



Australian Capital Territory

# Planning and Development Amendment Regulation 2008 (No 3)

**Subordinate Law SL2008-33**

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The Australian Capital Territory Executive makes the following regulation under the *Planning and Development Act 2007*.

Dated 5 August 2008.

ANDREW BARR  
Minister

SIMON CORBELL  
Minister

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Australian Capital Territory

# Planning and Development Amendment Regulation 2008 (No 3)

Subordinate Law SL2008-33

made under the

Planning and Development Act 2007

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J2008-365

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**1 Name of regulation**

This regulation is the *Planning and Development Amendment Regulation 2008 (No 3)*.

**2 Commencement**

This regulation commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

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

**4 Section 20**

*substitute*

**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.

## 5 **New part 3.3**

*insert*

### **Part 3.3 Development approvals—when amendment not required**

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

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.

### **36 Expiry—pt 3.3**

This part expires on 31 March 2010.

## **6 Section 113 (1) (b)**

*substitute*

- (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).

**7 Section 410**

*omit*

schedule 5

*substitute*

schedule 20

**8 Schedule 1**

*omit*

(see s 20)

*substitute*

(see s 20 (1))

**9 Schedule 1, section 1.1, definitions of *designated development, finished floor level, general exemption criteria and surface water***

*omit*

**10 Schedule 1, part 1.2 heading**

*substitute*

## **Part 1.2 General exemption criteria**

**11 Schedule 1, section 1.12, note**

*substitute*

*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).



**12 Schedule 1, section 1.15**

*omit*

exempt development

*substitute*

relevant development

**13 Schedule 1, section 1.16, examples and note**

*substitute*

**Examples**

- 1 A house, rear deck and pergola are to be built at the same time. Building the house requires development approval because of its height. The development approval for the house needs to include the deck and pergola because they are part of another development (ie the house) that requires development approval.
- 2 The development approval for the house in example 1 was issued subject to a single condition that the trees on the block be protected by a temporary fence during the building of the house. The design of the house is varied during construction to add an extra external doorway that complies with s 1.21. A variation to the development approval is not required because the addition of the doorway complies with sch 1A, s 1A.20. The condition of the development approval about trees being fenced is relevant to building the doorway. Criterion 5 (see s 1.15) does not prevent the addition of the doorway if the fence complies with the condition while the doorway is built. However, if the addition of the doorway breaches the condition, the addition of the doorway is prevented by criterion 5.
- 3 A new owner of a completed house proposes to attach a garage, deck and pergola to the house and to alter it by cutting-in an external doorway. Cutting-in the doorway, and building the garage, deck and pergola, will not be carried out as part of another development on the land and the works will comply with this schedule. The cutting-in of the doorway and the building of the garage, deck and pergola without a development approval is not prevented by criterion 6 because it is not part of another development which requires development approval. However, other general exemption criteria, and certain provisions in this schedule, might be relevant to the cutting-in of the doorway, and building the garage, deck and pergola.

*Note 1* See also the examples to sch 1A, s 1A.10.

*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).

## 14 Schedule 1, section 1.21

*substitute*

### 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.

**15 Schedule 1, section 1.22 (1), definition of *excluded item*, note**

*substitute*

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

**16 Schedule 1, sections 1.51 (2) (c) and 1.52 (1) (c), new note**

*insert*

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

**17 Schedule 1, section 1.78**

*omit*

section 1.72

*substitute*

section 1.77

**18 Schedule 1, section 1.102 (2)**

*omit*

A designated development or

*substitute*

A designated development for

**19**      **Schedule 1, sections 1.106 and 1.107**

*omit*

**20**      **New schedule 1A**

*insert*

**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).

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## 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 25mm 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) 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) 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.

## Part 1A.3 Other permitted variations

### 1A.20 Other permitted variations to approved developments and exempt developments

- (1) This section applies to a matter mentioned in table 1A.20, column 2.
- (2) A designated development for the matter must be carried out in accordance with the provision of schedule 1 (Exemptions from requirement for development approval) mentioned in table 1A.20, column 3 in relation to the matter.

**Table 1A.20 Other permitted variations**

column 1 item	column 2 matter	column 3 provision
1	internal alteration of class 1 building	s 1.20
2	installation, alteration or removal of external door or window in building	s 1.21 or s 1.21A

*Note* See the examples to sch 1, s 1.16.

**21 Schedule 5, modification 5.1**

*substitute*

**[5.1] New sections 429A to 429F**

*insert*

**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).’

**429F      Modification—s 298A (Application for extension of time to commence or complete building and development)**

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).’

**22 Schedule 5, new modification 5.7**

*insert*

**[5.7] 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.

**23 Schedule 5, new modification 5.8**

*insert*

**[5.8] 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).

**24 Schedule 5**

*renumber as schedule 20*

**25 Dictionary, note 3, new dot point**

*insert*

- exempt

**26 Dictionary, new definition of *approved development***

*insert*

***approved development***, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

**27 Dictionary, definition of *designated development***

*substitute*

***designated development***, in relation to land—see schedule 1 (Exemptions from requirement for development approval), section 1.2.

**28 Dictionary, new definition of *exempt development***

*insert*

***exempt development***, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

**29 Dictionary, definitions of *finished floor level* and *general exemption criteria***

*substitute*

*finished floor level*—see the territory plan (13 Definitions).

*general exemption criteria*, for a development—see schedule 1 (Exemptions from requirement for development approval), section 1.10.

**30 Dictionary, new definition of *sch 1 exempt development***

*insert*

*sch 1 exempt development*, for schedule 1A (Permitted variations to approved and exempt developments)—see schedule 1A, section 1A.1.

**31 Dictionary, definition of *surface water***

*substitute*

*surface water*—see the *Water Resources Act 2007*, section 8.

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**Endnotes**

**1 Notification**

Notified under the Legislation Act on 5 August 2008.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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