than 40m²; and
- (e) any vehicles at the lease for the purposes of the business are parked—
 - (i) on the lease in a driveway, garage, carport or location screened from any part of the road on which the lease is located; or
 - (ii) if the business is operated from a unit under the *Unit Titles Act 2001*—in parking for the unit; and
- (f) the conduct of the business complies with the *Environment Protection Act 1997*; and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (g) averaged over a period of 7 days, the conduct of the business does not generate more than 5 vehicle arrivals each day at the lease; and
- (h) any sign relating to the business is exempt from requiring development approval under this schedule, division 1.3.3 (Exempt developments—signs); and
- (i) the conduct of the home business complies with the general exemption criteria that are applicable to the development.

Note **General exemption criteria**—see s 1.10.

- (2) In this section:

home business—see the Act, section 247 (3).

1.109 Designated areas—developments not involving lease variations

A development in a designated area if the development does not involve the variation of a lease.

Note **Designated area**—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), s 4.

Part 1.4

Permitted open space boundary fence colours

Note This part relates to s 1.52 (Basic open space boundary fences).

| column 1 item | column 2 colour |
|--------------------------|----------------------------|
| 1 | B53 (Dark Grey Blue) |
| 2 | G14 (Moss Green) |
| 3 | G15 (Rainforest Green) |
| 4 | G16 (Traffic Green) |
| 5 | G23 (Shamrock) |
| 6 | G24 (Fern Green) |
| 7 | G25 (Olive) |
| 8 | G34 (Avocado) |
| 9 | G52 (Eucalyptus) |
| 10 | G53 (Banksia) |
| 11 | G54 (Mist Green) |
| 12 | G55 (Lichen) |
| 13 | G56 (Sage Green) |
| 14 | G62 (River Gum) |
| 15 | G64 (Slate) |
| 16 | G65 (Ti-Tree) |
| 17 | G66 (Environment Green) |
| 18 | N54 (Basalt) |
| 19 | N55 (Lead Grey) |
| 20 | N63 (Pewter) |
| 21 | N64 (Dark Grey) |
| 22 | N65 (Graphite Grey) |

| column 1 item | column 2 colour |
|--------------------------|----------------------------|
| 23 | P42 (Mulberry) |
| 24 | P52 (Plum) |
| 25 | R44 (Possum) |
| 26 | R45 (Ruby) |
| 27 | R52 (Terra Cotta) |
| 28 | R53 (Red Gum) |
| 29 | R54 (Raspberry) |
| 30 | R55 (Claret) |
| 31 | R62 (Venetian Red) |
| 32 | R63 (Red Oxide) |
| 33 | R64 (Deep Indian Red) |
| 34 | T14 (Malachite) |
| 35 | T51 (Mountain Blue) |
| 36 | T53 (Peacock Blue) |
| 37 | X41 (Buff) |
| 38 | X42 (Biscuit) |
| 39 | X43 (Beige) |
| 40 | X45 (Cinnamon) |
| 41 | X51 (Tan) |
| 42 | X52 (Coffee) |
| 43 | X53 (Golden Tan) |
| 44 | X54 (Brown) |
| 45 | X55 (Nut Brown) |
| 46 | X61 (Wombat) |
| 47 | X62 (Dark Earth) |
| 48 | Y44 (Sand) |

Schedule 1
Part 1.4

Exemptions from requirement for development approval
Permitted open space boundary fence colours

| column 1 item | column 2 colour |
|--------------------------|----------------------------|
| 49 | Y45 (Manila) |
| 50 | Y51 (Bronze Olive) |
| 51 | Y52 (Chamois) |
| 52 | Y53 (Sandstone) |
| 53 | Y54 (Oatmeal) |
| 54 | Y55 (Deep Stone) |
| 55 | Y56 (Merino) |
| 56 | Y62 (Sugar Cane) |
| 57 | Y63 (Khaki) |
| 58 | Y65 (Mushroom) |
| 59 | Y66 (Mudstone) |

Part 1.5 Tables of exempt signs

Note This part relates to s 1.67 (Signs attached etc to buildings, structures and land) and s 1.69 (Temporary signs).

Table 1.5.1 Exempt signs: commercial and industrial zones

| | Commercial and industrial zones | | | | | | | |
|--|---------------------------------|-----|-----|-----|-----|-----|-----|-----|
| | CZ1 | CZ2 | CZ3 | CZ4 | CZ5 | CZ6 | IZ1 | IZ2 |
| Type of sign | | | | | | | | |
| Awning/fascia sign | A | A | A | A | A | | A | A |
| Blind sign | A | A | A | A | | | A | A |
| Business plate sign | A | A | A | A | A | A | A | A |
| Canopy sign | A | A | A | A | | | A | A |
| Changeable message sign | A | A | A | A | A | | A | A |
| Construction site fence sign | A | A | A | A | A | A | A | A |
| Display home/development site sales sign | T | T | T | T | T | T | T | T |
| Event sign | T | T | T | T | T | T | T | T |
| Fence sign | | | | | | | | |
| Flag pole sign | | | | | | | | |
| Ground sign | A | A | A | A | A | | A | A |
| Hamper sign | A | A | A | A | A | | A | A |
| High rise building sign | | | | | | | | |
| Inflatable sign | | | | | | | | |
| Information sign | A | A | A | A | A | A | A | A |
| Lantern sign | A | A | A | A | A | A | A | A |
| Mobile sign | | | | | | | | |
| Pole sign | A | A | A | A | A | | | |
| Projecting sign | | | | | | | | |
| Pylon/column sign | | | | | | | | |
| Roof sign | | | | | | | | |
| Stallboard sign | A | A | A | A | A | | A | A |

Schedule 1
Part 1.5

Exemptions from requirement for development approval
Tables of exempt signs

| | Commercial and industrial zones | | | | | | | |
|-----------------------------------|---------------------------------|-----|-----|-----|-----|-----|-----|-----|
| | CZ1 | CZ2 | CZ3 | CZ4 | CZ5 | CZ6 | IZ1 | IZ2 |
| Type of sign | | | | | | | | |
| Territory signs | | | | | | | A | A |
| Under awning sign | A | A | A | A | A | | A | A |
| Vertical banner building sign | | | | | | | A | A |
| Vertical banner freestanding sign | | | | | | | A | A |
| Wall sign | | | | | | | A | A |
| Window sign | A | A | A | A | A | | A | A |

Table 1.5.2 Exempt signs: zones other than commercial and industrial zones

| | Zones other than commercial and industrial zones | | | | | | | | | |
|--|--|-----|-----|-----|-----|-----|-----|------|------|-------|
| | RZ1 | RZ2 | RZ3 | RZ4 | RZ5 | RZ6 | CFZ | PRZ1 | PRZ2 | other |
| Type of sign | | | | | | | | | | |
| Awning/fascia sign | | | | | | | | | | |
| Blind sign | | | | | | | A | | | |
| Business plate sign | A | A | A | A | A | A | A | A | A | A |
| Canopy sign | | | | | | | | | | |
| Changeable message sign | | | | | | | | | | |
| Construction site fence sign | A | A | A | A | A | A | A | A | A | A |
| Display home/development site sales sign | | | | | | | | | | |
| Event sign | | | | | | | T | | T | |

Schedule 1 Exemptions from requirement for development approval
Part 1.5 Tables of exempt signs

| | Zones other than commercial and industrial zones | | | | | | | | | |
|-------------------------|---|------------|------------|------------|------------|------------|------------|-------------|-------------|--------------|
| | RZ1 | RZ2 | RZ3 | RZ4 | RZ5 | RZ6 | CFZ | PRZ1 | PRZ2 | other |
| Type of sign | | | | | | | | | | |
| Fence sign | | | | | | | | | | |
| Flag pole sign | | | | | | | | | | |
| Ground sign | | | | | | | | | | |
| Hamper sign | | | | | | | | | | |
| High rise building sign | | | | | | | | | | |
| Inflatable sign | | | | | | | | | | |
| Information sign | A | A | A | A | A | A | A | | A | A |
| Lantern sign | A | A | A | A | A | A | A | A | A | A |
| Mobile sign | | | | | | | | | | |
| Pole sign | | | | | | | | | | |
| Projecting sign | | | | | | | | | | |
| Pylon/column sign | | | | | | | | | | |
| Roof sign | | | | | | | | | | |
| Stallboard sign | | | | | | | | | | |

| | Zones other than commercial and industrial zones | | | | | | | | | |
|-----------------------------------|---|------------|------------|------------|------------|------------|------------|-------------|-------------|--------------|
| | RZ1 | RZ2 | RZ3 | RZ4 | RZ5 | RZ6 | CFZ | PRZ1 | PRZ2 | other |
| Type of sign | | | | | | | | | | |
| Territory signs | | | | | | | | | | |
| Under awning sign | | | | | | | | | | |
| Vertical banner building sign | | | | | | | | | | |
| Vertical banner freestanding sign | | | | | | | | | | |
| Wall sign | | | | | | | | | | |
| Window sign | | | | | | | | | | |

Schedule 1A Permitted variations to approved and exempt developments

(see s 20 (2) and s 35)

Part 1A.1 Preliminary

1A.1 Definitions—sch 1A

In this schedule:

approved development means a development that is covered by a development approval.

exempt development means—

- (a) a sch 1 exempt development; or
- (b) a development that is exempt from requiring development approval under the relevant development table.

sch 1 exempt development means a development that is exempt from requiring development approval under section 20 (1).

Part 1A.2 Permitted construction tolerances

1A.10 Permitted variations—horizontal siting tolerances for buildings and structures

- (1) This section applies to the horizontal siting on a block of a building or structure that does not comply with the applicable siting criteria.

- (2) The building or structure must be horizontally sited so that—
- (a) for any point of the building or structure that the applicable siting criteria allows or requires to be sited on, or not more than 900mm horizontally from, a boundary of the block—
 - (i) for a boundary fence—the point is sited so that the centre of the fence's panelling is not more than 50mm horizontally from the boundary; and
 - (ii) in any other case—the point is sited wholly on the block and not more than 50mm horizontally from where the applicable siting criteria allow or require it to be sited; and
 - (b) for any point of the building or structure that the applicable siting criteria allows or requires to be sited more than 900mm horizontally from a boundary of the block—the point is sited wholly on the block and not more than 340mm horizontally from where the applicable siting criteria allow or require it to be sited; and
 - (c) compared to the approved development or exempt development, the building or structure does not do either or both of the following:
 - (i) increase the diversion or concentration of the flow of surface water—
 - (A) in a way that causes ponding; or
 - (B) onto other land;

Note **Surface water**—see the *Water Resources Act 2007*, s 8.

- (ii) change the number of stories in the building or structure.

Examples—s (2)

- 1 An exemption for the construction of a house requires a wall to be sited not closer than 900mm horizontally from the western boundary of the block. The house is constructed so that its western wall is 850mm horizontally from the boundary (50mm less than required). The siting of the house is within the allowed tolerance under par (a) (ii) because it breaches the siting requirement under the exemption by not more than 50mm.
- 2 If the resiting of the wall under example 1 moves the wall onto an easement, the resiting of the wall does not comply with this section because the resiting breaches general exemption criterion 1 (see s 1.11) about easements.
- 3 If the resiting of the wall under example 1 increases the gross floor area of the house because the other walls of the house were not correspondingly resited, the resiting of the wall would not comply with this section if it breaches a requirement under the lease about plot ratio or the house's gross floor area (see general exemption criterion 5 (s 1.15 (b))). However, if the house were constructed under an exemption in a development table and the resiting of the wall only breaches a requirement about plot ratio in the exemption in the relevant development table, the resiting is not prevented by this section because a breach of a plot ratio requirement in the development table is not excluded by this section or the general exemption criteria.
- 4 An external deck with a finished floor level of 1m is built so that one side of it is 1.4m from a side boundary. Under sch 1, s 1.48 (2) (b) any part of the deck that is within 1.5m of the side boundary must have a finished floor level of not more than 0.4m above natural ground level. The siting of the deck is within the allowed tolerance under par (b) because it breaches the siting requirement by only 100mm.

Note 1 The development, as changed in accordance with this section, must also comply with the general exemption criteria, see s 20 (2) and s 35.

Note 2 A change to the height of the finished floor level of the level immediately above a basement may mean that the space is counted as a storey and may also affect the calculation of gross floor area (see territory plan (13 Definitions), defs **basement** and **storey**).

Note 3 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the planning and land authority makes an exemption declaration that extends the permitted horizontal dimension of a dwelling, the distance of 340mm mentioned in subsection (2) (b) is reduced—
- (a) if the dimension is extended by not more than 290mm—by the extended distance stated in relation to the dimension in the exemption declaration; or
 - (b) if the dimension is extended by more than 290mm—by 290mm.

- (4) In this section:

exemption declaration—see section 1.100A (1) (e).

- (5) In this section:

applicable siting criteria, in relation to a point of a building or structure on a block, means the criteria about the horizontal siting of the point on the block under—

- (a) if the building or structure would be covered by a development approval other than for its horizontal siting on the block—the approval; or
- (b) if the building or structure would be a sch 1 exempt development other than for its horizontal siting on the block—schedule 1, part 1.3 (Exempt developments); or
- (c) if the building or structure would be an exempt development under the relevant development table other than for its horizontal siting on the block—the table.

easement means an easement registered, or shown on a certificate of title, under the *Land Titles Act 1925*.

on, a block, or a boundary of a block, includes above or below ground level for the block or boundary.

1A.11 Permitted variations—height tolerances for buildings and structures

- (1) This section applies to the vertical siting on a block of a building or structure that does not comply with the applicable height criteria.
- (2) The building or structure must be vertically sited so that—
 - (a) for any point of the building or structure that the applicable height criteria allows or requires to be sited at a particular height—
 - (i) the point is sited wholly within the lease to which the point relates and is not more than 340mm above or below where the applicable height criteria allow or require the point to be sited; but
 - (ii) if the point is the sill of an exterior window—the sill is not more 50mm closer to the finished floor level immediately adjacent to the window's sill; and

Example—subpar (i)

A multistorey block of apartments is divided into separate units under the *Unit Titles Act 2001*. Each apartment must be within the spatial lease for the unit.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) compared to the approved development or exempt development, the building or structure does not do any of the following:
 - (i) increase the diversion or concentration of the flow of surface water—
 - (A) in a way that causes ponding; or
 - (B) onto other land;

Note **Surface water**—see the *Water Resources Act 2007*, s 8.

(ii) reduce the accessibility of the building or structure for people with disabilities;

(iii) change the number of stories in the building or structure.

Note 1 The development, as changed in accordance with this section, must also comply with the general exemption criteria, see s 20 (2) and s 35.

Note 2 A change to the height of the finished floor level of the level immediately above a basement may mean that the space is counted as a storey and may also affect the calculation of gross floor area (see territory plan (13 Definitions), defs **basement** and **storey**).

(3) If the planning and land authority makes an exemption declaration that extends a permitted height criterion of a dwelling, the distance of 340mm mentioned in subsection (2) (a) (i) is reduced—

(a) if the criterion is extended by not more than 290mm—by the extended distance stated in the exemption declaration for the criterion; or

(b) if the criterion is extended by more than 290mm—by 290mm.

(4) In this section:

exemption declaration—see section 1.100A (1) (e).

(5) In this section:

applicable height criteria, in relation to a point of a building or structure, means the criteria about the height of the point under—

(a) if the building or structure would be covered by a development approval other than for the height of the point—the approval; or

(b) if the building or structure would be a sch 1 exempt development other than for the height of the point—schedule 1, part 1.3 (Exempt developments); or

(c) if the building or structure would be an exempt development under the relevant development table other than for the height of the point—the table.

Schedule 2 Limited public notification of certain merit track development applications

(see s 27)

| column 1 item | column 2 matters |
|------------------|---|
| 1 | <p>The building or alteration of 2 or more dwellings, or buildings or structures associated with the dwellings, on a block that has ceased to be in a future urban area under the Act, section 96 (3) if—</p> <ul style="list-style-type: none">(a) at the time of the application, the lease for the block permits a development of the type applied for, or the lease was granted for development and subdivision; and(b) if the area of the block is not more than 450m²—no setback is required by the territory plan for the dwellings, buildings or structures in relation to 1 side boundary only; and(c) if the area of the block is more than 450m²—the setback of the dwellings, buildings or structures is required by the territory plan to be at least—<ul style="list-style-type: none">(i) 4m from any front boundary; and(ii) 3m from any rear boundary; and(iii) 3m from any side boundary; and(d) the development would not result in the building on the block of—<ul style="list-style-type: none">(i) a building having more than 1 storey; or |

| column 1 item | column 2 matters |
|------------------|--|
| | <p>(ii) a building or structure having a height of more than 6.5m above natural ground level; and</p> <p><i>Note</i> Natural ground level—see the territory plan (13 Definitions).</p> <p>(e) the development would not result in the alteration of a building on the block at the time of application—</p> <p>(i) to add 1 or more storeys; or</p> <p>(ii) by the construction of an alteration having more than 1 storey; and</p> <p>(f) the development would not result in the alteration of a building or structure on the block at the time of application—</p> <p>(i) to increase its height to more than 6.5m above natural ground level; or</p> <p>(ii) by the construction of an alteration having a height of more than 6.5m above natural ground level.</p> |
| 2 | The demolition of a building or structure in connection with the building or alteration of a building or structure to which item 1 applies. |
| 3 | Public works in a future urban area if the works are— |
| | <p>(a) the building, alteration or demolition of a building or structure; or</p> <p>(b) the carrying out of earthworks or other construction work that would affect the landscape of the area.</p> |
| 4 | The building, alteration or demolition of a single dwelling, if the development would not result in more than 1 dwelling being on a block. |

Schedule 2

Limited public notification of certain merit track development applications

| column 1 item | column 2 matters |
|--------------------------|---|
| 5 | The demolition of a building or structure in connection with the building or alteration of a single dwelling, if the development would not result in more than 1 dwelling being on a block. |
| 6 | The building, alteration or demolition of a class 10 building or structure. |
| | <i>Note</i> A class 10 building or structure is a non-habitable building or structure (see building code). |

Schedule 3 **Matters exempt from third-party ACAT review**

(see s 350 and s 351)

Part 3.1 **Definitions**

3.1 **Definitions—sch 3**

In this schedule:

Belconnen town centre means the area outlined in bold on the plan in this schedule, division 3.4.2.

city centre means the area outlined in bold on the plan in this schedule, division 3.4.1.

corrections facility—see the territory plan (13 Definitions).

Gungahlin town centre means the area outlined in bold on the plan in this schedule, division 3.4.3.

town centre means the Belconnen town centre, the Gungahlin town centre, the Tuggeranong town centre or the Woden town centre.

Tuggeranong town centre means the area outlined in bold on the plan in this schedule, division 3.4.4.

Woden town centre means the area outlined in bold on the plan in this schedule, division 3.4.5.

Part 3.2

Merit track matters exempt from third-party ACAT review

| column 1 item | column 2 matters |
|--------------------------|---|
| 1 | A development to which schedule 2 (Limited public notification of certain merit track development applications) applies. |
| 2 | The putting up, attaching or displaying of a sign or advertisement on land or to a building or structure on land. |
| 3 | The building, alteration or demolition of a single dwelling, if the development would not result in more than 1 dwelling being on a block. |
| 4 | A development on land in— <ul style="list-style-type: none">(a) the city centre; or(b) a town centre; or(c) an industrial zone. |

| column 1 item | column 2 matters |
|------------------|---|
| 5 | <p>A development on land in a transport zone and services zone, other than land in the city centre or a town centre, if—</p> <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) the development would not result in any of the following uses of the land being permitted:<ul style="list-style-type: none">(i) a hazardous waste facility;(ii) an incineration facility;(iii) a land fill site; and(c) the development would not increase the gross floor area of buildings on the land to more than a plot ratio of 1:1 (calculated on the area of the land at the time of the application); and(d) the development does not consist of—<ul style="list-style-type: none">(i) the building of a building or structure with a height of more than 10m above natural ground level; or(ii) the alteration of a building or structure to increase its height to more than 10m above natural ground level. <p><i>Note</i> Natural ground level—see the territory plan (13 Definitions).</p> |
| 6 | <p>A development on land in a commercial zone, other than land in the city centre or a town centre, if—</p> <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) if the land has been previously developed—the development would not increase the total gross floor area of all buildings on the land by more than 50%; and |

Schedule 3
Part 3.2

Matters exempt from third-party ACAT review
Merit track matters exempt from third-party ACAT review

| column 1 item | column 2 matters |
|------------------|---|
| | <ul style="list-style-type: none">(c) if at the time of the application the lease permits a community use, or a use including a community use—the development would not have the effect of prohibiting a community use of the land; and(d) the development would not have the effect of permitting the use of the land for a corrections facility; and(e) if the land is in a commercial CZ2 (Business Zone) zone in Deakin, a commercial CZ5 (Mixed Use Zone) zone in Bruce or a commercial CZ2 (Business Zone) zone or commercial CZ5 (Mixed Use Zone) zone on Northbourne Avenue, Canberra Avenue, Yamba Drive or Drakeford Drive—<ul style="list-style-type: none">(i) if no building or structure on the land at the time of the application has more than 4 storeys—the development would not result in a building or structure on the land having more than 4 storeys; and(ii) if a building or structure on the land at the time of the application has more than 4 storeys—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having more than 4 storeys; and(iii) if the land is in a commercial CZ2 (Business Zone) zone or commercial CZ5 (Mixed Use Zone) zone on Northbourne Avenue, Canberra Avenue, Yamba Drive or Drakeford Drive—the development would result in the setback of any proposed new building by at least 10m from the land’s front boundary; and |

| column 1 item | column 2 matters |
|--------------------------|--|
| | <p>(f) if the land is in a commercial CZ1 (Core Zone) zone, commercial CZ2 (Business Zone) zone or commercial CZ3 (Services Zone) zone and is listed in the Group Centres Precinct Code—</p> <p>(i) if no building or structure on the land at the time of the application has more than 2 storeys—the development would not result in a building or structure on the land having more than 2 storeys; and</p> <p>(ii) if a building or structure on the land at the time of the application has more than 2 storeys—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having more than 2 storeys; and</p> <p>(g) if the land is in a commercial CZ4 (Local Centres Zone) zone—</p> <p>(i) there is no building or structure on the land at the time of the application that has more than 2 storeys; and</p> <p>(ii) the development would not result in a building or structure on the land having more than 2 storeys; and</p> <p>(iii) if the lease at the time of the application permits the use of the land for a shop, or a use including a shop—the development would not have the effect of prohibiting the use of the land for a shop; and</p> <p>(iv) the development would not have the effect of permitting the building of a dwelling on the land.</p> |

Schedule 3
Part 3.2

Matters exempt from third-party ACAT review
Merit track matters exempt from third-party ACAT review

| column 1 item | column 2 matters |
|--------------------------|--|
| 7 | <p>A development on land in a commercial CZ5 (Mixed Use Zone) zone in Kingston or a commercial CZ6 (Leisure and Accommodation Zone) zone other than land in the city centre or a town centre, if—</p> <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) if the land has been previously developed—the development would not increase the total gross floor area of all buildings on the land by more than 50%; and(c) if at the time of the application the lease permits a community use, or a use including a community use—the development would not have the effect of prohibiting a community use of the land; and(d) if no building or structure on the land at the time of the application has more than 2 storeys—the development would not result in a building or structure on the land having more than 2 storeys; and(e) if a building or structure on the land at the time of the application has more than 2 storeys—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having more than 2 storeys. |
| 8 | <p>A development on land in a community facility zone or PRZ2 (Restricted Access Recreation Zone) zone, other than land in the city centre or a town centre, if—</p> <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) the gross floor area of all buildings on the land at the time of the application is not more than 300m²; and |

| column 1 item | column 2 matters |
|------------------|--|
| | <p>(c) the development would not result in the total gross floor area of all buildings on the land being more than 300m²; and</p> <p>(d) if the land has been previously developed—the development would not increase the proportion of the total site area on the land covered by buildings, driveways and carparking areas by more than 50% (calculated on the area of the land at the time of the application); and</p> <p>(e) if, at the time of the application, the lease permits a community use, or a use including a community use—the development would not have the effect of prohibiting a community use of the land; and</p> <p>(f) the development would not have the effect of permitting the use of the land for a corrections facility; and</p> <p>(g) if no building or structure on the land at the time of the application has more than 1 storey—the development would not result in a building or structure on the land having more than 1 storey; and</p> <p>(h) if a building or structure on the land at the time of the application has more than 1 storey—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having a height of more than 6m above natural ground level.</p> <p><i>Note</i> Natural ground level—see the territory plan (13 Definitions).</p> |
| 9 | A development on land in an urban open space zone, a hills, ridges and buffer zone, a river corridor zone, a mountains and bushland zone or an area identified as a P4 (Plantation forestry |

Schedule 3
Part 3.2

Matters exempt from third-party ACAT review
Merit track matters exempt from third-party ACAT review

| column 1 item | column 2 matters |
|------------------|---|
| | precinct) precinct in the territory plan, other than land in the city centre or a town centre, if— <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased at the time of the application or permitted by a licence under the Act that is current at the time of the application; and(c) the development would not increase the area of the leased land by more than 1ha; and(d) if the gross floor area of all buildings on the land at the time of the application is not more than 300m²—the development would not result in the total gross floor area of all buildings on the land being more than 300m²; and(e) if the gross floor area of all buildings on the land at the time of the application is more than 300m²—the development would not increase the total gross floor area of all buildings on the land; and(f) if the total site area covered by buildings, driveways and carparking areas at the time of the application is equal to not more than 50% of the area of the land—the development would not result in the site coverage by buildings, driveways and carparking areas increasing to more than 50% of the area of the land (calculated on the area of the land at the time of the application); and(g) if the total site area covered by buildings, driveways and carparking areas at the time of the application is more than 50% of the area of the land—the development would not increase the site coverage by buildings, driveways and |

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| column 1 item | column 2 matters |
|------------------|---|
| | carparking areas (calculated on the area of the land at the time of the application); and |
| | (h) if there is no building or structure on the land at the time of the application that has more than 1 storey—the development would not result in a building or structure on the land having more than 1 storey; and |
| | (i) if there is a building or structure on the land at the time of the application that has more than 1 storey—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having a height of more than 6m above natural ground level. |
| | <i>Note</i> Natural ground level —see the territory plan (13 Definitions). |
| 10 | A development on land in a broadacre zone or rural zone if— |
| | (a) the land is at least 50m from land in a residential zone; and |
| | (b) the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased at the time of the application or permitted by a licence under the Act that is current at the time of the application; and |
| | (c) the development would not increase the area of the leased land by more than 1ha; and |
| | (d) if the gross floor area of all buildings on the land at the time of the application is not more than 2 000m ² —the development would not result in the total gross floor area of all buildings on the land being more than 2 000m ² ; and |
| | (e) if the gross floor area of all buildings on the land at the time of the application is more than 2 000m ² —the |

Schedule 3
Part 3.2

Matters exempt from third-party ACAT review
Merit track matters exempt from third-party ACAT review

| column 1 item | column 2 matters |
|------------------|--|
| | development would not increase the total gross floor area of all buildings on the land; and |
| (f) | if the total site area covered by buildings, driveways and carparking areas at the time of the application is equal to not more than 50% of the area of the land—the development would not result in the site coverage by buildings, driveways and carparking areas increasing to more than 50% of the area of the land (calculated on the area of the land at the time of the application); and |
| (g) | if the total site area covered by buildings, driveways and carparking areas at the time of the application is more than 50% of the area of the land—the development would not increase the site coverage by buildings, driveways and carparking areas (calculated on the area of the land at the time of the application); and |
| (h) | if there is no building or structure on the land at the time of the application that has more than 1 storey—the development would not result in a building or structure on the land having more than 1 storey; and |
| (i) | if there is a building or structure on the land at the time of the application that has more than 1 storey—the development would not result in any increase in the height of the building or structure or any other building or structure on the land having a height of more than 6m above natural ground level. |
| | <i>Note</i> Natural ground level —see the territory plan (13 Definitions). |

| column 1 item | column 2 matters |
|--------------------------|---|
| 11 | <p>A development on land in a designated area, other than land in the city centre or a town centre, if—</p> <ul style="list-style-type: none">(a) the land is at least 50m from land in a residential zone; and(b) the development would not have the effect of permitting the use of the land for a purpose other than that for which it is leased at the time of the application or permitted by a licence under the Act that is current at the time of the application; and(c) if the land has been previously leased—the development would not increase the total gross floor area of all buildings permitted by the lease at the time of the application by more than 50%. |
| 12 | <p>The demolition of a building or structure in connection with a development consisting of the building or alteration of a building or structure to which this schedule applies.</p> |
| 13 | <p>Public works consisting of the building, alteration or demolition of—</p> <ul style="list-style-type: none">(a) electricity, water, gas or communication services; or(b) a floodway or sewerage or drainage works; or(c) a public road, public path, cycleway or car park. |
| 14 | <p>The building, alteration or demolition of public facilities on unleased land, including barbecues, seating and playground equipment, or related landscaping.</p> |

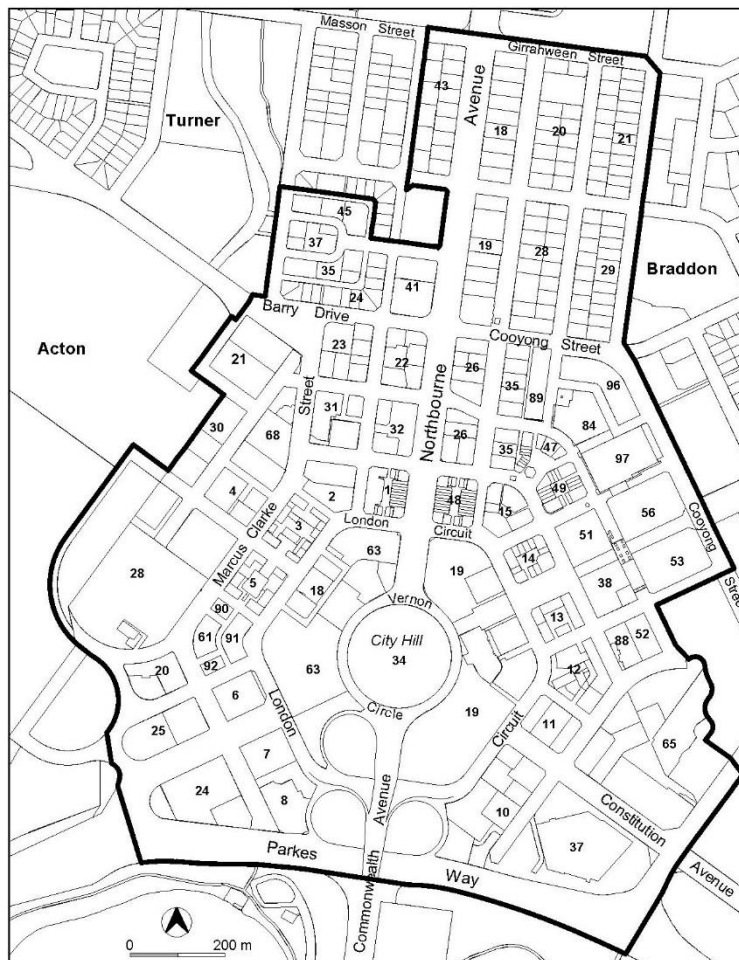
Part 3.3

Impact track matters exempt from third-party ACAT review

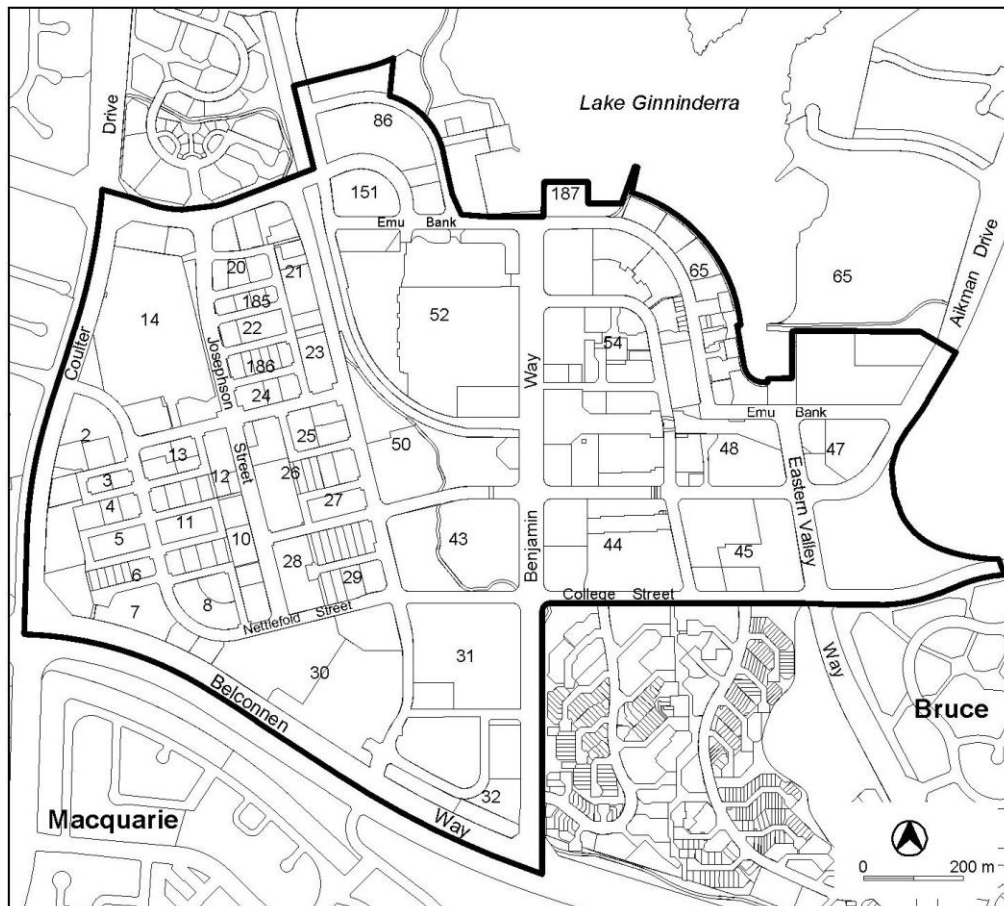
| column 1 item | column 2 matters |
|--------------------------|--|
| 1 | The building, alteration or demolition of public facilities on unleased land, including barbecues, seating and playground equipment, or related landscaping. |

Part 3.4 City centre and town centres maps

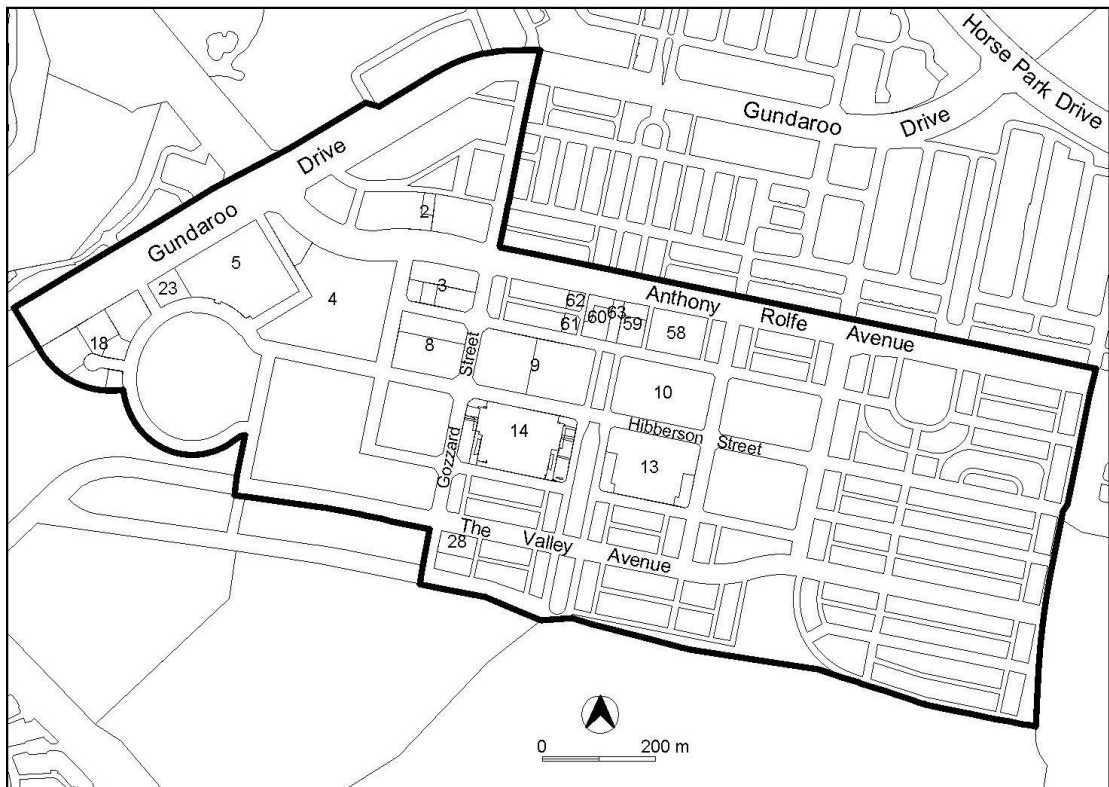
Division 3.4.1 City centre



Division 3.4.2 Belconnen town centre



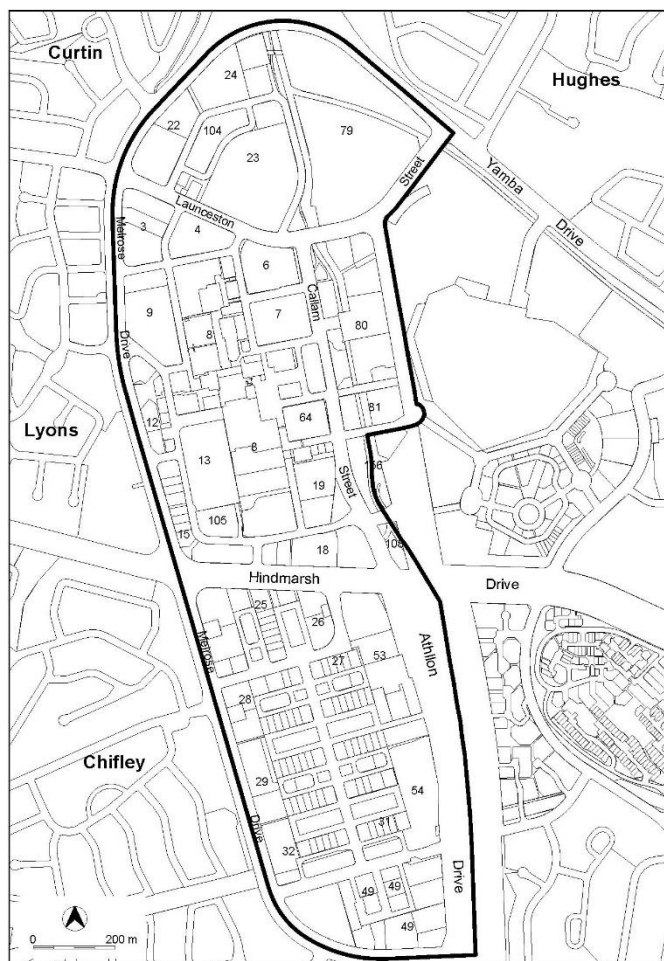
Division 3.4.3 Gungahlin town centre



Division 3.4.4 Tuggeranong town centre



Division 3.4.5 Woden town centre



Schedule 4 Prescribed territory plan instruments

(see s 401)

Part 4.1 Australian standards

- AS 1158.1 (*The lighting of urban roads and other public thoroughfares*)
- AS 1158.1.3 (*Pedestrian Lighting*)
- AS 1158.3.1 (*Road lighting - Pedestrian area (Category P) lighting - Performance and installation design requirements*)
- AS 1428.1 (*Design for Access and Mobility - General Requirements for Access - New Building Work*)
- AS 1428.2 (*Design for Access and Mobility - Enhanced and Additional Requirements - Buildings and Facilities*)
- AS 1428.3 (*Design for Access and Mobility - Requirements for Children and Adolescents with Physical Disabilities*)
- AS 1428.4 (*Design for Access Mobility - Tactile Indicators*)
- AS 1668.1 (*The Use of Ventilation and Air-conditioning in Buildings*)
- AS 1680.0 (*Interior Lighting - Safe Movement*)
- AS 1735.7 (*Lifts, Escalators and Moving Walks - Stairway Lifts*)
- AS 1735.12 (*Lifts, Escalators and Moving Walks - Facilities for Persons With Disabilities*)
- AS 1735.14 (*Lifts for people with limited mobility - restricted use - low rise platforms*)
- AS 1742.10 (*Manual of Uniform Traffic Control Devices – Pedestrian Control and Protection*)
- AS 2107 (*Acoustics - Recommended Design Sound Levels and Reverberation Times for Building Interiors*)

-
- AS 2220.2 (*Emergency Warning and Intercommunication Systems in Buildings - System Design, Installation and Commissioning*)
 - AS 2700 (*Colour Standards for General Purposes*)
 - AS 2890.1 (*Parking Facilities: Part 1 - Off Street Car Parking*)
 - AS 2899 (*Public Information Symbol Signs - Part 1 General Information Signs*)
 - AS 3671 (*Acoustics - Road Traffic Noise Intrusion, Building and Siting Construction*)
 - AS 3769 (*Automatic Teller Machines - User access*)
 - AS 4282 (*Control of the Obtrusive Effects of Outdoor Lighting*)
 - AS 4299 (*Adaptable Housing*)
 - AS 4586 (*Slip Resistance Classification of New Pedestrian Surface materials*)

Part 4.2 Computer modelling software

- *Aquacycle*, Cooperative Research Centre for Catchment Hydrology
- *DRAINS (ILSAX)*, Watercom Pty Ltd
- *MUSIC* (Model for Urban Stormwater Conceptualisation), Cooperative Research Centre for Catchment Hydrology
- *NSW BASIX* (New South Wales Building Sustainability Index), NSW Department of Planning
- *PURRS* (Probabilistic Urban Rainwater and Wastewater Reuse Simulator), University of Newcastle
- *RORB*, Monash University
- *WBNM* (Watershed Bounded Network Model), University of Wollongong
- *XP-AQUALM*, XP Software
- *XP-RAFTS* (Runoff and Flow Training Simulation), XP Software

Part 4.3 **Other instruments**

- *ACT Crime Prevention and Urban Design Resource Manual*, ACT Planning and Land Management, 2000
- *ACT Draft Noise Management Guideline*, ACT Planning Authority, 1996
- *ACT Government Strategic Plan - Contaminated Sites Management*, Department of Urban Services, 1995
- *Australia Post Terms and Conditions, Appendix 2: Street Mail Service - Conditions of Delivery*, Australia Post, 2001
- *Contaminated Sites Environmental Protection Policy*, Environment ACT, 2000
- *Design Standards for Urban Infrastructure*, Department of Urban Services
- *Development Control Code for Best Practice Waste Management in the ACT*, Department of Urban Services, 1999
- *Environment Protection Guidelines for Construction and Land Development in the ACT*, ACT Environment Protection Authority, 2007
- *Guide to Traffic Engineering Practice Part 13 - Pedestrians*, Austroads, 1995
- *Guide to Traffic Engineering Practice Part 14 - Bicycles*, Austroads, 1999
- *Neighbourhood Plans*, ACT Planning and Land Authority

Schedule 20 Modification of Act

(see s 410)

[20.1] New sections 429AA to 429G

insert

429AA Modification—s 114 (Application of assessment tracks to development proposals)

Section 114 applies as if subsection (2) were omitted and the following subsections substituted:

- ‘(2) If a development proposal is in an assessment track, the proposal must be assessed in that assessment track.
- (2A) This section is subject to section 123 (Impact track applicability).’

429AB Modification—div 7.2.5 (Development proposals not in development table and not exempted)

Division 7.2.5 applies as if the following section were inserted:

‘131A Development proposal for lease variation in designated area

- (1) This section applies to a development proposal that is a variation of a lease in a designated area.
- (2) Section 50 and the territory plan do not apply in relation to the development proposal.
- (3) The development proposal must be dealt with under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the merit track.
- (4) However, if the impact track applies to the development proposal under section 123 (b), (c), (d) or (e), the proposal must be dealt with

under the provisions of this Act (other than any territory plan-related provisions) that apply in relation to the impact track.

(5) In this section:

territory plan-related provision means a provision of this Act that applies a development table, code, rules or criteria, objectives for a zone, statement of strategic directions, or anything else in the territory plan.

Examples of territory plan-related provisions

1 s 119 (2) (b)

2 s 139 (2) (e) and (f)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).’

429A Modification—s 197 (Applications to amend development approvals)

Section 197 (1) applies as if it read as follows:

‘(1) This section applies if—

- (a) the planning and land authority has given development approval for a development proposal (the ***original development proposal***); and
- (b) the development proposal changes (the ***changed development proposal***) so that it is not covered by the approval; and
- (c) section 198C (When development approvals do not require amendment) does not apply to the changed development proposal.’

429B Modification—s 198 (Deciding applications to amend development approvals)

Section 198 (4) applies as if it read as follows:

- ‘(4) To remove any doubt, if public notification of the proposed development is required under the assessment track that applies to the proposed development and the requirement to publicly notify the application is not waived under subsection 198B, only the application for the amendment need be publicly notified.’

429C Modification—div 7.3.11 (Correction and amendment of development approvals)

Division 7.3.11 applies as if the following sections were inserted:

‘198A Exception to referral requirement under s 198 (1) (b)

- (1) This section applies if—
- (a) a development application was referred to an entity under division 7.3.3 (Referral of development applications); and
 - (b) an application for amendment of the development approval to which the development application related must be referred to the entity under section 198 (1) (b); and

Note For the referral requirement, see s 145.

- (c) the planning and land authority is satisfied that the application for amendment does not affect any part of the development approval in relation to which the entity made a comment.
- (2) Despite section 198 (1) (b), the planning and land authority need not refer the application for amendment to the entity.

198B Exception to notification requirement under s 198 (1) (b)

Despite section 198 (1) (b), the planning and land authority may waive the requirement to publicly notify an application for amendment of a development approval if satisfied that—

- (a) no-one other than the applicant will be adversely affected by the amendment; and
- (b) the environmental impact caused by the amendment will do no more than minimally increase the environmental impact of the development.

Note For the notification requirement, see s 146.

198C When development approvals do not require amendment

- (1) This section applies if—
 - (a) the planning and land authority has given development approval for a development application; and
 - (b) the development is changed so that it is not covered by the approval.
- (2) A regulation may prescribe the circumstances in which a development in accordance with the changed development is taken to be in accordance with the development approval.

Note 1 The development may still need building approval, or further building approval, under the *Building Act 2004*.

Note 2 The development must also comply with the lease for the land on which it is carried out.'

429D Modification—s 203 (Development other than use lawful when begun)

Section 203 (1) (c) applies as if it read as follows:

‘(c) after the person undertakes, or begins, the development, the development stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).’

429E Modification—s 204 (Use as development lawful when begun)

Section 204 (1) (c) applies as if it read as follows:

‘(c) the use stops being exempt because of an amendment of this Act.

Note A reference to an Act includes a reference to the statutory instruments (eg the territory plan) made or in force under the Act, including any regulation (see Legislation Act, s 104).’

429EA Modification—s 246 (Payment for leases)

Section 246 (2) applies as if paragraphs (c) and (d) were omitted and the following paragraph substituted:

‘(d) a further lease granted under section 254; or’

429EB Modification—s 254 (Grant of further leases)

Section 254 (1) (e) applies as if it read as follows:

‘(e) if the lease is a rural lease—

(i) if the lease is a rental lease—the amount of rent determined under section 280 is payable under the lease; or

(ii) in any other case—

(A) the amount determined under section 280 for the grant is paid; or

(B) if the determination under section 280 provides for the payment of the amount by instalments—any instalment required to be paid under the determination before the lease has been granted has been paid; and’

429EC Modification—s 255 (Grant of further lease includes authorised use)

Section 255 applies as if the following subsection were inserted:

- ‘(3A) To remove any doubt, a further lease may include provisions that are different to the lease that it is replacing.

Example

A further lease includes a restriction on the number of dwellings that may be built on the lease. The lease the further lease is replacing did not include a similar provision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).’

429ED Modification—s 280 (Determination of amount payable for further leases—rural land)

Section 280 applies as if it read as follows:

‘280 Determination of amount payable for further leases—rural land

- (1) The Minister may make a determination for section 254 (1) (e) (i) or (ii).
- (2) A determination for section 254 (1) (e) (ii) may provide for the amount payable for the grant of the lease is payable by stated instalments.
- (3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.’

429F Modification—s 298A (Application for extension of time to commence or complete building and development)

- (1) Section 298A applies as if subsection (4) were omitted.

- (2) Section 298A (5), definition of **D** applies as if it and the note read as follows:

‘**D** means—

- (a) the number of days for which the extension is sought; or
- (b) if more than 1 extension for the lease is sought in the application—the highest of the number of days for which the extensions are sought.

Example—par (b)

if both a 6-month extension is being sought to commence building work and a 12-month extension to complete the building work, the number for **D** is 365

Note 1 The required fee may be waived under the *Financial Management Act 1996*, s 131.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).’

429G Modification—s 298B (Extension of time to commence or complete building and development)

Section 298B applies as if subsections (5) and (6) were omitted.

[20.1A] Section 431 (2) (a) and (b)

substitute

- (a) section 446 (Power to make lease and development conditions);
- (b) section 446A (Transitional—application for development approval if lease and development condition);

[20.2] Section 442 (1)

substitute

- (1) This section applies if—
 - (a) before commencement day, a person applied for—

- (i) an approval under the repealed Act, section 226 (Application to undertake development); or
 - (ii) an amendment of an approval under the repealed Act, section 247 (Minor amendments); and
- (b) immediately before commencement day, the planning and land authority had not finally decided the application.

[20.3] New section 442 (4)

insert

- (4) In this section:

finally decided—an application for approval under the repealed Act, section 226 is ***finally decided*** if—

- (a) the period for making an application under the repealed Act, section 246 for reconsideration of the planning and land authority's decision on the application for approval has ended and no application for reconsideration has been made; or
- (b) if an application under the repealed Act, section 246 for reconsideration of the planning and land authority's decision on the application for approval is made within the reconsideration period—
 - (i) the authority has made a decision on the application for reconsideration under the repealed Act, section 246A (1) (b); or
 - (ii) the authority is taken to have confirmed the original decision under the repealed Act, section 246B.

reconsideration period means the period within which an application must be made under the repealed Act, section 246 (3).

[20.3A] New section 442C

insert

442C Transitional—development application lodged on or after commencement day for estate development plan given before commencement day

- (1) This section applies to a development application if—
- (a) the application is lodged on or after the commencement day but not later than 6 months after the commencement day; and
 - (b) the application relates to, or incorporates, a document that the planning and land authority is satisfied is an estate development plan; and
- Note* For considerations for when something is an estate development plan, see s (5).
- (c) the estate development plan was given to the planning and land authority before the commencement day for consideration on the basis that the plan might form the basis of a development application.
- (2) The development application may be made, and decided, in accordance with the repealed Act (including the territory plan and any other instruments under the repealed Act) as if that Act had not been repealed.
- (3) If the development application is approved, the approval—
- (a) is taken to be a development approval under this Act (including for section 96) unless otherwise provided by subsection (4); and
 - (b) unless extended under this Act, continues in force until the time when it would have ended under the repealed Act; and
 - (c) is taken to relate to a proposal in the merit track for section 198 (2) (Deciding applications to amend development approvals).
- (4) Also, the repealed Act (including the territory plan and any other instruments under the repealed Act), and not this Act, applies in

relation to any application for reconsideration, or for review, of the decision on a development application to which this section applies.

- (5) In deciding whether a document is an estate development plan, the planning and land authority must consider whether—
- (a) the document is identified, by itself or another document, as an estate development plan; and
 - (b) at the time it was given to the authority, the document appeared to be a document to which the government publication *Guidelines for Estate Development Plans—Greenfield Land Subdivision—September 2007*, published on the public website maintained by the authority, applied; and
 - (c) the document includes plans or a proposal for the subdivision of land and related infrastructure development.

Examples—related infrastructure

sewers, footpaths, street lighting

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) For this section, an estate development plan (the *final plan*) in relation to a development application is taken to have been given to the planning and land authority for consideration if—
- (a) an estate development plan (the *initial plan*) was given to the authority; and
 - (b) the final plan is identifiable as a revised version of the initial plan.

[20.4] Section 444

substitute

444 Transitional—approvals under repealed Act

- (1) This section applies if—

- (a) immediately before commencement day, a person had an approval under the repealed Act, part 6 (Approvals and orders); or
- (b) the planning and land authority gives an approval under the repealed Act after the commencement day.

Note The repealed Act applies to applications for approvals not decided immediately before commencement day (see s 442 as modified by regulation).

(2) The approval—

- (a) is taken to be a development approval under this Act; and
- (b) unless extended under this Act, continues in force until the time when it would have ended under the repealed Act; and
- (c) for the Act, section 198 (2) (Deciding applications to amend development applications) is taken to relate to a proposal in the merit track.

- (3) If the application to which the approval relates was not required to be publicly notified under the repealed Act, an application under this Act for the amendment of the approval need not be notified under this Act.

Note If an application for reconsideration has not been finally decided by the planning and land authority, the repealed Act (including rights of AAT review under the repealed Act) continues to apply to the application (see s 442 as modified by regulation).

[20.4A] New section 444A

insert

444A Commencement of development approvals under repealed Act

- (1) This section applies to each of the following development approvals unless the development approval commenced before the commencement day:

- (a) a development approval mentioned in section 442 (Transitional—applications lodged before commencement day);
 - (b) a development approval mentioned in section 442B (Transitional—application for review lodged after commencement day for application lodged before commencement day);
 - (c) a development approval mentioned in section 442C (Transitional—development application lodged on or after commencement day for estate development plan given before commencement day);
 - (d) a development approval mentioned in section 443 (Transitional—applications for review not finally decided);
 - (e) a development approval mentioned in section 444 (Transitional—approvals under repealed Act).
- (2) Despite anything else in this part, the development approval commences, or is taken to have commenced, when the development approval would have commenced under the repealed Act if the repealed Act had not been repealed.

[20.5] Section 445 (2) (a)

substitute

- (a) is taken to be a development approval under this Act; and

[20.5A] Sections 446 and 446A

substitute

446 Power to make lease and development conditions

- (1) This section applies to land in relation to which—
- (a) an earlier application has been made and earlier approval given, whether the earlier approval is given before or after the commencement day; or

- (b) development approval has been given under section 442C.

Note Under s 442C, if an estate development plan was considered before commencement of this Act, the repealed Act applies to the application for development approval.

- (2) On and after the commencement day, the planning and land authority may make a lease and development condition in relation to the land, or part of the land.

- (3) In this section:

defined land means land identified in the old territory plan for the repealed Act, subdivision 2.3.4.

earlier application means an application for development approval if the application—

- (a) was made under the repealed Act before the commencement day; and
- (b) relates to land that was defined land when the application was made; and
- (c) is for approval to subdivide land, whether or not it is also for approval of something else.

earlier approval means development approval under the repealed Act of an earlier application.

lease and development condition means a lease and development condition that could have been made under the repealed Act, but for its repeal.

old territory plan means the Territory Plan under the repealed Act.

- (4) This section is a provision to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) does not apply.
- (5) This section expires 5 years after the commencement day.

446A Transitional—application for development approval if lease and development condition

- (1) This section applies to a development application if the application is—
 - (a) not in the code track; and
 - (b) for development on land to which—
 - (i) a lease and development condition made under section 446 applies; or
 - (ii) a lease and development condition made under the repealed Act applied immediately before the commencement day.
- (2) The planning and land authority, or Minister, must consider the lease and development condition in making a decision under section 162 (Deciding development applications) in relation to the development application if—
 - (a) the territory plan provides that the condition may vary the plan; and
 - (b) the condition is relevant to assessing the application and granting the approval.
- (3) This section expires 5 years after the commencement day.

[20.6] Section 447*omit***[20.6A] Sections 458 and 459***substitute***458 Transitional—applications for certain grants before commencement day**

- (1) This section applies if—

- (a) a person applies for the grant of a lease under the repealed Act, section 161 (Granting of leases), section 163 (Leases to community organisations) or section 164 (Special leases); and
 - (b) the lease is not granted before commencement day.
- (2) The planning and land authority may grant a lease under—
 - (a) the repealed Act as if the repealed Act had not been repealed; or
 - (b) if the person agrees in writing to a lease under this Act being granted—this Act.
- (3) A lease to which subsection (2) (a) applies—
 - (a) may be registered under the *Land Titles Act 1925* as if the repealed Act had not been repealed; and
 - (b) is taken to have been granted under this Act.
- (4) This section is taken to have commenced on 31 March 2008.

[20.7] New section 459A*insert***459A Transitional—contracts before commencement day to grant leases**

- (1) This section applies if—
 - (a) by contract made before commencement day, the land development agency or planning and land authority agreed with someone else (the *third party*) that a lease would be granted under the repealed Act; and
 - (b) the lease is not granted before commencement day.

Examples—par (a)

- 1 The conditions of a land auction require a lease to be granted under the repealed Act.

- 2 Under a deed of agreement with a developer for the development of land the planning and land authority agrees that the holding leases for the development, and the individual leases for the developed land, will be granted in the form of a lease under the repealed Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The planning and land authority may grant a lease under—
- (a) the repealed Act as if the repealed Act had not been repealed; or
 - (b) if the third party agrees in writing to a lease under this Act being granted—this Act.
- (3) A lease to which subsection (2) (a) applies—
- (a) may be registered under the *Land Titles Act 1925* as if the repealed Act had not been repealed; and
 - (b) is taken to have been granted under this Act.
- (4) This section is taken to have commenced on 31 March 2008.

[20.8] New section 459B

insert

459B Transitional—conversion of Commonwealth leases

- (1) This section applies if—
- (a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1) has been amended or repealed; and
 - (b) because of the amendment or repeal of the declaration, land has ceased to be national land; and
 - (c) a lease granted under a prescribed law over all or part of the land was in force immediately before the amendment or repeal of the declaration.

(2) The lease is taken to have been granted under this Act on the amendment or repeal of the declaration.

(3) In this section:

prescribed law means any of the following:

- (a) the *Leases Ordinance 1918*;
- (b) the *Leases (Special Purposes) Ordinance 1925*;
- (c) the *City Area Leases Ordinance 1936*;
- (d) a law mentioned in paragraph (a), (b) or (c) as in effect under the *National Land Ordinance 1989* (Cwlth).

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- conservator of flora and fauna
- heritage council
- person
- the Territory
- working day.

Note 3 Terms used in this regulation have the same meaning that they have in the *Planning and Development Act 2007* (see Legislation Act, s 148). For example, the following terms are defined in the *Planning and Development Act 2007*, dict:

- change of use charge
- development (see s 7)
- exempt
- inquiry panel
- land agency
- land management agreement
- lease (see s 235)
- nominal rent lease
- structure
- territory plan (www.legislation.act.gov.au)
- zone.

added value, for the variation of a lease, for part 5.5 (Change of use charges)—see section 170.

allocated land, in relation to the housing commissioner, for part 5.1 (Direct sale of leases)—see section 100.

approved development, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

Australian National University, for part 5.1 (Direct sale of leases)—see section 100.

basic paling fence, for schedule 1 (Exemptions from requirement for development approval)—see the Act, section 416A.

Belconnen town centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

block means a block under the *Districts Act 2002*.

building line, for schedule 1 (Exemptions from requirement for development approval)—see the territory plan (13 Definitions).

bushfire emergency, for chapter 9 (Bushfire emergency rebuilding)—see section 372.

business-case criteria, in relation to the direct sale of a lease to a person, for part 5.1 (Direct sale of leases)—see section 101.

business-case documentation, in relation to a proposed development by a person, for part 5.1 (Direct sale of leases)—see section 101.

carport, for schedule 1 (Exemptions from requirement for development approval)—see the territory plan (13 Definitions).

city centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

City West precinct, for part 5.1 (Direct sale of leases)—see section 102.

City West precinct deed, for part 5.1 (Direct sale of leases)—see section 100.

class, for a building or structure, means the class of building or structure under the building code.

Note **Building code**—see the Legislation Act, dict, pt 1.

class 10a building, for schedule 1, division 1.3.2 (Exempt developments—non-habitable buildings and structures)—see schedule 1, section 1.40.

clearing, for schedule 1 (Exemptions from requirement for development approval)—see the *Nature Conservation Act 1980*, section 74.

Commonwealth entity, for part 5.1 (Direct sale of leases)—see section 100.

community organisation means a corporation that—

- (a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and
- (b) is not carried on for the financial benefit of its members; and
- (c) does not hold a club licence under the *Liquor Act 1975*.

community use—see the territory plan (13 Definitions).

constitution, for a corporation, for part 5.1 (Direct sale of leases)—see section 100.

consultation plan, in relation to a strategic environmental assessment—see section 15.

consultation report, in relation to a strategic environmental assessment—see section 15.

corrections facility, for schedule 3 (Matters exempt from third-party ACAT review)—see the territory plan (13 Definitions).

designated area—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 4, definition of *Designated Area*.

designated development, in relation to land—see schedule 1 (Exemptions from requirement for development approval), section 1.2.

direct sale, for part 5.1 (Direct sale of leases)—see section 100.

dwelling—see section 5.

earlier index number, in relation to a lease, for part 5.6 (Discharge amounts for rural leases)—see section 190.

educational establishment, for part 5.1 (Direct sale of leases)—see section 100.

excluded amount, in relation to a lease, for part 5.6 (Discharge amounts for rural leases)—see section 190.

exempt development, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

finished floor level—see the territory plan (13 Definitions).

finished ground level—see the territory plan (13 Definitions).

fire-caused rebuilding development, for chapter 9 (Bushfire emergency rebuilding)—see section 373.

front boundary—see the territory plan (13 Definitions).

general exemption criteria, for a development—see schedule 1 (Exemptions from requirement for development approval), section 1.10.

gross floor area—see the territory plan (13 Definitions).

Gungahlin town centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

height means—

- (a) for a thing (including a building or structure)—
 - (i) in relation to finished ground level—the largest of the vertical distances measured at all points for the thing between finished ground level for each point to the top of the thing above the point; or

- (ii) in relation to natural ground level—the largest of the vertical distances measured at all points for the thing between natural ground level for each point to the top of the thing above the point; or
 - (iii) in relation to something else (the **baseline**)—the largest of the vertical distances measured at all points for the thing between the baseline for each point to the top of the thing above the point; and
- (b) for a building or structure, for chapter 9 (Bushfire emergency rebuilding)—see section 371.

holding lease—see the *Districts Act 2002*, section 7 (7).

index number, for part 5.6 (Discharge amounts for rural leases)—see section 190.

member, for part 4.2 (Inquiry panels)—see section 70.

native vegetation, for schedule 1 (Exemptions from requirement for development approval)—see the *Nature Conservation Act 1980*, section 73.

natural ground level—see the territory plan (13 Definitions).

open space boundary, for schedule 1 (Exemptions from requirement for development approval)—see schedule 1, section 1.1.

period of extension, in relation to a lease with a building and development provision, for division 5.7.2 (Applications for extension of time to commence or complete required works)—see section 202.

plan area, of a building or structure, means the total horizontal area of the building or structure if viewed from above.

Example

- 1 If viewed from above, the outer edge of a house's roof gutters, front patio and rear pergola are visible as the building's outermost perimeter. Therefore, the plan area of the house is the horizontal area bounded by the outer edges of the gutters, pergola and patio.

- 2 If viewed from above, an office building is a square ring shape with a large open courtyard in the centre. The courtyard does not contain structures that are related to the building. The plan area of the building excludes the area of the courtyard.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

prescribed general exemption criteria, for schedule 1, division 1.3.3 (Exempt developments—signs)—see schedule 1, section 1.66.

presiding member, for part 4.2 (Inquiry panels)—see section 70.

previously approved, for chapter 9 (Bushfire emergency rebuilding)—see section 374.

proposal, for a strategic environmental assessment, for chapter 2 (Strategic environmental assessments)—see section 10.

rear boundary means a boundary that is not a front boundary and does not meet a front boundary.

recently commenced lease, for division 5.5.3 (Increase of change of use charge)—see section 180.

residential lease—see the Act, section 234.

rules, for an incorporated association, for part 5.1 (Direct sale of leases)—see section 100.

rural lease—see the Act, section 234.

sch 1 exempt development, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

SEA scoping document, in relation to a strategic environmental assessment—see section 13.

setback—see the territory plan (13 Definitions).

side boundary means a boundary that meets a front boundary.

special Pialligo lease, for part 5.6 (Discharge amounts for rural leases)—see section 190.

subdivision—see the Act, section 234.

supportive accommodation, for part 5.1 (Direct sale of leases)—see section 100.

surface water—see the *Water Resources Act 2007*, section 8.

territory entity, for part 5.1 (Direct sale of leases)—see section 100.

town centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

Tuggeranong town centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

type, for a sign, for schedule 1 (Exemptions from requirement for development approval)—see schedule 1, section 1.1.

Woden town centre, for schedule 3 (Matters exempt from third-party ACAT review)—see schedule 3, section 3.1.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

| | |
|---|---|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | par = paragraph/subparagraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | pt = part |
| exp = expires/expired | r = rule/subrule |
| Gaz = gazette | renum = renumbered |
| hdg = heading | reloc = relocated |
| IA = Interpretation Act 1967 | R[X] = Republication No |
| ins = inserted/added | RI = reissue |
| LA = Legislation Act 2001 | s = section/subsection |
| LR = legislation register | sch = schedule |
| LRA = Legislation (Republication) Act 1996 | sdiv = subdivision |
| mod = modified/modification | sub = substituted |
| o = order | SL = Subordinate Law |
| om = omitted/repealed | <u>underlining</u> = whole or part not commenced or to be expired |

3 Legislation history

Planning and Development Regulation 2008 SL2008-2

notified LR 3 March 2008
s 1, s 2 commenced 3 March 2008 (LA s 75 (1))
remainder commenced 31 March 2008 (s 2 and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

as amended by

Planning and Development Amendment Regulation 2008 (No 1) SL2008-8

notified LR 27 March 2008
s 1, s 2 commenced 27 March 2008 (LA s 75 (1))
remainder commenced 31 March 2008 (s 2 and see Planning and Development Regulation 2008 SL2008-2, s 2, Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

Planning and Development Amendment Regulation 2008 (No 2) SL2008-27

notified LR 30 June 2008
s 1, s 2 commenced 30 June 2008 (LA s 75 (1))
remainder commenced 1 July 2008 (s 2)

Planning and Development Amendment Regulation 2008 (No 3) SL2008-33

notified LR 5 August 2008
s 1, s 2 commenced 5 August 2008 (LA s 75 (1))
remainder commenced 6 August 2008 (s 2)

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.44

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.44 commenced 26 August 2008 (s 2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.82

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.82 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Endnotes

4 Amendment history

Planning and Development Amendment Regulation 2008 (No 4) SL2008-41

notified LR 15 September 2008
s 1, s 2 commenced 15 September 2008 (LA s 75 (1))
remainder commenced 16 September 2008 (s 2)

Planning and Development Amendment Regulation 2008 (No 5) SL2008-52

notified LR 22 December 2008
s 1, s 2 commenced 23 December 2008 (LA s 75 (1))
remainder commenced 23 December 2008 (s 2)

Planning and Development Amendment Regulation 2009 (No 1) SL2009-3

notified LR 24 February 2009
s 1, s 2 commenced 24 February 2009 (LA s 75 (1))
remainder commenced 25 February 2009 (s 2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Exempt developments—Act, s 133, def *exempt development*, par (c)

s 20 am SL2008-8 s 4
sub SL2008-33 s 4
am SL2009-3 s 4

Public notification of merit track development applications—Act, s 152 (1) (a) and (2)

s 27 sub SL2008-8 s 5

Public consultation period—Act, s 157, def *public consultation period*, par (a)

s 28 sub SL2008-8 s 5

Development approvals—when amendment not required

pt 3.3 hdg ins SL2008-33 s 5
exp 31 March 2010 (s 36)

When development approvals do not require amendment—Act, s 198C (2)

s 35 ins SL2008-33 s 5
am SL2009-3 s 5
exp 31 March 2010 (s 36)

Expiry—pt 3.3

s 36 ins SL2008-33 s 5
exp 31 March 2010 (s 36)

Definitions—pt 4.2

s 70 def *inquiry panel* om A2008-28 amdt 3.136

Definitions—pt 5.1

s 100 def *Australian National University* exp 5 April 2015
 (s 402 (a))
 def *City West precinct* exp 5 April 2015 (s 402 (a))
 def *City West precinct deed* exp 5 April 2015 (s 402 (a))
 def *territory entity* am SL2008-8 s 6

Meaning of *City West precinct*—pt 5.1

s 102 am SL2008-8 s 7
 exp 5 April 2015 (s 402 (b))

Direct sales requiring approval by Executive—Act, s 240 (1) (a)

s 105 (d) exp 5 April 2015 (s 402 (c))

Direct sale criteria for Commonwealth entities—Act, s 240 (1) (a) (i)

s 107 (2) exp 5 April 2015 (s 402 (d))

Direct sale criteria for non-government educational establishments—Act, s 240 (1) (a) (i)

s 108 (4) exp 5 April 2015 (s 402 (e))

Direct sale criteria for City West precinct land for Australian National University—Act, s 240 (1) (a) (i)

s 111 am SL2008-8 s 8
 exp 5 April 2015 (s 402 (f))

Direct sale criteria for supportive accommodation—Act, s 240 (1) (a) (i)

s 113 am SL2008-33 s 6

Direct sales requiring approval by Minister—Act, s 240 (1) (b)

s 120 am SL2008-8 s 9

Certain direct sales not requiring approval

div 5.1.4 hdg ins SL2008-8 s 10

Certain direct sales not requiring approval—Act, s 240 (1) (d)

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s 142 ins SL2008-8 s 11

Lease classes for variation to pay out rent—Act, s 272A (1)

s 160 hdg sub SL2008-8 s 12

Decision on rent payout lease variation application—Act, s 272B (1)

s 161 ins SL2008-8 s 13

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s 175 (1) (a) (vii), (3), (5) exp 1 December 2010 (s 175 (5))

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div 5.7.2 hdg ins SL2008-41 s 5

Meaning of *period of extension*—div 5.7.2

s 202 ins SL2008-8 s 14
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s 203 ins SL2008-8 s 14
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s 204 ins SL2008-41 s 5

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s 205 ins SL2008-41 s 5

Application for extension of time—lease transferred or assigned in special circumstances—Act, s 298A (5), def A, par (b)

s 206 ins SL2008-41 s 5

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s 207 ins SL2008-41 s 5

Amount of refund on surrender or termination of certain leases—Act, s 300 (2)

s 210 hdg sub A2008-28 amdt 3.137
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s 211 hdg sub A2008-28 amdt 3.138
s 211 am SL2008-41 s 7

Concessional lease exclusions—Act, s 235 (1), def *concessional lease*, par (c) (v)

s 240 am SL2008-41 s 8, s 9

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s 350 sub A2008-37 amdt 1.353

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s 351 sub A2008-37 amdt 1.353

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Disapplication of Legislation Act, s 47 (6) for certain territory plan instruments—Act, s 422A (1)

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s 403 ins SL2008-8 s 19

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s 410 ins SL2008-8 s 20

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sch 1 pt 1.2 hdg sub SL2008-33 s 10

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sch 1 s 1.76 (prev s 1.71) renum as s 1.76 SL2008-8 s 31

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sch 1 s 1.90 am SL2008-8 s 34, s 35

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sch 1 s 1.95 am SL2008-8 s 36

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sch 1 s 1.100A ins SL2009-3 s 11

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am SL2009-3 s 12, s 13; ss renum R8 LA

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sch 1A pt 1A.3 hdg ins SL2008-33 s 20
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sch 3 hdg am A2008-37 amdt 1.355
sch 3 am SL2008-8 ss 46-49; A2008-37 amdt 1.355

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sch 4 ins SL2008-8 s 50

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sch 20 (prev sch 5) ins SL2008-8 s 51
am SL2008-27 ss 4-7; SL2008-33 ss 21-23
renum as sch 20 SL2008-33 s 24
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Dictionary

dict

am SL2008-33 s 25; A2008-28 amdt 3.139; A2008-37 amdt 1.354

def **approved development** ins SL2008-33 s 26

def **Australian National University** exp 5 April 2015 (s 402 (h))

def **basic paling fence** ins SL2008-8 s 52

def **Belconnen town centre** am A2008-37 amdt 1.355

def **city centre** am A2008-37 amdt 1.355

def **City West precinct** exp 5 April 2015 (s 402 (h))

def **City West precinct deed** exp 5 April 2015 (s 402 (h))

def **class 10a building** ins SL2008-8 s 52

def **corrections facility** am A2008-37 amdt 1.355

def **designated development** sub SL2008-33 s 27

def **exempt development** ins SL2008-33 s 28

def **finished floor level** sub SL2008-33 s 29

def **general exemption criteria** sub SL2008-33 s 29

def **Gungahlin town centre** am A2008-37 amdt 1.355

def **height** sub SL2008-8 s 53

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def **inquiry panel** om A2008-28 amdt 3.140

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def **town centre** am A2008-37 amdt 1.355

def **Tuggeranong town centre** am A2008-37 amdt 1.355

def **Woden town centre** am A2008-37 amdt 1.355

Endnotes

5 Earlier republishings

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| Republication No and date | Effective | Last amendment made by | Republication for |
|--------------------------------------|------------------------------|---------------------------------------|---|
| R1 31 Mar 2008 | 31 Mar 2008— 30 June 2008 | SL2008-8 | new regulation and amendments by SL2008-8 |
| R2 1 July 2008 | 1 July 2008— 5 Aug 2008 | SL2008-27 | amendments by SL2008-27 |
| R3 6 Aug 2008 | 6 Aug 2008— 25 Aug 2008 | SL2008-33 | amendments by SL2008-33 |
| R4 26 Aug 2008 | 26 Aug 2008— 15 Sept 2008 | A2008-28 | amendments by A2008-28 |
| R5 16 Sept 2008 | 16 Sept 2008— 22 Dec 2008 | SL2008-41 | amendments by SL2008-41 |
| R6 23 Dec 2008 | 23 Dec 2008— 1 Feb 2009 | SL2008-52 | amendments by SL2008-52 |
| R7 2 Feb 2009 | 2 Feb 2009— 24 Feb 2009 | SL2008-52 | amendments by A2008-37 |

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