



Australian Capital Territory

# Planning and Development Amendment Regulation 2012 (No 1)

**Subordinate Law SL2012-18**

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

Dated 9 May 2012.

SIMON CORBELL  
Minister

ANDREW BARR  
Minister

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Planning and Development Act 2007

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**1 Name of regulation**

This regulation is the *Planning and Development Amendment Regulation 2012 (No 1)*.

**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 5 (1), definition of *dwelling*, paragraph (a) (i) (A)**

*substitute*

(A) at least 1 but not more than 2 kitchens;

**5 Section 201**

*omit*

The following matters are prescribed:

*substitute*

The following matters are prescribed in deciding whether to consent to the transfer or assignment of a lease under the Act, section 298 (2):

**6 Schedule 1, section 1.4 (1), examples**

*omit*

- *Environment Protection Act 1997*

**7 Schedule 1, sections 1.4 and 1.10**

*omit*

(Criterion 4—heritage and tree protection)

*substitute*

(Criterion 4—heritage, tree and environment protection)

**8 Schedule 1, section 1.14 heading**

*substitute*

**1.14 Criterion 4—heritage, tree and environment protection**

**9 Schedule 1, section 1.14 (1)**

*substitute*

- (1) A development must not contravene—
- (a) the *Heritage Act 2004*; or
  - (b) the *Tree Protection Act 2005*; or
  - (c) the *Environment Protection Act 1997*.

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

**10 Schedule 1, section 1.23**

*omit*

(Criterion 4—heritage and tree protection)

*substitute*

(Criterion 4—heritage, tree and environment protection)

**11 Schedule 1, section 1.27**

*substitute*

**1.27 External 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, other than section 1.18 (Criterion 8—compliance with other applicable exemption criteria), that are applicable to the development.

*Note 1* **Designated development**, in relation to land—see s 1.2.

*Note 2* **General exemption criteria** for a development—see s 1.10.

- (2) In this section:

**service**—

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

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

### 1.27A External photovoltaic panels

- (1) A designated development for an externally mounted photovoltaic panel for a block if—
  - (a) no part of the panel is within 1.5m of a side boundary or rear boundary of the block; and
  - (b) if the panel is a protruding panel—
    - (i) no part of the panel is more than 300mm above the closest point of the roof; or
    - (ii) no part of the panel restricts solar access to another block; and
  - (c) if the panel is mounted on the ground—no part of the panel is between a front boundary and a building line for the block; and
  - (d) the designated development complies with the general exemption criteria, other than section 1.18 (Criterion 8—compliance with other applicable exemption criteria), that are applicable to the development.

*Note 1* **Designated development**, in relation to land—see s 1.2.

*Note 2* **General exemption criteria** for a development—see s 1.10.

- (2) In this section:

**protruding panel** means a roof mounted photovoltaic panel any part of which is higher than a plane projected at 30° above horizontal from a height of 3m above the natural ground level at a boundary of the block.

**restrict**—a protruding panel on a block **restricts** solar access to another block if, on the winter solstice when the sun's angle is 30° above the horizon, the shadow cast by the panel at natural ground level on the other block is larger than the shadow that would be cast on the other block by the roof if the protruding panels were not mounted on it.



**12 Schedule 1, section 1.48 (2) (e)**

*after*

any part of the deck is

*insert*

higher than 0.4m above natural ground level and

**13 Schedule 1, section 1.53 (1) (a)**

*substitute*

- (a) if the retaining wall is between a front boundary and a building line for the block—the retaining wall is not higher than 0.4m above natural ground level on the lowest side of the wall; and

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

**14 Schedule 1, section 1.53 (1) (c)**

*after*

any part of the retaining wall is

*insert*

higher than 0.4m above natural ground level on the lowest side of the wall and

**15 Schedule 1, new division 1.3.3A**

*insert*

**Division 1.3.3A Exempt developments—community gardens**

**1.72 Definitions—div 1.3.3A**

In this division:

***boundary*** means the boundary of—

- (a) the unleased territory land on which a community garden is established; or
- (b) the existing school campus on which a community garden is established.

***class 10a building*** means any of the following buildings that are class 10a buildings under the building code:

- (a) a shed
- (b) a greenhouse;
- (c) a gazebo;
- (d) a pergola;
- (e) a hail protection structure;
- (f) a storeroom or other out-building.

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

***class 10b structure*** means any of the following structures that are class 10b structures under the building code:

- (a) an arbour;
- (b) an arch;

- (c) a fence;
- (d) a freestanding wall;
- (e) a garden bed;
- (f) a pole.

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

***community garden***—

- (a) means the use of land for the cultivation of produce primarily for personal use by the individuals undertaking the gardening; and
- (b) includes demonstration gardening or other activities to encourage the involvement of school groups, youth groups or others in gardening activities.

**Example**

a garden in a school that is cultivated by students and grows produce for use in the school canteen

*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).

**1.73 Application—div 1.3.3A**

- (1) This division applies to a community garden if—
  - (a) the garden is established on—
    - (i) unleased territory land under a licence granted under the Act, part 9.11 (Licences for unleased land); or
    - (ii) an existing school campus.

*Note* **Existing school campus**—see s 1.97.

- (2) If this division applies to a community garden the following sections of schedule 1 do not apply in relation to a development in the community garden:
- (a) section 1.41 (Class 10 buildings and structures—2nd exempt building or structure within boundary clearance area);
  - (b) section 1.45 (Roofed class 10a buildings—enclosed or open on 1 side);
  - (c) section 1.46 (Roofed class 10a buildings—unenclosed or partially open);
  - (d) section 1.47 (Class 10a buildings—unroofed and unenclosed);
  - (e) section 1.50 (Class 10b structures—plan area not more than 2m<sup>2</sup>);
  - (f) section 1.51 (Fences and freestanding walls generally);
  - (g) section 1.52 (Basic open space boundary fences);
  - (h) section 1.62 (Water tanks);
  - (i) section 1.63 (External ponds);
  - (j) section 1.100 (Compliant single buildings).

*Note* The provisions of sch 1 that are not mentioned in this section may apply in relation to a development in a community garden.

#### **1.74 Community gardens—general exemption criteria**

Unless otherwise stated in a provision, a development to which this division applies must comply with the general exemption criteria, other than section 1.18 (Criterion 8—compliance with other applicable exemption criteria), that are applicable to the development.

*Note 1* **Designated development**, in relation to land—see s 1.2.

*Note 2* **General exemption criteria** for a development—see s 1.10.

**1.74A Community gardens—class 10a building**

A designated development for building or installing a class 10a building in a community garden if—

- (a) the height of the building is—
  - (i) not more than 3m above natural ground level; or
  - (ii) if no part of the building is higher than a plane projecting at 30° above horizontal from a height of 3m above the natural ground level at a boundary—not more than 4m above natural ground level; and

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

- (b) the plan area of the building is—
  - (i) if the community garden is less than 600m<sup>2</sup>—not more than 10m<sup>2</sup>; or
  - (ii) if the community garden is 600m<sup>2</sup> or more—not more than 50m<sup>2</sup>; and
- (c) the height of the finished floor level of the building that has a floor is—
  - (i) if the building is within 1.5m of a boundary—not more than 0.4m above natural ground level; or
  - (ii) in any other case—not more than 1m above finished ground level; and

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

- (d) the minimum setback between the building and any street frontage is—
  - (i) if the plan area of the building is not more than 10m<sup>2</sup>—6m; or

- (ii) if the plan area of the building is more than  $10\text{m}^2$  and not more than  $50\text{m}^2$ — $15\text{m}$ ; and
- (e) if any part of the building is within  $1.5\text{m}$  of a boundary that does not align with any street frontage—
  - (i) the building is the only class 10 building or structure (other than a boundary fence) that has any part of it within  $1.5\text{m}$  of the boundary; or
  - (ii) section 1.74C applies to the building.

**1.74B Community gardens—class 10b structures**

- (1) A designated development for building or installing a garden bed in a community garden if—
  - (a) the bed has a plan area of not more than  $50\text{m}^2$ ; and
  - (b) the bed is not more than  $1\text{m}$  high.
- (2) A designated development for building or installing a fence in a community garden if—
  - (a) the fence is made of mesh; and
  - (b) the fence is not more than  $2.3\text{m}$  high; and
  - (c) if the fence is a boundary fence—it does not divert or concentrate the flow of surface water in a way that causes the water to pond or be diverted onto other land.
- (3) A designated development for building or installing a class 10b structure (other than a garden bed or a fence) in a community garden if the structure—
  - (a) has a plan area of not more than  $2\text{m}^2$ ; and
  - (b) is not wider than  $2\text{m}$ ; and
  - (c) is not higher than  $1.85\text{m}$  above natural ground level; and

- (d) if the structure has a floor—the floor is not more than 0.4m above natural ground level; and
- (e) if any part of the structure is within 1.5m of a boundary—
  - (i) the structure is the only class 10 building or structure (other than a boundary fence) that has any part of it within 1.5m of the boundary; or
  - (ii) section 1.74C applies to the structure.

#### **1.74C Community gardens—boundary clearance area**

- (1) In this section:

*boundary clearance area* means the area between a boundary and a line drawn 1.5m inside and parallel to the boundary.

*class 10 building or structure* does not include a sign installed on a community garden.

*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 if—
- (a) an existing class 10 building or structure (the *1st thing*) is partially or fully in a boundary clearance area; and
  - (b) the 2nd thing would be exempt under another section of this division if the 1st thing were not 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 30m<sup>2</sup>.

**1.74D Community gardens—water tanks**

A designated development for building or installing a water tank in a community garden if—

- (a) the capacity of the tank is not more than 20kL; and
- (b) the height of the tank is not higher than 3m above natural ground level; and
- (c) no part of the tank is within 1.5m of a boundary.

**1.74E Community gardens—ponds**

A designated development for building or installing an external pond in a community garden 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) no part of the pond is within 1.5m of a boundary.



**1.74F Community gardens—shade structures**

A designated development for building or installing a shade structure (and carrying out any related earthworks or other construction work on or under the land) in a community garden if—

- (a) the height of the shade structure is not more than 4m above existing ground level; and
- (b) the plan area of the shade structure is not more than 50m<sup>2</sup>; and
- (c) the shade structure is unenclosed on at least 2 sides.

**16 Schedule 1, section 1.90 (2), new definitions**

*insert*

***kiosk*** means a structure in an open space that is used to provide food or drinks to people using the open space mainly for another purpose.

***public amenities*** means toilets, showers and change rooms that are available for public use.

**17 Schedule 1, section 1.90 (2), definition of *public works*, new paragraphs (k) and (l)**

*after the example, insert*

- (k) installation or maintenance of public amenities; or
- (l) installation or maintenance of a kiosk.

**18 Schedule 1, section 1.90 (2), definition of *street and park furniture*, example 1**

*omit*

public toilet,

**19**      **Schedule 1, section 1.90 (2), definition of *street and park furniture*, example 3**

*omit*

telephone kiosk

*substitute*

telephone booth

**20**      **Schedule 1, section 1.99C (1) (a) (ii), examples**

*after*

classroom

*insert*

, environment learning centre

**21**      **Schedule 1, sections 1.100B and 1.101**

*omit*

(Criterion 4—heritage and tree protection)

*substitute*

(Criterion 4—heritage, tree and environment protection)

**22 Schedule 1, new section 1.113**

*in division 1.3.7, insert*

**1.113 Vehicle charging point**

- (1) A designated development for a vehicle charging point if the development complies with the general exemption criteria, other than section 1.18 (Criterion 8—compliance with other applicable exemption criteria), that are applicable to the development.

*Note 1* **Designated development**, in relation to land—see s 1.2.

*Note 2* **General exemption criteria** for a development—see s 1.10.

- (2) In this section:

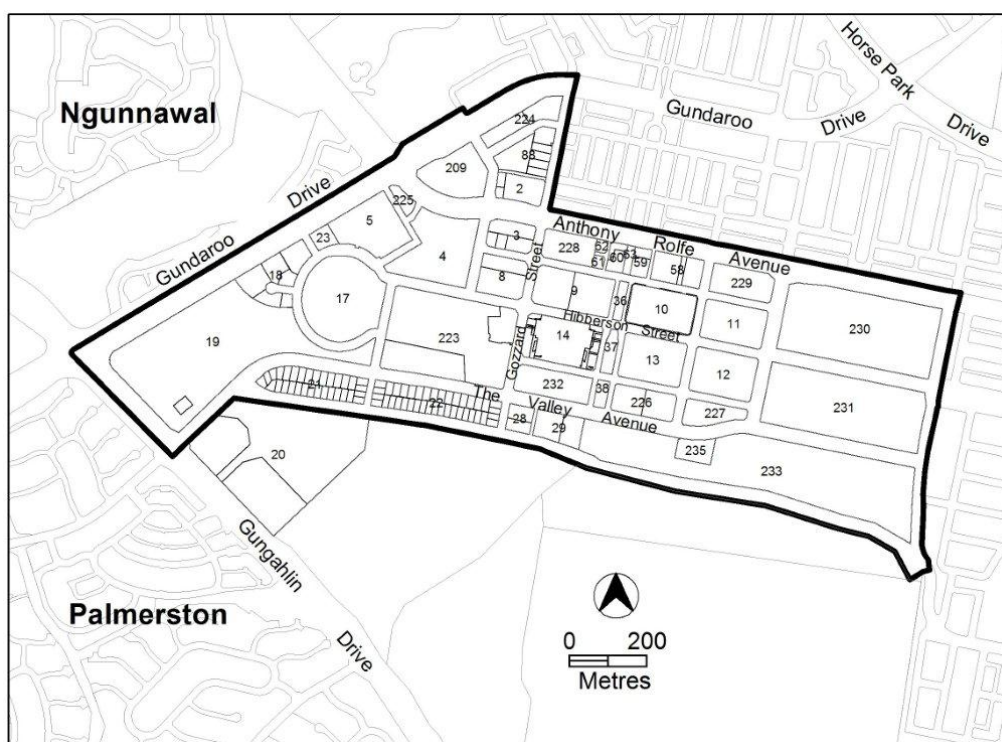
**vehicle charging point** means a fixture that allows for the electric charging of a vehicle if the fixture—

- (a) is attached to a building or structure and has a vertical surface area of not more than 0.5m<sup>2</sup>; or
- (b) is attached to a free standing column or bollard that is not more than 1.8m high and the plan area is not more than 1m<sup>2</sup>.

**23 Schedule 3, division 3.4.3**

*substitute*

**Division 3.4.3 Gungahlin town centre**



**24 Dictionary, new definition of *boundary***

*insert*

***boundary***, for schedule 1, division 1.3.3A (Exempt developments—community gardens)—see schedule 1, section 1.72.

**25 Dictionary, definition of *class 10a building***

*substitute*

*class 10a building*—

- (a) for schedule 1, division 1.3.2 (Exempt developments—non-habitable buildings and structures)—see schedule 1, section 1.40; and
- (b) for schedule 1, division 1.3.3A (Exempt developments—community gardens)—see schedule 1, section 1.72.

**26 Dictionary, new definition of *class 10b structure***

*insert*

*class 10b structure*, for schedule 1, division 1.3.3A (Exempt developments—community gardens)—see schedule 1, section 1.72.

**27 Dictionary, new definition of *community garden***

*insert*

*community garden*, for schedule 1, division 1.3.3A (Exempt developments—community gardens)—see schedule 1, section 1.72.

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**Endnotes**

**1 Notification**

Notified under the Legislation Act on 10 May 2012.

**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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