



Australian Capital Territory

Planning and Development Amendment Regulation 2009 (No 11)

Subordinate Law SL2009-40

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

Dated 22 July 2009.

ANDREW BARR
Minister

SIMON CORBELL
Minister



Australian Capital Territory

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Planning and Development Act 2007

Contents

	Page
1 Name of regulation	1
2 Commencement	1
3 Legislation amended	1
4 New section 25 (1) (e)	1
5 Schedule 1, section 1.10 (c)	1
6 Schedule 1, section 1.13	1
7 Schedule 1, section 1.22 (1), definition of <i>exterior item</i> , new paragraph (h)	2
8 Schedule 1, new section 1.26A	2

J2009-367

Contents

		Page
9	Schedule 1, new section 1.30A	3
10	Schedule 1, section 1.31 (1), definition of <i>prescribed general exemption criteria</i> and note	3
11	Schedule 1, section 1.45 (1) (c) and note	4
12	Schedule 1, new section 1.45 (1A)	4
13	Schedule 1, section 1.45 (2), definition of <i>size limitation</i> , paragraph (a)	4
14	Schedule 1, section 1.45 (2), definition of <i>size limitation</i> , paragraph (c)	4
15	Schedule 1, section 1.46 (b) and note	5
16	Schedule 1, section 1.46 (c) (i)	5
17	Schedule 1, new section 1.46 (2)	5
18	Schedule 1, section 1.47 (c) and note	5
19	Schedule 1, new section 1.47 (2)	6
20	Schedule 1, section 1.51 (2), note 3	6
21	Schedule 1, section 1.54 (1) (c)	6
22	Schedule 1, section 1.55 (1) and note	6
23	Schedule 1, section 1.55 (2) (b) and (c)	6
24	Schedule 1, section 1.55 (2) (e), except note	7
25	Schedule 1, section 1.56 (c)	7
26	Schedule 1, new section 1.61	7
27	Schedule 1, section 1.66 and note	8
28	Schedule 1, sections 1.75 to 1.78	8
29	Schedule 1, section 1.85 (1) and note	9
30	Schedule 1, section 1.100 (1) (c) (ii)	9
31	Schedule 1, section 1.100 (4), definition of <i>prescribed general exemption criteria</i> , paragraph (a)	9
32	Schedule 1, section 1.101 (1) and note	10
33	Schedule 1, section 1.103 (1) (c) and notes	10
34	Schedule 1, new sections 1.110 and 1.111	11

1 Name of regulation

This regulation is the *Planning and Development Amendment Regulation 2009 (No 11)*.

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 New section 25 (1) (e)

after the notes, insert

- (e) the alteration of a building on a block in a residential zone if the alteration—
 - (i) does not increase the gross floor area of the building; and
 - (ii) does not change the siting of the building on the block.

Note 1 **Gross floor area**—see the territory plan (13 Definitions).

Note 2 Some alterations of buildings may be exempt from the requirement for development approval (see sch 1, s 1.21 and s 1.21A).

5 Schedule 1, section 1.10 (c)

omit

6 Schedule 1, section 1.13

omit

**7 Schedule 1, section 1.22 (1), definition of *exterior item*,
new paragraph (h)**

insert

(h) a pole or post.

8 Schedule 1, new section 1.26A

insert

1.26A Buildings—external shades

(1) In this section:

external shade means a device used to shade a window or door externally, and includes a pole, post or any other item associated with an external shade.

Examples

awning, blind, louvre, shutter

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) A designated development for an external shade if—

- (a) the external shade, when opened to its full capacity, is within the boundary of the block; and
- (b) the designated development complies with the general exemption criteria that are applicable to the development.

9 Schedule 1, new section 1.30A

insert

1.30A Resealing existing driveways

A designated development for resealing an existing driveway if—

- (a) 1 or more of the following materials is used:
 - (i) concrete (including coloured or patterned concrete);
 - (ii) bitumen;
 - (iii) pavers, including bricks;
 - (iv) timber;
 - (v) grass, including stabilising treatment; and
- (b) the designated development complies with the general exemption criteria that are applicable to the development.

Note A driveway in an existing school campus may also be exempt under s 1.99R.

10 Schedule 1, section 1.31 (1), definition of *prescribed general exemption criteria* and note

substitute

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.

11 Schedule 1, section 1.45 (1) (c) and note

substitute

- (c) the height of the building is not more than—
- (i) if subsection (1A) applies—4m above natural ground level; or
 - (ii) in any other case—3m above natural ground level; and

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

12 Schedule 1, new section 1.45 (1A)

insert

- (1A) This subsection applies to a building that—
- (a) is more than 3m above natural ground level; but
 - (b) has no part higher than a plane projecting at 30° above the horizontal from a height 3m above the natural ground level at a boundary.

13 Schedule 1, section 1.45 (2), definition of *size limitation*, paragraph (a)

substitute

- (a) if the size of the block is less than 500m²—the building has a plan area of not more than 10m²; or

14 Schedule 1, section 1.45 (2), definition of *size limitation*, paragraph (c)

omit

36m²

substitute

50m²

15 Schedule 1, section 1.46 (b) and note

substitute

- (b) the height of the building is not more than—
- (i) if subsection (2) applies—4m above natural ground level;
or
 - (ii) in any other case—3m above natural ground level; and

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

16 Schedule 1, section 1.46 (c) (i)

omit

25m²

substitute

50m²

17 Schedule 1, new section 1.46 (2)

after the notes, insert

- (2) This subsection applies to a building that—
- (a) is more than 3m above natural ground level; but
 - (b) has no part higher than a plane projecting at 30° above the horizontal from a height 3m above the natural ground level at a boundary.

18 Schedule 1, section 1.47 (c) and note

substitute

- (c) the height of the building is not more than—
- (i) if subsection (2) applies—4m above natural ground level;
or

(ii) in any other case—3m above natural ground level; and

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

19 Schedule 1, new section 1.47 (2)

after the notes, insert

- (2) This subsection applies to a building that—
- (a) is more than 3m above natural ground level; but
 - (b) has no part higher than a plane projecting at 30° above the horizontal from a height 3m above the natural ground level at a boundary.

20 Schedule 1, section 1.51 (2), note 3

omit

21 Schedule 1, section 1.54 (1) (c)

omit

22 Schedule 1, section 1.55 (1) and note

omit

23 Schedule 1, section 1.55 (2) (b) and (c)

substitute

- (b) if any part of the tank is located between a front boundary and a building line for the block—the whole tank is buried under the natural ground level; and

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

- (c) in any other case—the height of the tank is not more than 3m above natural ground level; and

24 Schedule 1, section 1.55 (2) (e), except note

substitute

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

25 Schedule 1, section 1.56 (c)

omit

26 Schedule 1, new section 1.61

in subdivision 1.3.2.3, insert

1.61 Flag poles

- (1) In this section:

flag pole includes a lanyard, flag or other item associated with a flag pole.

- (2) A designated development for building or installing a flag pole if—
- (a) the height of the flag pole is not more than 10m above finished ground level; and
 - (b) the designated development complies with the general exemption criteria that are applicable to the development.

Note A flag pole in an existing school campus may also be exempt under s 1.99L.

27 Schedule 1, section 1.66 and note

substitute

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 section 1.18 (Criterion 8—compliance with other applicable exemption criteria).

Note *General exemption criteria*—see s 1.10.

28 Schedule 1, sections 1.75 to 1.78

substitute

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.

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.

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*.

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.

29 Schedule 1, section 1.85 (1) and note

substitute

- (1) In this section:

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

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

30 Schedule 1, section 1.100 (1) (c) (ii)

substitute

- (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 (other than rule 33 and rule 66); and

31 Schedule 1, section 1.100 (4), definition of *prescribed general exemption criteria*, paragraph (a)

omit

32 Schedule 1, section 1.101 (1) and note

substitute

- (1) The demolition of a building or structure, or part of a building or structure, if—
- (a) if the building or structure is a class 10 building or structure—
 - (i) the building or structure is on land in a residential zone; and
 - (ii) the demolition complies with section 1.14 (Criterion 4—heritage and tree protection); or
 - (b) in any other case—
 - (i) were the building or structure, or the part of the building or structure, to be built the building or structure would be an exempt development; and
 - (ii) the demolition complies with section 1.14 (Criterion 4—heritage and tree protection).

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

33 Schedule 1, section 1.103 (1) (c) and notes

substitute

- (c) the installation of minor utility infrastructure with a height not more than 2m above natural ground level;
- (d) maintenance carried out only to maintain an electricity, water, sewerage, stormwater, gas or telecommunication service.

Examples—par (c)

weather station cabinets, sewerage and water supply controls

Examples—par (d)

replacing pipes with pipes that are the same or substantially the same, digging trenches needed to replace pipes

Note 1 **General exemption criteria**—see s 1.10.

Note 2 **Estate development plan**—see the Act, s 94.

Note 3 **Natural ground level**—see the territory plan (13 Definitions).

Note 4 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).

34 Schedule 1, new sections 1.110 and 1.111

insert

1.110 Rebuilding damaged buildings and structures

- (1) A designated development to rebuild a damaged building or structure 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 more than the previously approved height of the damaged building or structure, both of which are measured from the natural ground level;
 - (ii) the gross floor area of any new or altered building or structure being more than 15% larger than the previously approved gross floor area of the damaged building or structure;

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

- (iii) any new or altered building or structure being used for more 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 relevant 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) 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
- (d) 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 (c).

(2) In this section:

certifier means a certifier, for building work, within the meaning of the *Building Act 2004*.

damage, in relation to a building or structure, means damage caused by an act or event, other than an act done by the lessee of the land with the intention of causing the damage.

Examples—act or event causing damage

natural disaster, electrical fire, vandalism

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).

lessee, of land before the act or event that damaged the building or structure, includes a person who, before the act or event, 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 no transfer had been registered under the *Land Titles Act 1925* in accordance with the agreement.

plan, of a development, means—

- (a) a plan that complies with AS 1100; or
- (b) unless the building or structure will differ from the previously approved development—the plan for the previously approved development.

previously approved—a development has been **previously approved** if the development was approved under—

- (a) the *Land (Planning and Environment) Act 1991*; or
- (b) the *Buildings (Design and Siting) Act 1964*; or

- (c) this Act, unless, immediately before the act or event that damaged the building or structure—
 - (i) the period for applying to the ACAT for review of the decision to approve the development had not ended; or
 - (ii) if an application to the ACAT for a review of the decision had been made—the application had not been finally disposed of by the ACAT.

1.111 Bores

- (1) A designated development in relation to a bore if the development complies with the general exemption criteria that apply to the development.

Note 1 **General exemption criteria**—see s 1.10.

Note 2 Other territory laws, including the *Water Resources Act 2007* and the *Environment Protection Act 1997*, must be complied with (see s 1.4).

- (2) In this section:

bore—see the *Water Resources Act 2007*, dictionary.

Endnotes

1 Notification

Notified under the Legislation Act on 23 July 2009.

2 Republications of amended laws

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

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