



Australian Capital Territory

Planning and Development Amendment Regulation 2009 (No 5)

Subordinate Law SL2009-15

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

Dated 23 April 2009.

ANDREW BARR
Minister

KATY GALLAGHER
Minister



Australian Capital Territory

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made under the

Planning and Development Act 2007

1 Name of regulation

This regulation is the *Planning and Development Amendment Regulation 2009 (No 5)*.

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*.

J2009-273

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

4 Section 20 (6) (c)

substitute

- (c) the requirement under schedule 1, section 1.100 (Compliant single dwellings) that there be not more than 1 dwelling on a block.

5 Section 35 (4) (c)

substitute

- (c) the requirement under schedule 1, section 1.100 (Compliant single dwellings) that there be not more than 1 dwelling on a block.

6 Schedule 1, section 1.100 heading

substitute

1.100 Compliant single dwellings

7 Schedule 1, section 1.100 (1)

substitute

- (1) Building a single dwelling (the *dwelling*) or altering a single dwelling (the *alteration*) on a block if—
 - (a) the dwelling will be the only dwelling on the block (whether or not another dwelling has previously 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 or alteration, as built, complies with—
 - (i) the relevant rules in any relevant precinct code that would apply if the dwelling or alteration were not exempt; 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 Housing Development Code that would apply if the dwelling or alteration were not exempt; and
 - (iii) to the extent that they are not inconsistent with the relevant rules in a relevant precinct code or the Residential Zones—Single Dwelling Housing Development Code—the prescribed general exemption criteria; and
- (d) the dwelling or alteration will be in a residential zone.

Note 1 **Relevant rules**—see the Act, dictionary. See also s (3).

Note 2 Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

8 Schedule 1, section 1.100 (4), new definition of *prescribed general exemption criteria*

after the note, insert

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 1.17 (Criterion 7—no multiple occupancy dwellings);
- (c) section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

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

9 Schedule 1, section 1.100A

substitute

1.100A Otherwise non-compliant single dwellings

- (1) Building a single dwelling (the *dwelling*) or altering a single dwelling (the *alteration*) on a block if—
 - (a) the building of the dwelling or alteration would be exempt under section 1.100, apart from the encroachment of the dwelling or alteration in 1 or more of the following ways:
 - (i) beyond the front, side or rear setback required under the defined rules;
 - (ii) beyond the building envelope that applies, under the defined rules, to the block where the dwelling or alteration is being built;
 - (iii) into the minimum private open space required under the defined rules; and
 - (b) the planning and land authority declares (an *exemption declaration*) that the dwelling or alteration does not stop being an exempt development because of a non-compliance with the defined rules identified in the declaration.
- (2) An exemption declaration must state the following distances (each of which is an *extended distance*):
 - (a) the distance by which any setback for the dwelling or alteration, that is required by the defined rules, is reduced to allow for the encroachment;
 - (b) the distance that any element of the dwelling or alteration may extend beyond the building envelope that applies, under the defined rules, to the block where the dwelling or alteration is being built;

- (c) the distance by which any element of the dwelling or alteration may encroach into the minimum private open space required under the defined rules.
- (3) 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).

- (4) However, the planning and land authority must not make an exemption declaration in relation to a non-compliant dwelling or alteration unless satisfied that—
- (a) the non-compliance is minor; and
 - (b) building the dwelling or alteration other than in accordance with the defined rules—
 - (i) will not adversely affect someone other than the applicant; and
 - (ii) will not increase the environmental impact of the dwelling or alteration more than minimally.

- (5) In this section:

block—see section 1.100 (4).

defined rules means—

- (a) the relevant rules in any relevant precinct code that would apply if the dwelling or alteration were not exempt; or

- (b) the relevant rules in the Residential Zones—Single Dwelling Housing Development Code that would apply if the dwelling or alteration were not exempt.

preliminary block—see section 1.100 (4).

setback—see the territory plan (13 Definitions).

10 Schedule 1, new section 1.100B

insert

1.100B Single dwellings—demolition

The demolition of a single dwelling, or part of a single dwelling, if the demolition complies with section 1.14 (Criterion 4—heritage and tree protection).

Note Other territory laws, including the *Building Act 2004*, must be complied with (see s 1.4).

11 Schedule 1, section 1.101

substitute

1.101 Buildings and structures—demolition

- (1) The demolition of a building or structure, or part of a building or structure, if, were the building or structure, or the part of the building or structure, to be built, it would be an exempt development.

Note Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

- (2) In this section:

building does not include a single dwelling.

Endnotes

1 Notification

Notified under the Legislation Act on 24 April 2009.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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