**2008**

**THE LEGISLATIVE ASSEMBLY**
**FOR THE AUSTRALIAN CAPITAL TERRITORY**

# *PLANNING AND DEVELOPMENT REGULATION 2008*
**SUBORDINATE LAW No SL2008-2**

## EXPLANATORY STATEMENT

Circulated by authority of
Andrew Barr MLA
Minister for Planning

**AUSTRALIAN CAPITAL TERRITORY**
***PLANNING AND DEVELOPMENT REGULATION 2008***
**EXPLANATORY STATEMENT**

## Overview

The Planning and Development Regulation is made under section 426 of the *Planning and Development Act 2007* (the Act).

The Act establishes a faster, simpler and more effective system of planning in the ACT. The Act replaces the existing *Land (Planning and Environment) Act 1991* (the Land Act) and the *Planning and Land Act 2002*.

The objective of the Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT in a way that is consistent with the social, environmental and economic aspirations of the people of the ACT, and which is in accordance with sound financial principles.

The regulation is intended to facilitate the achievement of this objective by supplementing the provisions of the Act.

Throughout the Act, there are provisions for regulations concerning, amongst other things:

- strategic environmental assessments
- exempt development
- environmental impact statements
- inquiry panels
- matters relating to the administration of leases such as the grant of further leases, subletting of leases and eligibility criteria for the direct sale of leases
- the referral of development applications to entities
- controlled activities
- merit and impact track decisions exempt from AAT review

## Notes on Regulations

### Chapter 1 Preliminary

**Section 1** – **Name of regulation** – names the regulation as the *Planning and Development Regulation 2008.*

**Section 2** – **Commencement** – provides that the regulation commences on the commencement of section 426 of the *Planning and Development Act 2007* (regulation-making power).

**Section 3** – **Dictionary** – states that the dictionary at the end of the regulation is part of the regulation.

**Section 4** – **Notes** – provides that notes included in the regulation are only explanatory.

**Section 5** – **Meaning of *dwelling*** – **regulation** – provides the meaning of ***dwelling*** in the regulation. In the regulation, a ***dwelling*** means a class 1 building or a self contained part of a class 2 building that includes not more than two kitchens, at least one bath or shower and at least one toilet pan. The building must not have access from another building that is either a class 1 building or the self-contained part of a class 2 building. Any ancillary parts of the building and any class 10a buildings associated with the building are included within the meaning of 'dwelling'. In the section, a kitchen does not include outdoor cooking facilities or a barbeque in an enclosed garden room.

**Chapter 2 Strategic environmental assessments (SEA)**

**Section 10** – **Meaning of *proposal* – ch 2** – sets out the meaning of ***proposal*** for the chapter. It has a different meaning depending upon the reason for the preparation of the SEA. A ***proposal*** for an assessment prepared under section 100 (Preparation of strategic environmental assessments) is the matter to which the assessment relates. A ***proposal*** for an assessment prepared under section 103(2) (Review of territory plan) of the Act is the review of the territory plan to which the assessment relates.

**Section 11** – **Development of strategic environmental assessments– Act, s 101(a)** – specifies the stages a person developing a SEA must complete. The stages need not be completed in order and the person may complete more than one stage at a time. The stages are:

**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

**Sections 12 –16** set out what constitutes the completion of each of the stages A to E inclusive. A person developing a SEA must set the context and establish the baseline for the SEA by screening the proposal, identifying environmental issues and setting objectives (Stage A); develop alternatives for the proposal, and decide the scope of the SEA by preparing a SEA scoping document (Stage B); assess the environmental benefits and impacts of the proposal by assessing the effects of the proposal against the SEA scoping document and considering how the environmental impacts can be managed (Stage C); carry out consultation about the SEA by preparing a plan for consultation, carrying out consultation and reporting on the results of the consultation (Stage D); monitor the SEA by developing a monitoring plan (Stage E).

**Section 17** – **Contents of strategic environmental assessments – Act, s 101(b)** – specifies what SEA must contain and what documents must be attached. A SEA must contain

- a non technical summary of the SEA;
- an outline of the content and main objectives of the proposal and any
- relationship with planning policies or plans such as *The Canberra Spatial Plan*;
- a description of the environmental, social and economic characteristics of the
- area and region around the proposal;
- details of processes and methods used;
- an assessment of the likely environmental effects of the proposal, including
- those matters identified in the SEA scoping document;
- a discussion of alternatives for the proposal;
- the measures proposed to mitigate any significant environmental effects
- including measures required for monitoring;
- recommendations about how the SEA should be considered in future
- planning.

The SEA scoping document, the consultation plan and consultation report must be attached to the SEA.

## Chapter 3 Development Approvals
## Part 3.1 Exemptions for requirement for development approval

**Section 20** – **Exempt developments – Act, s 133, def *exempt*** – defines ***exempt development*** for section 133(c) (What is an ***exempt development***?) of the Act. Schedule1 of the regulation sets out what developments are exempt from the requirement for development approval.

## Part 3.2 Development applications

**Section 25 – When survey certificate not required for development applications – Act, s 139(2)(j)** – sets out when a survey certificate need not accompany a development application. In effect, developments considered to be minor and of minimal impact are exempted. This includes the demolition of a building or structure, certain public works, signs located entirely within a lease, the installation of certain small attachments to a roof, and certain small extensions to existing buildings.

**Section 26 – Referral of certain development applications – Act, s 148(1)** – prescribes the referral entities for development applications in the impact track and the merit track for section 148(1) of the Act (Some development applications to be referred). Development applications in the impact track must be referred to:

(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 health policy and municipal services.

Sections 26(1)(h) and (2)(b) also specify that the authority must refer a development application in the impact or merit track that relates to unleased land or public land to the custodian of the land.

A development application in the merit track that relates to any part of a declared site within the meaning of the *Tree Protection Act 2005* must be referred to the conservator of flora and fauna.

Section 26(3) specifies that if the territory plan requires a development application to be referred to an entity, the entity is prescribed.

**Section 27 – Public notification of merit track development applications – Act, s152, def *publicly notifies*** – specifies that all merit track development applications except those set out in schedule 2 of the regulation must be notified in accordance with section 152 (b) of the Act (that is, a sign on the property and a notice in a daily newspaper). The applications set out in Schedule 2 are publicly notified under section 152(a) (that is, letters to neighbours).

**Section 28 – Public consultation period – Act, s157, def *public consultation period*, par (a)** – defines ***public consultation period*** for development applications. The period for development applications notified under section 152(a) (that is, merit track applications set out in schedule 2 of the regulation) is

10 working days after the day the development application is publicly notified. For development applications notified under the Act, section 152(b) (that is, impact track applications and merit track applications not included in schedule 2 of the regulation), the consultation period is15 working days after the day the application is publicly notified.

**Section 29** – **Conditions for code track proposals – Act, s 165(4)** – prescribes the conditions for code track proposals for section 165(4) (Conditional approvals) of the Act. Those conditions include providing information relating to compliance with stated conditions to the planning and land authority (the authority); requirements that development to be carried out and conditions complied with within a stated period; requirements to manage the impact of the development, enter into a bond, keep certain documents, obtain approvals under another Act, register something under the *Land Titles Act1925* and have certain licences and permits.

## Chapter 4 Environmental impact statements and inquiries
## Part 4.1 Environmental impact statements (EIS)

**Section 50** – **Preparation of EIS – Act, s 208(1)** – sets out what an EIS must contain and some of the formatting requirements of an EIS.

An EIS in relation to a development proposal must include:

- a nontechnical summary of the EIS;
- a glossary of technical terms, abbreviations and acronyms;
- a description of the proposal; including details of the land to which the proposal
- relates, the proposal's objectives, any action in relation to the land already
- taken, and any alternatives to the proposal;
- a description of the EIS process including statutory approvals, base information
- used and the criteria used to assess each environmental impact;
- a statement about compatibility with the appropriate part of the territory plan;
- an analysis of each potentially significant environmental impact identified in the
- scoping document for the proposal;
- a description of consultation undertaken;
- for a revised EIS – a summary of representations made.

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 also address the matters mentioned in the *Environment and Biodiversity Conservation Regulations 2000* (Cwlth), schedule 4.

An EIS must be prepared in accordance with any requirement set out in the scoping document for the EIS. Each significant environment impact must be addressed in its own part of the EIS. The approach proposed to be taken to the environmental management of the land may be set out in a management plan for the land.

**Section 51– Entities relevant for preparation of scoping documents – Act, s 212(3)** – specifies what entities the authority must and may consult with in preparing a scoping document for a development proposal. The authority must consult the entities to which a development application must be referred under section 26 of the regulation unless that entity is the proponent of the development proposal. The authority may also consult the ACT community or another entity such as a NSW local council, government or non-government body or a relevant expert under section 51(3).

**Section 52 – Time for consulting entities on preparation of scoping documents** –specifies the time for consulting entities on the preparation of scoping documents. If an application is made under section 212 (Scoping of EIS) of the Act in relation to a development proposal, the authority must, as far as practicable, within 5 working days after receiving the application, give each entity that must be consulted under section 51 and any other entity considered appropriate,

(a) the scoping documentation for the development proposal (scoping documentation is the application, a draft of the scoping document and any other documents considered appropriate by the authority – section 52(4)); and

(b) a written notice that invites comments on the scoping documentation and gives the entity 15 working days after receipt of the notice to make written submissions.

The period of 15 working days can be extended pursuant to section 53 (Extension of time for giving comments on scoping documentation) of the regulation.

An entity is taken to have made no comments if it fails to give comments within the 15-day period or any extended time period.

**Section 53 – Extension of time for giving comments on scoping documentation** – allows an entity given scoping documentation under section 52 of the regulation to apply for an extension of time to make submissions. The application for extension must be made before the expiry of the 15 working day period, be in writing, and state the reasons for making the application and the additional period the entity considers necessary for making comments. If the

chief planning executive allows an extension of time, the authority must tell each entity given the documentation under section 52 about the extended period.

**Section 54** – **Content of scoping documents – Act, s 213(1)** – sets out what a scoping document must and may contain. A scoping document for an EIS must contain:

- the contact details of the people who prepared the document;
- a list of entities that provided comments and that the proponent must consult
- (the scoping document may include requirements that affected groups with
- particular communication needs have adequate opportunity to comment);
- each potentially significant environmental impact that must be addressed;
- the social and public health impact issues, if applicable. If the development
- proposal is to vary a lease to change its concessional status, the authority must
- have regard to the matters in section 261(2) of the Act (No decision on
- application unless consideration in public interest);
- any information held by the Territory that would be of use in preparing the EIS;
- the form and formatting requirements of the EIS;
- the number of copies to be given to the authority.

A scoping document may include:

- requirements in relation to the methods of assessment to be used in the EIS;
- a requirement that the proponent consider ongoing monitoring regimes for
- potentially significant environmental impacts;
- a list of impacts that are not significant environmental impacts that can be
- addressed in some other way.

**Section 55** – **Criteria for consultants – Act, s 213(3), def *consultant*** – sets out the criteria that needs to be satisfied to be a ***consultant*** under section 213(3) (Contents of scoping document) of the Act. The authority must be satisfied that the person holds relevant professional qualifications in relation to the preparation of EIS and has relevant experience or the capacity to prepare EIS.

**Part 4.2 Inquiry panels**

**Section 70** – **Definitions – pt 4.2** – defines ***inquiry panel***, ***member*** and ***presiding member***.

**Section 71** – **List of experts for inquiry panels** – specifies that the authority may keep a list of people who may be appointed to an inquiry panel. A person

may apply, in writing, to the authority to be included on the list. The authority may include a person on the list if satisfied the person holds relevant professional qualifications or has relevant expertise. The authority must review the list every 3 years.

**Section 72** – **Conflict of interests to be considered in appointing panel members** – specifies that the Minister may only appoint a person as a member of an inquiry panel for an EIS 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 relates; and

(b) the interest could conflict with the person's proper exercise of the person's functions as a member of the panel in relation to the panel's consideration of the EIS.

**Section 73** – **Disclosure of interests by panel members** – states that if a member of an inquiry panel has a potential conflict of interest, the member must disclose it as soon as practicable after the relevant facts come to the member's knowledge. Disclosure of the interest must be made to a meeting of the inquiry panel and the parties to the inquiry. Unless each party consents to the person continuing to take part, the person must not take part in the inquiry. If a presiding member becomes aware of a conflict of interest, the presiding member must direct the person not to continue to take part in the inquiry unless each party to the inquiry has given its consent. The presiding member of an inquiry panel must give a statement of disclosure to the Minister within 14 days of the interest being disclosed to the presiding member.

**Section 74** – **Presiding member's functions** – sets out the functions of the presiding member of an inquiry panel. The presiding member manages the affairs of the panel, ensures a good working relationship between the panel and relevant parties, and keeps the Minister informed.

**Section 75** – **Constitution of inquiry panels** – sets out the constitution of inquiry panels. An inquiry panel must not exercise its function unless all members of the panel are present or the panel is reconstituted in accordance with this section. If a member stops being a member of a panel before the inquiry is completed, the Minister must, in writing, end the inquiry and appoint a new panel to conduct the inquiry afresh or appoint a new member to reconstitute the panel. If the panel is reconstituted, the panel may have regard to any record of the inquiry before the previously constituted panel.

**Section 76** – **Inquiries to be public** – states that an inquiry panel must conduct its inquiry in public.

However, under section 76(2) an inquiry panel may direct:

(a) that the inquiry or part of the inquiry be conducted in private and who may be present during any private hearing; or

(b) the prohibition or restriction of publication of information given to the inquiry.

Section 76(3) sets out what an inquiry panel must consider in deciding to conduct an inquiry in private or restrict publication of information. It is a strict liability offence to contravene a direction under section 76(2) and the maximum penalty is 10 penalty units. A penalty unit is defined in the *Legislation Act 2001* (the Legislation Act) and is currently $100.

**Section 77**– **General procedure for inquiry panels** – specifies the general procedure for inquiry panels. An inquiry panel must conduct the inquiry as informally as practicable and is not bound by the rules of evidence. The presiding member may request, in writing, that a person produce documents to the panel which the panel reasonably requires to exercise its functions.

**Section 78** – **Arrangements for the use of staff and facilities** – specifies that an inquiry panel may make arrangements with the authority for the use of the services of public servants in the authority and facilities of the authority. A public servant exercising functions for an inquiry panel must do so in accordance with the directions of the presiding member of the panel.

## Chapter 5 Leases generally

### Part 5.1 Direct sale of leases

Under the Land Act, there were three provisions for the direct grant of leases (sections 161,163 and 164). Section 161 provided the general power with sections 163 and 164 providing for the direct grant of leases to community organisations and special leases respectively. Special leases were associated with the economic development of the ACT or the development of business in the ACT.

The direct grant of a lease under one of these provisions could only be done in accordance with the criteria in a disallowable instrument under the relevant section. A large percentage of leases granted by direct grant were also concessional (that is, granted for an amount less than market value).

In December 2005, the Government announced its policy position on both the concessional lease review and the planning system reform project. As part of the announcements, it was recommended that:

1. there be one provision for the direct grant of leases; and

2. the criteria for the direct grant of leases should be reviewed and those criteria should be made publicly available.

As a result, section 240 (Restriction on direct sale by authority) of the Act came into being and a review of the existing disallowable instruments relevant to direct grants was undertaken with the aim of converting them to regulation. The review considered which disallowable instruments were no longer required and how the criteria in the instruments could be consolidated into general and specific and be more informative of the decision to grant a lease by direct sale. The regulations in Part 5.1 are the result of that review.

More recently, government decided that it was more appropriate to use the term "direct sale" rather than "direct grant" as the word "grant" implied that there was no sum of money involved when this was not necessarily the case.

**Division 5.1.1 Interpretation – pt 5.1**

**Section 100** – **Definitions – pt 5.1** – provides definitions for part 5.1 of the regulation. It defines terms used in the part such as ***commonwealth entity*** and ***territory entity, direct sale***, ***educational establishment*** and ***supportive accommodation***. Many of these definitions help to inform categories of direct sales. Applicants for the direct sale of a lease are able to determine in which category they are using the definition and then ascertain the criteria they need to meet to obtain the sale by reference to the relevant section. For instance, a person wanting to establish a school would look at the definition of an ***educational establishment*** to ascertain if they come within the definition and then would look at section 107 of the regulation to ascertain if they can meet the criteria.

**Section 101** – **Meaning of *business-case criteria* and *business-case* documentation – pt 5.1** – provides definitions of ***business-case criteria*** and ***business- case documentation*** for part 5.1 of the regulation. During the review of the disallowable instruments relating to direct sales, it became apparent that most of the instruments, no matter what type of direct sale was envisaged, had common criteria that had to be met. These criteria generally related to the intended recipient being able to show that they had formulated a plan for the development of the land and had the financial resources and expertise to develop the land. The ***business-case criteria*** and ***business-case documentation*** are the product of a consolidation and review of the common criteria in the disallowable instruments. The object of requiring such criteria to be met and such documentation to be produced, where relevant, is to ensure that applicants for direct sales can demonstrate that they are ready, willing and able to develop the land in accordance with their proposal.

**Section 102** – **Meaning of *City West precinct* – pt 5.1** – provides a definition of ***City West precinct*** for part 5.1 of the regulation. Under the Land Act, the direct sale of a lease to the Australian National University (ANU) in the City West precinct was made in accordance with a disallowable instrument pursuant to section 161(7). The direct sale of such leases is now done pursuant to the power conferred by section 240(1)(a)(i) (Restriction on direct sale by authority) of the Act. The criteria for the direct sale of a lease of land to the ANU in the City West precinct is in section 111 of the regulation.

**Division 5.1.2 Direct sales approved by Executive**

**Section 105** – **Direct sales requiring approval by Executive – Act, s 240(1)(a)** – prescribes the classes of leases the direct sale of which require approval by the ACT Executive under section 240(1)(a) (Restriction on direct sale by authority) of the Act. Direct sales of Territorial significance require approval by the Executive.

**Section 106** – **Direct sale criteria for territory entities – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a lease to a territory entity. ***Territory entity*** is defined in section 100. The criteria are that there is no other land available to the entity suitable for the proposed use of the land; an amount has been appropriated or is available to develop and manage the land; and the proposed use is consistent with the entity's operations.

**Section 107** – **Direct sale criteria for Commonwealth entities – Act, s 240 (1)(a)(i)** – prescribes the criteria for the direct sale of a lease to a ***Commonwealth entity*** which is defined in section 100 of the regulation. The criteria are that there is no other land available to the entity suitable for the proposed use of the land; an amount has been appropriated or is available to develop and manage the land; and the proposed use is consistent with the entity's operations. The section does not apply to the direct sale to the ANU of a lease of land in the City West precinct.

**Section 108**– **Direct sale criteria for non-government educational establishments – Act, s 240(1)(a)(i)** - prescribes the criteria for the direct sale of a lease to a person for a non-government educational establishment. ***Educational establishment*** is defined in section 100. The criteria are that the person is a registered non government school; or, if applicable, registered under the *Education Act 2004*, section 88B; or registered under the *Training and Tertiary Education Act 2003* or is authorised to operate a university. The authority must also be satisfied that the person meets the business-case criteria (see section 101) and that the use of the land will promote government education policies or will meet an education need in the ACT that is not currently being met. The person must give the authority the business-case documentation (see section 101) for the proposal and written documentation of how the development will meet relevant government policies. The section does not apply to the direct sale to the ANU of a lease of land in the City West precinct.

**Section 109** – **Direct sale criterion for unallocated land for housing commissioner – Act, s 240(1)(a)(i)** – prescribes the criterion for the direct sale of a lease of land that is not allocated to the housing commissioner within the meaning given to that term under the *Housing Assistance Act 2007*. ***Allocated land*** is defined in section 100. The section applies when the housing commissioner requires land for housing and that land has not already been placed under the control of the commissioner under the *Housing Assistance Act 2007*, section 32. In such a case, the ACT Executive must approve the direct sale.

**Section 110** – **Direct sale criteria for leases of contiguous unleased territory land that is public land – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a lease of contiguous unleased territory land that is public land. It is sometimes the case that there can be a small parcel of land adjoining a larger parcel of land and it is expedient for the smaller parcel to be incorporated into the lease of the larger one. For instance, to rectify an existing encroachment of a building on an existing lease, or where the small parcel of land can serve no useful purpose because of its size or location. In these sorts of cases, it is expedient to be able to directly sell the land to the adjoining leaseholder. When the contiguous land is public land, the Executive must approve its direct sale. Otherwise, the Minister can approve the sale (see section 122). The grant of the lease cannot detract from the amenity of the surrounding area, must promote better land management, and not unreasonably restrict public access to other land.

**Section 111** – **Direct sale criteria for City West precinct land for Australian National University – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a lease of land in the City West precinct to the ANU. ***City West precinct*** is defined in section 102.The criteria are that a development deed has been entered into for the land between the ANU and the land development agency; the university has a development proposal for the land; and the authority is satisfied that the university has the capacity to develop and manage the land. The section also includes definitions for ***development deed*** and ***development proposal*** by reference to the City West precinct deed. This and other sections relating to the City West precinct expire on 5 April 2015. This is the date the City West precinct deed expires (see also section 401 of the regulation).

**Section 112** – **Direct sale criteria for community uses – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a lease for community uses. The criteria for the direct sale of a lease for community use are that the proposed lessee is a community organisation, and that the authority is satisfied:

(1) the proposed lessee meets the business-case criteria (see section 101); and

(2) the proposed use of the land is consistent with the proposed lessee's constitution or rules, and with applicable government policies.

***Community organisation*** and ***community use*** are defined in the dictionary.

The proposed lessee must provide the authority with the business-case documentation (see section 101) for the proposal.

**Section 113 – Direct sale criteria for supportive accommodation – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a lease for supportive accommodation. The section recognises that providing supportive accommodation for aged people and people with special needs is a priority for the government. The sale of land for this purpose outside of a competitive process can deliver direct benefits to the community that may not otherwise be achieved. ***Supportive accommodation*** is defined in section 100 of the regulations and includes the following within the meaning of the territory plan:
(a) a retirement complex (permanent residential accommodation for persons aged 55 years or over, including self-care units and nursing home accommodation);
(b) residential care accommodation;
(c) supportive housing
(both (b) and (c) provide accommodation and services such as the provisions of meals, domestic services and personal care for persons requiring support.)

**Section 114 – Direct sale criteria for rural leases – Act, s 240(1)(a)(i)** – prescribes the criteria for the direct sale of a rural lease to a person. The criteria are that the person has lawfully occupied the land or been the occupier of contiguous land for at least 5 years before applying for the direct sale and the land's custodian agrees to the grant.

**Division 5.1.3 Direct sales approved by Minister**

**Section 120 – Direct sales requiring approval by Minister – Act, s 240(1)(b)** – prescribes the classes of leases the direct sale of which require approval by the Minister under section 240(1)(b) of the Act. The Minister can approve direct sales of certain classes of leases that have already been endorsed by the Executive and where it is considered appropriate for agreement to those sales to be at Ministerial level. The Minister retains the discretion to forward any application for a direct sale to the Executive for a decision.

**Section 121 – Direct sale criteria for Territory – Act, s 240(1)(b)(i)** – prescribes the criteria for the direct sale of a lease to the Territory. The criteria are that the authority is satisfied that the land is suitable for the proposed use and an amount has been appropriated to develop and manage the land.

**Section 122 – Direct sale criteria for leases of contiguous unleased territory land other than public land – Act, s 240(1)(b)(i)** – prescribes the criteria for the direct sale of a lease of contiguous unleased territory land other than public land.

It is sometimes the case that there can be a small parcel of land adjoining a larger parcel of land and it is expedient for the smaller parcel to be incorporated into the lease of the larger one. For instance, to rectify an existing encroachment of a building on an existing lease, or where the small parcel of land can serve no useful purpose because of its size or location. In these sorts of cases, it is expedient to be able to directly sell the land to the adjoining leaseholder. When the contiguous land is public land, the Executive must approve its direct sale (see section 110). The grant of the lease cannot detract from the amenity of the surrounding area, must promote better land management, and not unreasonably restrict public access to other land.

**Part 5.2 Grants of leases generally**

**Section 140** – **Period for failure to accept and execute lease – Act, s250(1)** – provides that the period for the purposes of subsection 250(1) (Failure to accept and execute lease) of the Act is 20 working days from the day on which the person is notified that the lease is available for execution. Subsection 250(2) of the Act provides that where a person fails within the prescribed period to accept and execute their lease or pay any amount required under the lease, their right to the grant of the lease may be terminated.

**Part 5.3 Grants of further leases**

**Sections 150 and 151** provide the criteria for the grant of further leases for unit title schemes and for community title. Sections 150 and 151 were previously sections 172A and 172B of the Land Act. It is more appropriate for these provisions to be in the regulation rather than the Act because of their detail and specific application to particular circumstances.

**Section 150** – **Criteria for grant of further leases for unit title schemes – Act, s 254(1)(f)** – provides that, in respect of a lease of a unit or common property, the subject of a units plan under the *Unit Titles Act 2001*, the authority may not grant a further lease unless the owners corporation makes an application supported by an ordinary resolution of the owners corporation. The authority must grant a further lease for all of the units and the common property, and all for the same term.

**Section 151** – **Criteria for grant of further leases for community title schemes – Act, s 254(1)(f)** – provides that, in respect of a further lease of a lot in a community title scheme, the authority may not grant a further lease unless the application is made by the body corporate and supported by an ordinary resolution of the body corporate. The authority must grant a further lease for all lots in the scheme and all for the same term.

**Part 5.4 Lease variations**

**Section 160** – **Lease classes for variation to pay out rent – Act, 273(1)(a)** – specifies the prescribed classes of lease for the purposes of section 273(1)(a) (Variation of lease to pay out rent) of the Act. Section 273(1)(a) provides that a lease must not be varied to reduce the rent payable to a nominal rent unless the lease is included in a class of leases prescribed by regulation.

**Part 5.5 Change of use charges**

This part sets out the provisions relating to change of use charges. Charging policies are presently undergoing a major review by the government. In the meantime, the previous provisions of the *Land (Planning and Environment) Regulation 1992* have been carried forward into the regulation, without change, pending completion of the review. Change of use charges remain the same as they were under the Land Act.

**Division 5.5.1 Added Value**

**Section 170**– **Meaning of added value – pt 5.5** – provides a definition of ***added value*** for part 5.5 of the regulation.

**Division 5.5.2 Remission of change of use charges**

**Section 175** – **Remission of change of use charges generally – Act, s 278(1) and (2)** – prescribes the circumstances when the authority must remit all or part of the change of use charge for a variation of a lease. Subsection 175(2) states that the amount of the change of use charge to be remitted is the amount worked out in accordance with a policy direction, if one exists, or in any other case, the amount the authority decides is appropriate. Section 177 of the regulation specifies that the Minister may make a policy direction for section 175(2)(a). A policy direction is a disallowable instrument.

**Section 176** – **Remission of change of use charges for housing commissioner –Act, s 278(1) and (2)** – prescribes that a remission of 25% of the added value for a variation of a lease is to be applied for the variation of a lease granted to the housing commissioner where the term of the lease began before 17 December 1987.

**Section 177** – **Policy directions about remission of change of use charges – Act, s 278(1) and (2)** – specifies that the Minister may make a policy direction for subsections 175(1)(b) or 175(2)(a). A policy direction is a disallowable instrument.

**Division 5.5.3 Increase of change of use charge**

**Section 180** – **Meaning of recently commenced lease – div 5.5.3** – provides a definition of ***recently commenced lease*** in relation to the variation of a lease for the Division and a definition of ***largest lease*** and ***regrant*** for the section. In very broad terms, a recently commenced lease is one that commenced not more than 5 years before the application for the variation is made. The definition sets out the meaning of recently commenced lease in various situations, for instance, when a further lease is granted following the surrender of a lease, or a market value lease is granted following the surrender of a concessional lease. Section 182 of the regulation prescribes the change of use charge for a lease variation of a recently commenced lease.

**Section 181**– **Increase of change of use charge for concessional leases – Act, s 279(1) and (2)** – prescribes the circumstances in which the change of use charge for a lease variation of a concessional lease must be increased by 25% of the added value for the variation.

**Section 182** – **Increase of change of use charge for recently commenced leases – Act, s 279(1) and (2)** – prescribes the circumstances in which the change of use charge for a lease variation of a recently commenced lease must be increased by 25% of the added value for the variation. ***Recently commenced lease*** is defined in section 180.

**Part 5.6 Discharge amounts for rural leases**

This part prescribes the formulas for the calculation of the discharge amounts for rural leases including special Pialligo leases. These provisions were previously sections 186E, 186F and 186G of the Land Act. It is more appropriate for these provisions to be in the regulation rather than the Act because of their detail and specific application to particular circumstances.

**Section 190** – **Definitions – part 5.6** – provides definitions for part 5.6.

**Section 191** – **Discharge amount for rural leases other than special Pialligo leases – Act, s282, def *discharge amount*** – When a dealing under section 284 (Dealings with rural leases) of the Act is not to the lessee's domestic partner or child then a discharge amount may be payable under sections 284(4)(b) and section 282. The discharge amount for rural leases other than special Pialligo leases is determined in accordance with the formula in this section.

**Section 192** – **Discharge amount for special Pialligo leases – Act, s282, def *discharge amount*** – prescribes the formula for the calculation of the discharge amount for special Pialligo leases.

## Part 5.7 Transfer or assignment of leases subject to building and development provision

Section 298 (Transfer of land subject to building and development provision) of the Act deals with the transfer or assignment of interests in territory land before the completion of development that is required by the Crown lease of that land. Under subsection 298(2) the authority may consent to the transfer or assignment if it is satisfied that the proposed transferee intends to comply with the building and development provision of the relevant lease and if any required security for compliance with the provision has been given. In addition to those circumstances, the authority must be satisfied that one of the following circumstances apply:

(1) That the lessee is unable for personal reasons prescribed by regulation to comply with the building and development provision of the lease; or

(2) That the lessee is unable for financial reasons to comply with the building and development provision of the lease and those financial reasons are connected with the lease. Subsection 298(3) specifies when a financial reason is connected with the lease; or

(3) That an unforeseen major event outside the lessee's control happened after the lessee purchased the lease and the event has had a demonstrable effect on the lessee's ability to develop the land comprised in the lease; or

(4) The lessee has a contract with the proposed transferee to build a home on the leased land.

The authority may also consent to the transfer of a lease containing a building and development provision under subsection 298(4).

Subsection 298(5) of the Act provides for the matters to be considered by the authority in deciding whether to consent to a transfer or an assignment under subsection 298 (2) or (4), to be prescribed by regulation.

**Section 200 – Personal reasons for noncompliance with building and development provision – Act, s 298(2)(b)(i)** – prescribes the personal reasons for subsection 298(2)(b)(i) of the Act that the authority will accept for the purposes of consenting to the transfer of a lease which is subject to a building and development provision. They include:

(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 interstate or overseas for employment reasons;

(c) The lessee becoming unemployed for a period of at least 3 months prior to the request to assign or transfer the lease. Reasonable attempts to find employment must be demonstrated.

**Section 201** – **Matters for transfer or assignment of leases – Act, s 298(5)** – prescribes the matters under subsection 298(5) of the Act that the authority must consider before deciding whether or not the authority will consent to a transfer of a lease. They are intended to assist in determining whether the proposed transferee or assignee is willing and able to comply with the building and development provision of the lease. A mere statement of the intention of the transferee or assignee is not sufficient, on its own, to satisfy the authority that consent should be given. Other matters that are to be considered by the authority in deciding whether to consent to the transfer of the lease include the time remaining for compliance with the building and development provision (s201(d)) and the history of lease transactions undertaken by the lessee (s201(c).

**Part 5.8 Surrendering and terminating leases**

The Act enables territory land to be granted by auction, tender, ballot or direct sale. Where a lease is granted by any of these methods, the lessee may surrender the lease, or it may be terminated. Section 299 (Refund on lease surrender or termination) of the Act deals with refunds on the surrender or termination of a lease. The authority must not authorise the payment of an amount under section 299 of the Act otherwise than in accordance with criteria prescribed by regulation. Under subsection 299(2) the amount of the payment is prescribed by regulation.

Sections 210 and 211 of the regulation apply only to a residential lease granted for not more than 3 residential dwellings and a lease granted to a community organisation for community use.

**Section 210** – **Amount of refund on surrender or termination of certain leases – Act, s 299(2)** – prescribes the amount of refund to be paid under subsection 299(2) on application by a person surrendering a lease or the person whose lease has been terminated. Except for the circumstances set out in section 210(3), the prescribed amount is the lesser of the following amounts:
(1) the amount paid for the grant or transfer of the lease to the lessee (less any amount payable to the territory under section 211);
(2) the market value of the lease

**Section 211** – **Limitations for refund on surrender or termination of leases – Act, s 299(3)** – specifies the circumstances in which the prescribed amount in section 210 of the regulation will be paid by the authority. The criteria for the authorisation of payments were previously established by disallowable instrument. The regulation is in similar terms to the disallowable instrument. The authority may pay an amount if the application is made before the building and

development provision has ended or because the lease has been terminated; the authority is satisfied that it is not appropriate to consent to the transfer of the lease, and all amounts due to be paid to the Territory have been paid.

## Part 5.9 Subletting of leases

**Section 220 – Criteria for approving subletting of land – Act, s 308(2)** – prescribes the criteria for the approval by the authority of the subletting of a part of land comprised in a lease under section 308(2) (Power of lessee to sublet part of land) of the Act. Under the Land Act, land comprised in a lease could not be subleased unless it was connected to a building. Section 308 of the Act has freed up this restriction and allows subletting of land if approved by the authority in accordance with the criteria prescribed by regulation. Land on Territory leases can now be subleased provided the sublease is for a use authorised by the lease. Land on leases, other than Territory leases, can also be subleased provided the sublease is for a use authorised by the lease and the sublease includes a provision for the development of the land within a certain time period.

## Chapter 6 Concessional lease exclusions

**Section 240 – Concessional lease exclusions – Act, s 235(1), def *concessional lease*, par (c) (v)** prescribes the classes of leases that are specifically excluded from the definition of ***concessional lease*** under section 235 (Meaning of ***concessional lease*** and ***lease***–Act) of the Act.

## Chapter 7 Controlled activities

**Section 300 – Period for deemed refusal of application for controlled activity order – Act, s 351**

This section provides that the period within which a decision on an application for a controlled activity order is taken to be refused, for the purposes of subsection 351(4) of the Act, is 20 working days after the day the authority receives the application under section 350 of the Act (Applications to authority for controlled activity orders).

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

This section provides that the period for the purposes of subsection 354(1)(b) (Inaction after show cause notice) of the Act is 20 working days after the authority has given a show cause notice under division 11.3.2 of the Act (Controlled activity orders on authority's initiative). This means that if the authority has not made a decision in relation to the controlled activity order mentioned in the notice within 20 working days, the authority is taken to have decided not to make the controlled activity order.

## Chapter 8 Reviewable decisions

### Section 350 – Merit track decisions exempt form third–party AAT review – Act, sch 1, item 4, col 2, par (b)

This section provides that the merit track matters which are exempt from third party AAT review for the purposes of the Act, Schedule 1, Item 4, Column 2, paragraph (b) are in schedule 4 part 4.2 of the regulation.

### Section 351 – Impact track decisions exempt from third party AAT review – Act, sch 1, item 6, col 2

This section provides that the impact track matters which are exempt from third party AAT review for the purposes of the Act, Schedule 1, Item 6, Column 2 are in schedule 4 part 4.3 of the regulation.

## Chapter 9 Bushfire emergency rebuilding

### Section 370 – Main object

The main object of chapter 9 is to assist people to redevelop their land who suffered property damage during the bushfire emergency between 18 and 28 January 2003.

### Section 371 and 372 – Definitions – ch 9

Section 371 defines various terms used in chapter 9, in some instances cross-referencing definitions in the territory plan. These include **bushfire emergency**, **dwelling**, **height, fire-caused rebuilding development** and **previously approved**.

### Section 373 – Fire-caused rebuilding developments—ch 9

Section 373(1) provides that for chapter 9, 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 an ***applicable land declaration*** under the *Land (Planning and Environment) Bushfire Emergency (Applicable Land) Declaration 2003 (No 2)* (NI2003–114), in prescribed circumstances. Under this section, the building or structure to be constructed or altered must replace or alter a building or structure of the same kind that was located on the land and that was damaged during the bushfire emergency.

**Section 374 Previous approval—ch 9**

Section 374 provides that for chapter 9, a development, or a design or siting feature of a building or structure (such as its height or gross floor area; or a dwelling or dwellings for which it is used; or its setbacks), 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*.

A development, or a design or siting feature, is defined in this section as not being ***previously approved*** if the approval had been given before the beginning of the bushfire emergency; and immediately before the beginning of the bushfire emergency, and the time period for applying to the administrative appeals tribunal for a review of the approval decision had not expired; or an application to the tribunal for a review of such a decision had been made and the application had not been finally disposed of by the tribunal.

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

This section provides that a fire-caused rebuilding development is an exempt development if it had been previously approved and the ***lessee*** is the same as at the time of the bushfire emergency. The rebuilding can be exempt even if no work had been done following the approval, provided the development does not have disqualifying characteristics. For example, developments would not be exempt under this section if:

- they alter the height beyond an approved level;
- the gross floor area of a new or altered building or structure is more than 15% greater than the previously approved gross floor area of the building or structure that is replaced or altered;
- more dwellings are created and used than had previously been approved; or
- the setbacks for any new or altered building or structure does not comply with the lesser of (a) the setbacks under Residential Zones—Single Dwelling Housing Development Code or (b) any setbacks that were previously approved for the building or structure that is replaced or altered.

For the rebuilding to be exempt, before the development commences, the lessee must have given to the planning and land authority notice in writing of when the development would commence; a plan of the development; a written statement by a certifier that the development shown on the plan would not take the development outside the parameters approved for the rebuilding (noted above).

At the completion of the development, a certifier under the *Building Act 2004* must give the planning and land authority a written statement that the

development as constructed is in accordance with the plan that was given to the planning and land authority

***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**

**Section 400 – Disapplication of Legislation Act, s 47(5) and (6)**

This section specifies that the Legislation Act, section 47(5) does not apply to the City West precinct deed. Subsection 400(2) specifies that the Legislation Act, section 47(6) does not apply as indicated.

**Section 401 – Expiry of City West precinct provisions**

On 5 April 2015, section 401 in this regulation, and the provisions that relate to the City West precinct, expire.

**Schedule 1** sets out the exemptions from requirement for development approval. For a detailed explanation of schedule 1 refer to the attachment below.

**Schedule 2** sets out the merit track development applications that require only limited public notification.

**Schedule 3** sets out the merit track matters which are exempt from third party AAT review for the purposes of the Act, Schedule 1, Item 4, Column 2, paragraph (b) and the impact track matters which are exempt from third party AAT review for the purposes of the Act, Schedule 1, Item 6, Column 2.

There have been some changes to the boundaries of the town centre maps in this schedule consistent with the view that third party appeals should not be available within the commercial areas of these town centres. In particular, the boundaries of the Gungahlin town centre have been extended consistent with the enlargement of the commercial area of this centre under the restructured territory plan.

**Dictionary**
The dictionary contains definitions of terms used in the regulation.

**Attachment**

**Notes on the *Planning and Development Regulation 2008*, Schedule 1, (Exemptions from requirement for development approval)**.

This attachment provides more detail than the text above, so that lay readers should be able to understand the scope and rationale of the various exemptions available for certain developments under the Planning and Development Act 2007.

**Part 1.1 Preliminary**

**Section 1.1 Definitions – sch 1**

Section 1.1 defines terms with specific meaning relevant to Schedule 1. Some definitions cross-reference definitions in the territory plan, in other legislation or other sections within the Schedule.

**Section 1.2 Meaning of *designated development*—sch 1**

Section 1.2 defines the meaning of the term ***designated development***, in relation to land, for the purposes of Schedule 1. The term covers building, altering or demolishing a building or structure on land, carrying out earthworks or other construction work on or under the land, or carrying out work that would affect the landscape of the land.

**Section 1.3 Inconsistency between codes and this schedule**

Section 1.3 establishes a hierarchy for the application of requirements that are inconsistent. Where schedule 1 applies the rules of a code in the territory plan to a development, and those rules are inconsistent with a relevant provision in schedule 1, then the provision of schedule 1 prevails to the extent of the inconsistency.

For example, if a provision of the schedule were to provide that constructing a building which complied with the provisions of a code did not require a development approval under the *Planning and Development Act 2007,* but schedule 1 also provided in another provision that such a building would be exempt without requiring compliance with the code, then the former provision would prevail over the latter. The building would be exempt from requiring a development approval despite the building not complying with the rules of the code required by the other provision.

### Section 1.4 Exemption does not affect other territory laws

Section 1.4 provides that although schedule 1 describes circumstances in which development may be exempt from requiring development approval, the schedule does not remove the requirement for development to comply with other applicable Australian Capital Territory (hereafter Territory) legislation. For example, if the schedule provides that certain dwellings may be constructed without a development approval under the *Planning and Development Act 2007*, it may be that other authorisations are needed under other laws, such as a building approval under the *Building Act 2004*. The work may also be required to be done by the holders of relevant licences issued under the *Construction Occupations (Licensing) Act 2004*.

## Part 1.2 General exemption criteria for exempt developments

### Section 1.10 Exempt development—general criteria

Section 1.10 defines the term ***general exemption criteria*** as criterion 1 to 8 in sections 1.11 to 1.18 respectively. The term ***general exemption criteria*** is mentioned in a number of sections within schedule 1 as a compliance requirement for exemption from the requirement for a development approval. Section 20 of the regulation enables schedule 1 to prescribe such exempt developments. Where that is the case all eight criterion must be satisfied in addition to any other requirements set out in the relevant section, unless a contrary intention appears, such as by referring only to a lesser number of specific criterion, or where compliance with the criteria is not mentioned.

### Section 1.11 Criterion 1 – easement and other access clearances

Section 1.11 provides criterion 1 of the ***general exemption* criteria**, as explained at section 1.10. Criterion 1 requires that any building that is part of a development must not encroach into an existing or proposed ***easement***, ***utility infrastructure access corridor*** or ***utility infrastructure protection envelope***. Each of these terms is defined to clarify the scope of the criterion. The criterion is intended to ensure that access to infrastructure is maintained, particularly for augmentation, replacement, maintenance and repair purposes, and to avoid buildings damaging or interfering with infrastructure services. It also highlights the requirements of the *Utilities Act 2000* for the protection of utility assets.

### Section 1.12 Criterion 2 – plumbing and drainage clearances

Section 1.12 provides criterion 2 of the ***general exemption criteria,*** as explained at section 1.10. Criterion 2 is intended to protect aspects of plumbing and drainage design and constructed provided for in Australian Standard AS/NZS3500 (*Plumbing and Drainage Set*), as that standard includes clearance requirements for pipes, fittings, openings and outlets. Where criterion 2 applies it

provides that a development must not result in the breach of the clearance requirements specified in the standard. This is necessary to protect and maintain those clearances so that the function of pipes, and access to them for maintenance, is protected.

### Section 1.13 Criterion 3 – metallic, white and off-white external finishes in residential zones

Section 1.13 provides criterion 3 of the ***general exemption criteria***, as explained at section 1.10. Where criterion 3 applies, development in a residential zone must not include metal sheet, wall or roofing that has a metallic, white or off-white finish. The requirement also applies to the construction of a fence that is not for an open space boundary. The territory plan defines the meaning of the term ***white or off-white***. The term 'metallic' encompasses the silver or gold finish of bare metals such as the silver colour of zinc when used as a galvanised coating. An intended outcome of the criterion is to reduce nuisance to neighbours caused by the sun reflecting off-light or metallic colours.

### Section 1.14 Criterion 4 – heritage and tree protection

Section 1.14 provides criterion 4 of the ***general exemption***, as explained at section 1.10. Where criterion 4 applies, development must not contravene the *Heritage Act 2004* or the *Tree Protection Act 2005*. This is to focus attention on the requirements of those Acts, but is not to imply that they are the only laws applicable to undertaking the relevant development.

### Section 1.15 Criterion 5 – compliance with lease and other development approvals

Section 1.15 provides criterion 5 of the ***general exemption criteria***, as explained at section 1.10. Where there are other requirements not in schedule 1 that are relevant to the development, they must also be complied with for the development to be exempt.

The 3 parameters of criterion 5 are—

(a) a condition of a development approval, where that approval relates to the proposed exempt development; or

(b) a provision of a lease to which the exempt development relates; or

(c) an agreement collateral to the grant of a lease (such as a deed) to which the exempt development relates.

For example, if a lease for a parcel of land specifically prohibits the construction of a temporary building, it would not be possible for a temporary building to be

exempt under schedule 1. If, however, the lease did not impose such a restriction, and there was no related development approval that restricted the construction of a temporary building, then, subject to the requirements of section 1.19 of schedule 1, a temporary building may be exempt from development approval.

An intended outcome of this criterion is make it clear that exempting a development from requiring a development approval does not exempt the development from requirements to comply with other laws and the 3 requirements mentioned in criterion 5.

**Section 1.16 Criterion 6 – development approval not otherwise required**

Section 1.16 provides criterion 6 of the ***general exemption criteria****,* as explained at Section 1.10. Criterion 6 addresses those circumstances where a development has multiple elements that, in total, require development approval, but has some elements ('potentially exemptable' elements) that could be exempt as a separate development. The potentially exemptable elements of the development cannot be separated out from the development requiring developing approval, when undertaken as part of the whole development, if the whole development is undertaken as a single development.

An example is provided in the section to show the type of circumstance where all elements must be considered together for development approval.

However, if the potentially exemptable elements are developed independently of the whole development, they may be exempted under schedule 1. So, for example, if a dwelling and garage, if built together, are not exempt under schedule 1, that does not necessarily prevent either the garage or the dwelling being regarded as exempt under the relevant provision of schedule 1. An intended outcome is to preserve existing entitlements to build certain buildings without a development approval, but to also give effect to codified rules intended to limit the size and scale of exempt developments.

**Section 1.17 Criterion 7 – no multiple occupancy dwellings**

Section 1.17 provides criterion 7 of the ***general exemption criteria***, as explained at Section 1.10. Where criterion 7 applies, it provides that the development must not increase the number of dwellings to 2 or more. This means a single residential dwelling can meet the exemption criteria if it is the only dwelling on the land. If 2 or more dwellings are created on the land, the dwelling cannot be taken as being exempt development. An intended outcome is to ensure dual occupancy and other multiple occupancy developments are not exempt developments because multiple occupancies have the potential to adversely impact on low-density-housing neighbourhoods.

### Section 1.18 Criterion 8 – compliance with other applicable exemption criteria

Section 1.18 provides criterion 8 of the ***general exemption criteria***, as explained at Section 1.10. Criterion 8 provides that the general exemption criteria do not stand-alone and rely on requirements prescribed in schedule 1. Examples are provided to explain how the general exemption criteria combine with other relevant sections in the schedule to determine if the development is exempt. Schedule 1 also provides for certain development to be exempt without reliance upon all or any of the general exemption criterion, as the case requires.

## Part 1.3 Exempt developments

Section 133(c) of the Planning and Development Act provides that a regulation can exempt some developments from requiring development approval under the Act. Section 20 of the *Planning and Development Regulation 2008* defines an exempt development as one that complies with schedule 1. For a development to comply with schedule 1, the development must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

### Division 1.3.1 Exempt developments – minor building works

### Section 1.19 Temporary buildings and structures

Section 1.19 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain temporary buildings, ***exempt development***, which means that a development approval under the *Planning and Development Act 2007* is not required.

Section 1.19 allows for a building without a development approval on a temporary basis, where it is for a specific event, or for use at the site of, and associated with, another development. A 12-month time limit for such temporary structures is prescribed to ensure that the temporary buildings do not remain on site indefinitely. The 12-month period is intended to be long enough for most temporary events such as those listed in the section—a fair, circus, carnival, celebration, market, show, concert, display, exhibition, competition, training event, recreational event or publicity event or similar activity.

The 12-month limit is also intended to be cover most small to medium scale construction projects, so that site sheds, scaffolding and other temporary buildings and structures may be erected for the construction without a development approval. Where such temporary buildings need to remain longer than the 12-month period, the section provides the planning and land authority may extend the period in writing.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.20 Internal alterations of buildings

Section 1.20 of schedule 1 prescribes some of the technical parameters which must be complied with in order for certain internal alterations of buildings to not require a development approval under the *Planning and Development Act 2007*. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.20 allows for alterations within a building, provided the alterations do not change the ***class*** of the building under the ***building code***. This is to ensure that the ***class*** of the building is consistent with the use of the building, as the classes are based on allowable uses for buildings taking account of human safety, accessibility, amenity and energy efficiency. The section also provides that internal alterations for a ***non-residential development*** must not increase the building's gross floor area as this could adversely affect parking or other requirements.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. Section 1.17 of those criteria is particularly pertinent as it prohibits an increase in the number of dwellings on a parcel of land to 2 or more dwellings. This is to prevent single dwellings being converted to dual occupancy or other forms of multiple-occupancy because this has the potential for adverse effects on neighbourhood amenity. For example, internally altering a dwelling by adding a kitchen to the dwelling may be exempt development if it complies with section 1.19. However, if adding the kitchen creates a second kitchen within the dwelling, it may mean the dwelling has been converted to 2 dwellings (see the definition of ***dwelling*** in the regulation, particularly the limit on number of kitchens in a dwelling). In that case, the alteration that added the second kitchen would not be exempt development.

### Section 1.21 Installation or alteration of external doors and windows

Section 1.21 of schedule 1 prescribes some of the technical parameters which must be complied with for certain installations or alterations of external doors and windows of buildings to be ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2

(Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.21 allows for minor alterations to doors and windows in buildings without development approval. Distance limitations from side and rear boundaries are prescribed to ensure that large-scale alterations do not impose an undue impact on the amenity of surrounding land, or land users. This is further enforced by restricting the modifications to where the finished floor level of the building immediately adjacent to the ***replacement*** is not more than 500mm above the ***natural ground level***. Taking the ***natural ground level*** as the reference point ensures that any earthworks undertaken on site do not increase the potential for adverse off-site impacts, such as eroding neighbours' privacy.

Limiting the height of the finished floor level ensures that modifications are not made to doors or windows on an ***upper floor level***, as defined by the territory plan. Limiting the exterior width of the replacement to not more than 2 metres ensures the alterations can only be of a relatively minor scale.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.22 Exterior refinishing of buildings and structures**

Section 1.22 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to exterior refinishing of buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18). Section 1.22 does not extend to external doors, windows or skylights.

Section 1.22 allows for a building to be re-painted, or for an ***exterior item*** of a building to be replaced or covered with the same or different material, where he applicable requirements in general exemption criteria, sections 1.10–1.18 (and section 1.13 in particular), are complied with. Section 1.13 excludes certain sheet metal items with a metallic, white or off-white finish for. As is the case with this and other exemptions, the exemption is subject to other laws, including heritage and energy efficiency laws.

**Section 1.23 Maintenance of buildings and structures**

Section 1.23 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to maintenance of buildings, ***exempt development***. As explained above (refer Part 1.3), for a

development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.23 allows maintenance, and works associated with maintenance, to be carried out on a building without development approval if like is replaced with like, and where the work complies with the applicable requirements in the general exemption criteria, sections 1.10–1.18. As is the case with this and other exemptions in schedule 1, they are subject to other laws including heritage laws which may require that specific materials for items such as roofs and windows be used in order to match or be sympathetic with the existing character of an area. Licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

**Section 1.24 Buildings – roof slope changes**

Section 1.24 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to roof slope changes on buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.24 allows for small changes to roof form without a development approval. To be exempt from development approval, the change in roof slope must not be greater than 2 degrees, as a change beyond that level has the potential to impact on the streetscape and the amenity of surrounding neighbours due to overshadowing. The section stipulates that the modification must not result in an increase in the volume or floor area of an existing attic (as defined in the territory plan), or the creation of a new attic. This is because such modifications have the potential to impact adversely on the amenity and privacy of surrounding land and land users.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including heritage laws which may require that specific materials for items such as roofs be used, or not used, in order to match or be sympathetic with the existing character of something. Licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

**Section 1.25 Buildings – chimneys, flues and vents**

Section 1.25 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to roof chimneys, flues and vents on buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.25 allows for the construction, installation or attachment of small roof chimneys, flues and vents without a development approval. To be exempt from development approval, the top of the roof chimney, flue or vent must not be higher than 1.5 metres above the surface of the roof when measured from the lowest point where the roof chimney, flue or vent emerges from, or connects to, the roof. A height above 1.5 metres has the potential for adverse impacts, particularly visual, on the streetscape and the amenity of surrounding neighbours.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including heritage and energy efficiency laws.

**Section 1.26 Buildings – Skylights**

Section 1.26 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to skylights on buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.26 allows for both the installation and alteration of a skylight in the roof of a building without development approval. To be considered exempt from development approval, the installation or alteration of a skylight must not result in a skylight with an external area greater than $2m^2$ and projects higher than 150mm above the surface of the roof adjacent to the skylight. This limits the potential for adverse impacts, particularly visual, on the amenity of surrounding land and land users.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions

in schedule 1, other laws may apply. For example the *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

### Section 1.27 External photovoltaic panels, heaters and coolers

Section 1.27 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to external photovoltaic panels, heaters and coolers, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.27 allows for services (such as photovoltaic panels, solar water heaters, air conditions and evaporative coolers) to be mounted on the exterior of buildings without development approval. Distance limitations from side and rear boundaries are prescribed to ensure that the structure is of a scale unlikely to impose an undue adverse impact on the amenity of surrounding leased or unleased land. For roof-mounted services, the height is limited to 1.5 metres above the surface of the roof. This allows for installation whilst mitigating the potentially adverse visual impacts. For ground-mounted services, no part of the service is to be between a ***front boundary*** and a ***building line*** for the block. This is to limit the potentially adverse impacts on the public realm, including the visual impact on the streetscape, and to limit the cumulative effects of similar structures forward of the building line.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, other laws may apply.

### Section 1.28 Buildings – external switchboards

Section 1.28 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to external switchboards, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.28 allows for external switchboards without development approval where the switchboard complies with the applicable requirements in general exemption criteria, sections 1.10–1.18 of schedule 1. Other legislation may also apply.

### Section 1.29 Buildings – external area lighting

Section 1.29 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to external area lighting, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.29 allows for the installation of area lighting to the exterior of a building without a development application only where it is to assist people to avoid obstacles whilst moving around the exterior of a building. Lighting that is installed to illuminate advertising, or to highlight a building (flood lighting), or for activities such as tennis, is intended to fall outside the exemption.

The lighting must also comply with the applicable requirements in general exemption criteria, sections 1.10–1.18 of schedule 1 and other laws, including those that apply in relation to the emission of electromagnetic radiation, including light, such as the *Environment Protection Act 1997*. A person licensed under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake electrical wiring work. Electricity safety laws may also apply.

### Section 1.30 Residential leases – driveway crossings of road verges

Section 1.30 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to driveway crossing of road verges, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.30 allows for a designated development, without development approval, of a driveway across a **road verge** for a residential lease granted for a single dwelling, in certain circumstances. The section applies to a ***residential lease*** where not more than one dwelling is constructed, and where an application for another dwelling has not been made in relation to the lease. The section stipulates that there must not be more than 2 driveways per ***residential lease***. This is to avoid the proliferation of driveways entering the street which may limit on-street parking opportunities. The driveway must also be constructed in accordance with the written agreement of the chief executive of the administrative unit responsible for municipal services. In considering the driveway crossing of the road verge, the chief executive might have regard to

such things as compliance with driveway dimension standards, verge levels, public safety, the location of services within the road verge (including footpaths, sewers, water pipes, electricity conductors, and telecommunication lines), street trees, traffic volumes, and distances from intersections.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including tree protection laws, and laws that protect infrastructure including telecommunication, gas, electricity, sewerage, and electricity services.

### Division 1.3.2 Exempt development – non habitable buildings and structures

### Section 1.40 Class 10a buildings generally

Section 1.40 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to class 10a buildings (excluding swimming pools), ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.40 exempts various class 10a buildings, both enclosed and not enclosed (but other than an outdoor deck or veranda), if the development falls within specified parameters.

The section stipulates that the ***building*** is not to exceed 3metres in ***height***. This measurement is taken relative to the natural ground level. It is taken to be the height of the ***building*** regardless of the ***finished ground level***. This height accommodates a range of design types and roofing plans within the range of allowable structures.

The allowable structure size has been determined relative to the size of the block. Larger area blocks have greater capacity than smaller blocks to accommodate class 10a buildings without creating significant impacts on the surrounding land.

***Enclosed*** buildings that have a ***plan area*** of more than 10m$^2$ must be setback 15 metres from a front building line. This is intended to ensure that most of the exempt class 10a buildings will be located well behind the ***front building line*** to limit the potentially adverse impact they may have on the streetscape.

Class 10a buildings that are not enclosed and have a ***plan area*** of more than 25m$^2$ must also be setback 15 metres from a ***front building line***. This measure is intended to ensure most of the exempt class 10a buildings will be located well behind the ***front building line*** to limit the potentially adverse impact they might have on the streetscape.

The permitted finished floor level for the exempt class 10a buildings varies according to where they are located relative to the side and rear boundary. This minimises overlooking opportunities and other adverse impacts on the privacy of the adjoining land users.

The number of buildings that are allowed to be located within 1.5 metres of a side or rear boundary of the block are also prescribed by the section.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including the *Building Act 2004* which may require that building work be carried out in accordance with the Building Code of Australia. Licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building, electrical, gasfitting, plumbing, or asbestos removal work.

**Section 1.41 Class 10a buildings – outdoor decks**

Section 1.41 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to outdoor decks ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.41 allows certain decks, including external stairs or ramp, an external landing or a retaining wall, to be exempt from requiring development approval.

When an outdoor ***deck*** is located either between a ***front boundary*** and a ***building line*** for the block or within 1.5 metres of a side or rear boundary, it is important that the finished floor level of the deck does not exceed the limit prescribed by the section. This is because exceeding the limit could cause overlooking and privacy issues for the adjoining land users.

Decks located between a front boundary and a building line for the block are not permitted to have a **balustrade** as that maintains the light-weight appearance of the building and mitigates the visual impact of the structure on the streetscape. When decks are located behind a building line, the deck can have a balustrade

up to 1.2 metres above the finished floor level. This is because when the deck is behind the building line there is no significant risk of the building impacting on the streetscape.

The number of class 10 buildings allowed on the block within 1.5 metres of a side or rear boundary is determined relative to their location of the building and the block size.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including the *Building Act 2004* which may require that building work be carried out in accordance with the Building Code of Australia. Licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building work.

**Section 1.42 Class 10a buildings – outdoor verandas**

Section 1.42 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to outdoor verandas, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.42 allows for certain outdoor verandas, including external stairs or ramp, an external landing or a retaining wall, to be exempt from requiring development approval. The outdoor veranda must be attached to, or immediately adjacent to, a dwelling and cannot be any closer to a front boundary than 5.5 metres. A building that is not attached to, or adjacent to, a dwelling, is likely to better fit the description of another kind of building other than an outdoor veranda. The ***plan area*** of the veranda is limited to no more than 10m$^2$. There is allowance for the veranda to be roofed but the height of the building must not exceed 3 metres above ***natural ground level***. These dimensions are to limit the veranda to a scale unlikely to adversely dominate the dwelling's appearance and to protect neighbour's amenity, such as solar access and overshadowing.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws including the *Building Act 2004* which may require that building work be carried out in accordance with the Building Code of Australia. Licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building work.

### Section 1.43 Class 10b structures – plan area not more than 2m$^2$

Section 1.43 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain class 10b structures, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.43 allows for certain class 10b structures if:

(a) the structure's ***plan area*** does not exceed 2m$^2$,
(b) the structure is not wider than 2m, and
(c) the structure is no higher than 1.85m.

However, the ***height*** of the structure must not exceed 0.4 metre when the structure is located within 1.5m of a side or rear boundary. Single letterboxes are the only class 10b structure permitted to be between a ***front boundary*** and a ***building line*** under this section. These controls minimise the scale and impacts on adjoining land and land users while allowing relatively small-scale class 10b developments.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.44 Fences and freestanding walls generally

Section 1.44 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to fences and freestanding walls, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.44 allows for specified fences and walls that are freestanding and not associated with other structures such as the wall of a shed or dwelling, within specified parameters. The provision does not apply to open space boundaries as defined by the Act. These parameters have been prescribed because:

(i) the nominated maximum mesh fence height (2.7m in an **industrial zone** or 1.85m otherwise) can accommodate commonly used fencing materials and industrial fence heights. The provision specifically nominates mesh fences as these are predominantly transparent in appearance, sturdy and long lasting, and allow for passive surveillance

of fenced areas. The term ***industrial zone*** is as defined in the territory plan.

(ii) For fences and freestanding walls in other zones as indicated in the territory plan, the nominated height accommodates the standard 1.8 metre fence/wall height and includes an allowance of 50mm to cater for minor undulation on the site and to protect fences from ground moisture. That gives an overall height limit of 1.85 metres, as mentioned in the section.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. For example licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building work relating to pool fences. The *Building Act 2004* may require that pool-fence-building work be carried out in accordance with the Building Code of Australia. It is important that pool fencing is sited and constructed in accordance with the requirements of the *Building Act 2004* to reduce the risk of young children drowning.

Other provisions in schedule 1 relate to other kinds of fences, particularly provisions relating to basic open space boundary fences.

**Section 1.45 Reserved**. This section is reserved for an exemption for basic open space boundary fences, which exemption is contingent on the enactment of the *Planning and Development Legislation Amendment Bill 2008.*

**Section 1.46 Retaining walls**

Section 1.46 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to retaining walls, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

***Front boundary*** and ***building line*** are defined terms in the territory plan. Some sites, due to their layout, have more than one front boundary and building line.

The requirement that structures not be located in the front boundary area is intended to ensure that structures between the building line and the front boundary have their impacts assessed by way of a development assessment. The location of the structures in these areas has the potential to detrimentally impact on streetscapes. The limitation also avoids the cumulative impacts that

multiple relatively small scale and minor structures may have on a streetscape and a locality.

The section distinguishes between ***cut-in retaining walls*** and ***fill retaining walls***, stipulating different parameters for each, and for where a wall is both cut-in and fill retaining. The section defines those terms. Where the earth is excavated (or cut into) to produce an embankment, and a wall is constructed to stop the embankment collapsing, the wall is termed a ***cut-in retaining wall***. Where earth is placed upon the ground, the earth is sometimes termed ***filling material*** or ***fill***, and if the fill forms an embankment and a wall is constructed to keep the embankment from falling down, the wall is termed a ***fill retaining wall***.

Section 1.46 allows for retaining walls within prescribed height limits, but the height limits are lower where the wall is close to a boundary. For example, parts of a cut-in retaining wall that are located within the 1.5 metre boundary zone are limited to a height of no more than 0.4 metre. This is to protect the amenity for neighbours by reducing the potential to undermine foundation soil for fences or other structures on, or on the other side of, the boundary.

Section 1.46 limits the height of a ***cut-in retaining wall*** to 1.2 metre for the part of the wall that is not located within 1.5 metre of a side or rear boundary of the block upon which it is located. This limitation is to protect the visual amenity for neighbours, and of streetscapes which can be adversely impacted by a large upright expanse of retaining wall. Parts of a cut-in retaining wall that are located within the 1.5 metre boundary zone are limited to a height of no more than 0.4 metre. This is to protect amenity for neighbours by reducing the potential to undermine foundation soil for fences or other structures on, or on the other side of, the boundary.

The section limits the height of a ***fill retaining wall*** to 1 metre for the part of the wall that is not located within 1.5 metres of a side or rear boundary of the block upon which it is located. This limitation is to help protect the visual privacy of neighbours as fill retaining walls often raise the level of the ground thereby providing a higher vantage point from which to overlook neighbours. For this reason, parts of a fill retaining wall that are located within the 1.5 metre boundary zone are limited to a height of no more than 0.4 metre.

Where the earth is excavated or cut to form an embankment, and fill is placed on top of that embankment, extending its height, and a wall is constructed to prevent both the cut and fill embankment from collapsing, the wall is termed a ***combination retaining wall***. The section stipulates the same height limitations on combined retaining walls as those it stipulates for a cut-in retaining wall.

The section provides that the limitations on the height of retaining walls is measured from the lowest side of the wall as retaining walls have ground levels

that are higher on one side of the wall (the retained side) than the other side at the toe of the wall.

The section also stipulates when the height must be measured relative to natural ground level. Where the earth is excavated well below natural ground level to form a level building site, and a fill retaining wall is placed upon the excavated platform, the distance from the base of the retaining wall to its top might exceed the 1.5 metre dimension mentioned in the section as the height limit for such a retaining wall. Nevertheless, the wall might be exempt development under the section. This is because the 1.5 metre limit is prescribed by the section as being the height limit above the natural ground level. Much of the wall might be below natural ground level because of the site excavation and the adverse visual impact of the wall is mitigated by the fact that it has been located below the former natural ground level.

The section also limits the number of retaining walls or other class 10 structures in addition to the retaining wall that can be located within 1.5 metres of the side or rear boundary of the block upon which they are located. This is to mitigate the adverse visual and privacy effects of agglomerating such structures or buildings close to neighbours.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.47 Swimming pools**

Section 1.47 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to swimming pools and associated structures ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.47 allows for a swimming pool and associated structures provided they are not within 1.5 metres of a side or rear boundary of a block or between a front or rear boundary for the block. These controls limit the adverse impact such as noise and water splashing that these structures and the users of the structures might have on neighbours. It is important that such structures are not located between a front boundary and a building line to mitigate the potential for adverse visual impact that such structures, including landings and decks, could have on streetscapes.

The section stipulates that the maximum pool capacity is 45kL. This is the allowable maximum capacity of the pool regardless of whether the pool is filled to

that capacity. This avoids the adverse impacts of a large-scale pool on amenity for neighbours.

The section stipulates that the top of the pool reservoir is not to be more than 1.5 metres above ***natural ground level***. The floor level of any associated structure must not be higher than 1 metre above ***natural ground level***. The height restrictions mitigate the potential for adverse off-site impacts such as overlooking.

Other provisions of schedule 1 deal with fencing, and unless contrary intention appears, that fencing includes fencing for pools.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. For example, licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake building works. The *Building Act 2004* may require that pool-building work be carried out in accordance with the Building Code of Australia. It is important that pool fencing is sited and constructed in accordance with the requirements of the *Building Act 2004* to reduce the risk of young children drowning.

**Section 1.48 Water tanks**

Section 1.48 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to water tanks ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.48 allows for water tanks with a capacity that does not exceed 20kL and that are not taller than 2.45 metres. This is to reduce adverse visual impacts both on and off-site. The section does not stipulate the allowable form of the tank, so the tank's form can include a prefabricated portable tank, or a tank constructed on site, including a pond-type tank.

The section also limits the number of tanks or other class 10 structures permitted within 1.5 metres of a side or rear boundary, to reduce adverse visual impacts on neighbours.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions

in schedule 1, they are subject to other laws. For example, licensing under the *Construction Occupations (Licensing) Act 2004* may also be required to undertake water supply plumbing work.

### Section 1.49 Exterior ponds

Section 1.49 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to exterior ornamental ponds ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.49 allows for an exterior ornamental pond provided that the pond is only for ornamental purposes and not for swimming, wading or bathing.

The section stipulates maximum dimensions of the pond to reduce drowning hazards and the visual impact that such a development may have. The surface area of the pond must not be more than 6 metre$^2$ when flled to its maximum water level, and no part of the pond may be within 1.5 metres of a side or rear boundary of the block.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.50 Animal enclosures

Section 1.50 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to animal enclosures ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.50 allows for animal enclosures that comply with the dimensional limitations and location limitations prescribed.

Those limitations are to reduce the visual impact that such developments may have while allowing reasonable sized enclosures for small animals such as domestic-pet-size birds, fish, dogs and cats.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria,

sections 1.10–1.18, of schedule 1. Other legislation, such as the *Domestic Animals Act 2000*, may also apply to animal enclosures.

### Section 1.51 Clothes lines

Section 1.51 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to clothes lines ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.51 allows for clothes lines provided the structure's height does not exceed 3 metres at its highest point when measured from the finished ground level, including when the line is fully extended. The total line length must not exceed 60 metres when measured collectively. The span or cantilever of any support must not exceed 3 metres. These dimensions limit the size of the structure to mitigate off-site impacts while still allowing adequate flexibility for differing design solutions. The dimensions cater for some of the largest proprietary rotary clothes hoists available.

The section also stipulates that no part of the clothes line is to be between a front boundary and a building line for the blocks. ***Front boundary*** and ***building line*** are defined terms in the territory plan. Due to their layout, under this definition some sites have more than one front boundary and more than one building line. Prohibiting structures from the front boundary zone avoids the cumulative impacts that relatively small scale and minor structures may have on neighbours, a streetscape and a locality.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.52 Dish antennas

Section 1.52 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to dish antennas ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.52 allows for ***dish antennas*** that send and receive signals or receive signals only. It does not cater for dishes that are only to send signals, as they

have the potential for more adverse impacts than receiving dishes, particularly when they are directed towards, and in close proximity to, neighbours. The diameter of a ***dish antenna*** mounted on the ground must not exceed 1.55 metres and must be installed so that no part is greater than 3 metres above natural ground level.

When mounted externally on a building in a residential area where the closest point of the dwelling's roof to the antenna is lower than the highest point of the antenna, the ***dish antenna,*** at its highest point, must not be more than 1.5 metres from the closest point on the roof. This allows the antenna to be higher than a roof peak but by an amount that limits the visual impact on surrounding areas. The allowable size of the antenna in such an instance is smaller (at 0.65 metres) than if it was mounted on the ground.

A ***dish antenna*** mounted externally on a building in non-residential areas cannot exceed 1.55 metres in diameter. The ***dish antenna*** must not be any more than 2 metres higher than the closest point of the roof. This allows for the antenna to protrude above the roof line without having a significant overshadowing or visual impact on surrounding land and land users.

The section stipulates that, in all cases, the dish antenna must be colour matched to the building or in the colour provided by the manufacturer. This also limits the visual impact of the building.

If any part of the antenna is within 1.5 metres of a side or rear boundary, and the antenna is the only class 10 building or structure (other than a boundary fence) that has any part within 1.5 metres of the boundary, or the antenna is exempt under section 1.54, the development complies with the general exemption criteria that are applicable to the development.

**Section 1.53 Mast antennas**

Section 1.53 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to mast antennas ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.53 allows for ***mast antennas*** that send signals only, receive signals only, or send and receive signals. The diameter of the antenna must not exceed 0.75 metre. Any part of the ***mast antenna*** mounted on the ground can not exceed 6 metres above ***natural ground level***. When a ***mast antenna*** is mounted on a ***building***, the mast is to be no greater than 1.5 metres above the highest point of the ***building*** and the antenna must be colour matched to the

building or in the colour provided by the manufacturer. This is to mitigate the adverse visual impact of the antenna.

The height limits reduce the level of overshadowing and visual impact the structures will impose on the adjoining land and land users.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.54 Class 10 buildings and structures – 2nd exempt building or structure within boundary clearance area**

Section 1.54 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain class 10 buildings ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18). A class 10 building does not include a sign installed on land.

Section 1.54 allows for a second class 10 building to be within the boundary clearance area of the block upon which the building is located. Other provisions in schedule 1 provide for the exemption of the first building in that area and, for certain buildings, also provide that a second building in that area must comply with section 1.54 in order to also be exempt development.

The defined term, ***boundary clearance area,*** sets the parameters that create areas between the side and rear boundary and a line drawn 1.5 metres inside and parallel to that boundary. The ***boundary clearance area*** created for each boundary must be considered separately to other boundaries of the block. Some structures will be located so that they are in both the side and rear boundary clearance areas if they are near the junction of those 2 boundaries.

The section sets an upper limit on the combined cross-sectional area of the first and second buildings in the boundary clearance area. If a building is in more than one such area, for example, near the corner of a block, the building must have its ***relevant cross-section area*** calculated for each of the ***boundary clearance areas*** in which they are located. This calculation should only include the largest cross section of that part of the building that is within the area when measured in a plane parallel to the boundary within the ***boundary clearance area***. This ensures that the impact to adjoining land and land users is limited due to the combined visual effects of structures on one specific boundary.

If the first building in the boundary is exempt development, but adding the second building is not exempt because of the combined total cross sectional area of both buildings being larger than the $30m^2$ limit, then it is intended that in order for both to exist together, development approval is required for both.

Calculating the combined ***relevant cross-section area*** relies on the defined terms, ***relevant cross-section area*** and ***natural ground level***. Measurements are taken from natural ground level. This results in items below that level (including footings) being excluded from the calculation. Any earthworks associated with the building that are above natural ground level ought not be included when calculating the ***relevant cross-section area.*** Retaining walls are a class 10 building. If they are in the defined area, their ***relevant cross-section area*** must be calculated. A low retaining wall in the ***boundary clearance area*** can contribute significantly to a relevant cross section area calculation for some boundaries.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

### Division 1.3.3 Exempt developments – signs

### Section 1.55 Signs attached etc to buildings, structures and land

Section 1.55 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain signs ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.55 allows the putting up, attaching or displaying of a sign (whether permanent or temporary) on land, or attaching to, or putting or displaying on a building or structure on land, if the sign can be unfastened without it being damaged, or for a sign put up or displayed on the ground, the sign can be removed without disturbing the ground. To be considered with other exempt development requirements, the sign must be of a kind mentioned in column 1 of a table in part 1.5 (Tables of exempt signs), in schedule 1, and be located in a 'A' zone. The table, in effect, regulates where and how certain kinds of signs can be displayed in order to avoid potentially adverse visual outcomes.

The section also stipulates that the sign must comply with the relevant rules of the Signs General Code under the territory plan. The code, in effect, regulates where and how certain kinds of signs can be displayed in order to avoid potentially adverse visual outcomes.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.56 Moveable signs in public places

Section 1.56 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to movable signs ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.56 allows for the display of a moveable sign in a public place (as defined in the *Roads and Public Places Act 1937*) if the parameters of the section are complied with. Moveable signs are not fixed to buildings or structures. The parameters include a requirement that the sign does not impede public access to a place (including a public place); that the surface area of any side of the sign is not more than 1.5m$^2$ and the vertical distance from the top of any side of the sign to the bottom of the side is not more than 1.5m. An example of the intent of that parameter is to ensure a sign intended to physically bar access to leased premises is not placed on unleased land.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.57 Temporary signs

Section 1.57 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to temporary signs ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.57 allows putting up, attaching or displaying a sign if the sign is of a kind mentioned in column 1 of a table in schedule 1, 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. The table, in effect, regulates where and how certain kinds of signs can be displayed in order to avoid potentially adverse visual outcomes.

The section also requires that the sign comply with the relevant rules of the Signs General Code under the territory plan. The code, in effect, regulates where and how certain kinds of signs can be displayed in order to avoid potentially adverse visual outcomes.

The section also provides that the sign only be put up, attached or displayed for not more than 2 weeks in any 1 calendar year. This is to ensure that the display of the sign is only a temporary occurrence, thereby mitigating the potential for long-term adverse impacts.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.58 Signs—information about future urban areas**

Section 1.58 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to signs about future urban areas ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.58 allows for the putting up, attaching or displaying a sign containing information about a future urban area if the relevant parameters are complied with. The parameters include that the information on the sign is approved by the Territory; and is not about the marketing or sale of the land. The horizontal and vertical dimensions of the sign must not be longer than 2 metres, with one dimension not longer than 1.5metre, and no part of the sign is more than 2.5 metres above the finished ground level.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

The section is intended to apply to signs that typically only inform the public of the purpose for which vacant land has been set aside. For example, the sign might be placed on a vacant block of land that is surrounded by established dwellings, and indicate that the site is for a future community facility.

## Division 1.3.4 Exempt developments – lease variations

### Section 1.70 Lease variations—exempt developments

Section 1.70 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to lease variation for exempt developments ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.70 allows the variation of a lease for the purpose only of allowing a development that is exempt under schedule 1 if the variation of the lease complies with the general exemption criteria that are applicable to the development. An example of such a variation is the variation of a lease that does not have a provision for the construction of a carport to include a provision that permits the construction of an exempt carport.

### Section 1.71 Lease variations—withdrawal of part of land

Section 1.71 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to lease variation for withdrawal of a part of the land, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.71 allows 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. An example of such a variation is the variation of a lease comprising a school and a sports oval to remove the oval from the lease.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, Section 1.72 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to lease variation for subdivision for unit titles, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.72 allows 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. An example of such a variation is the variation of a lease for a multi-unit site to cater for unit-titling of units eventually constructed on the site.

### Section 1.73 Lease variations—other subdivisions

Section 1.73 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to lease variation for subdivision for unit titles ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.73 allows the variation of a lease for the purpose of subdividing the land (other than a subdivision to which section 1.72 of schedule 1 applies) if the lease was granted for purposes including development and subdivision and the land over which the lease was granted has been developed in accordance with the lease, and the variation of the lease complies with the general exemption criteria that are applicable to the development.

An example of such a variation is the variation of a lease for an estate to cater for new leases to be progressively granted for smaller blocks subdivided as the estate is developed.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

## Division 1.3.5 exempt developments – rural leases

### Section 1.80 Rural lease developments generally

Section 1.80 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to development on rural leases***, exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.80 allows for certain developments on a rural lease if the relevant parameters are complied with.

The section stipulates that if the development is the building or alteration of a building or structure—the development must have a plan area of not more than 100m$^2$, or the development must not result in the clearing of more than 0.5 hectare of native vegetation; the development must not be contrary to a land management agreement; the development must not require a licence under the *Water Resources Act 2007* or an environmental authorization or environmental protection agreement under the *Environment Protection Act 1997,* or an approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), and the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

The requirements of this section are intended to mitigate the potentially harmful environmental effects of works on rural leases. They do not negate the need for the development to comply with applicable laws such as tree protection laws and nature conservation laws. The section prevents larger buildings or structures being developed without being regulated by the development approval process, but allows for the building of structures such as farm sheds and stables, without development approval.

### Section 1.81 Rural leases—consolidation of rural leases

Section 1.81 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to consolidation of rural leases ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.81 allows for the consolidation of rural leases if the consolidation complies with the general exemption criteria that are applicable to the development. An example of such a variation is the variation of a lease to merge 2 land parcels into a single block.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. The Planning and Development Act and other sections in the regulation also place restrictions on the consolidation of rural leases.

## Division 1.3.6 Exempt developments – Territory developments

### Section 1.90 Minor Public Works

Section 1.90 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to minor public works

***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.90 allows for ***minor public works*** developments carried out by or for the Territory on unleased land. The section defines what the term ***minor public works*** means and provides examples. These include street and park furniture; the surfacing, resurfacing or repair of the trafficable surface of a road, bridge, car park or cycle path, and exclude the construction of public toilets.

The section stipulates that the development must not require an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*. This is to protect the environment from being adversely affected by the development.

The section stipulates that if the development involves the building or alteration of a bicycle parking facility—the building or alteration of the facility must be in accordance with the relevant rules in the Bicycle Parking General Code under the territory plan. That code specifies matters, such as allowable types and locations of facilities, in order to prevent problems associated with poor design of facilities.

If the development involves the building, alteration or demolition of a bus shelter or bin to which has been built in accordance with a bus shelter master plan or street furniture agreement, the alteration or demolition of the development must be in accordance with the agreement. The street furniture agreement is the contract between the Territory and Adshel Street Furniture Pty Ltd, contract number C06654. This is listed on the ACT Government Contracts Register. This parameter permits this kind of development to be exempt development, only if the development complies with, and is carried out, under the terms of that contract.

If the development involves the installation of a parking control sign or traffic control device, the sign or device must be of a kind to which Australian Standard AS 1742 (*Manual of Uniform Traffic Control Devices*), as in force from time to time, applies. It is not intended that the sign or device necessarily be installed in accordance with that standard. The intention is that a parking control sign or traffic control device that is not covered by that standard, for example, a sign or device larger than that provided for in the standard, is not covered by the section.

The section provides that the building or alteration of a road safety barrier is also exempt development if the barrier is of a kind to which Australian Standard AS/NZS 3845 (*Road Safety Barrier Systems*), as in force from time to time, applies.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

### Section 1.91 Landscape works

Section 1.91 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to landscape work, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.91 allows work by, or for, the Territory that affects the landscape of land if the work does not involve timber harvesting to produce merchantable timber or products, clearing native vegetation, or clearing a tract of a forest or arboretum, and the work complies with the applicable requirements in the general exemption criteria.

It is intended that the section permit horticultural maintenance such as landscape gardening, tree lopping, and pruning and removal. The provision is not intended to provide for the clearing of land as described in the section. This is to mitigate the potential for adverse environmental impacts.

### Section 1.92 Plantation forestry

Section 1.92 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to plantation forestry, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.92 allows 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.

It is intended that the provision only apply to cultivated trees rather than natural stands of trees, and to trees naturally generated by cultivated trees. This is to avoid the potential for adverse environmental impacts arising from harvesting natural stands of trees.

**Section 1.93 Waterway protection work**

Section 1.93 of schedule 1 prescribes some of the technical parameters which must be complied with to make waterway protection work an ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.93 allows for certain development to be carried out by, or for, the Territory for the protection of waterways if the chief executive of the administrative unit responsible for municipal services has agreed, in writing, to the work and the work does not result in the clearing of more than 0.5 hectare of native vegetation. This is to mitigate the potential for adverse environmental impacts.

The section also stipulates that the work must not be contrary to a land management agreement. It notes that a licence under the *Water Resources Act 2007*, or an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997,* or an approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) may also be required. These parameters are intended to mitigate the potential for adverse environmental impacts.

The section covers waterways as defined in the *Water Resources Act 2007*, section 10. These include —

(a) a river, creek, stream or other natural channel in which water flows (whether continuously or intermittently); or

(b) the stormwater system or any other channel formed (whether completely or partly) by altering or relocating a waterway mentioned in paragraph (a); or

(c) a lake, pond, lagoon or marsh (whether formed by geomorphic processes or by works) in which water collects (whether continuously or intermittently).

The definition also includes the bed that the water in the waterway normally flows over or is covered by, and the banks that the water in the waterway normally flows between or is contained by. A waterway does not include land normally not part of the waterway that may be covered from time to time by floodwaters from the waterway.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions

in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

### Section 1.94 Emergencies affecting public health or safety or property

Section 1.94 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain emergencies ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.94 allows development to be carried out by, or for, the Territory if the development is carried out because of an emergency to protect public health or safety or property. The intention of the provision is to avoid the potential for harm arising from the emergency and delays that would otherwise occur in obtaining development approval for the development.

Where the section mentions the term ***emergency,*** it is intended to have the same meaning as in the *Emergencies Act 2004*, dictionary.

It is not intended that the general exemption criteria of schedule 1 apply to the development because to do so could result in more harm arising from the emergency than would be the case if the criteria were complied with.

Nothing in the section is intended to override the requirement for the development to comply with all applicable laws.

### Section 1.95 Temporary flood mitigation measures

Section 1.95 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to temporary flood mitigation works ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.95 allows for certain development to be carried out by, or for, the Territory if the development is carried out for temporary flood mitigation. The intention of the provision is to avoid the potential for harm arising from the flood and delays that would otherwise occur in obtaining development approval for the development.

Nothing in the section is intended to override the requirement for the development to comply with all applicable laws.

### Division 1.3.7 Exempt developments – other developments

### Section 1.100 Single dwellings—new residential land

Section 1.100 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to building a single dwelling, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.100 allows for the building of a single dwelling on a block. The section also stipulates that the dwelling must comply with the relevant rules in any relevant precinct code, and rules in the Residential Zones Single Dwelling House Development Code under the territory plan. The codes in effect regulate design, construction and location parameters and are intended to reduce the potential for adverse urban planning outcomes, and on suburbs, precincts within suburbs, neighbourhoods, streetscapes, communities, neighbours, urban infrastructure, heritage interests, the environment and on natural resources. The section notes that 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.

The section stipulates that another dwelling must not have been built on the block. This is intended to prevent redevelopment through demolishing and rebuilding, building onto a pre-existing dwelling already built on the block, or creating another dwelling on the block beyond the first dwelling built on the block. The section stipulates that another dwelling must not have been built on the block. This is intended to prevent redevelopment through demolishing and rebuilding, building onto a pre-existing dwelling already built on the block, or creating another dwelling on the block beyond the first dwelling built on the block.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia, and a building approval be issued for the work.

### Section 1.101 Buildings and structures—demolition

Section 1.101 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to demolition of buildings and structures, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.101 allows for the demolition of a building or structure if the demolition of the building or structure complies with the relevant rules in the Residential Zones Single Dwelling House Development Code under the territory plan, and complies with the general exemption criteria that are applicable to the development and any relevant precinct code under the territory plan. Those codes regulate demolition parameters intended to reduce the potential for adverse urban planning outcomes and to reduce the potential for adverse impacts of development, including demolition, on the Territory environs generally, including on suburbs, precincts within suburbs, neighbourhoods, streetscapes, communities, neighbours, urban infrastructure, heritage interests, the environment and on natural resources.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works including demolition and work involving handling, removing or disturbing asbestos. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia, and a building approval be issued for the work.

### Section 1.102 Temporary use of land for emergency services training etc

Section 1.102 of schedule 1 prescribes some of the technical parameters which an ‘authorised entity’ must comply with to make development in relation to the temporary use of land for emergency services training, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

A designated development, or the use of land for training or the testing of things by an authorised entity may be an exempt development  if if the training or testing includes a ‘notifiable activity’, and 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 at least 5 days before the training or testing is to be carried out, the authorised entity gives written notice to the occupier of each place (other than unleased land) adjoining the land about certain matters. These include when the training or testing will be carried out; the general nature of the training or testing; and that the designated development or use complies with the general exemption criteria that are applicable to the development.

'Authorised entity' is defined to mean the Australian Defence Force; or the Australian Federal Police; or an emergency service; or any other entity authorised in writing by the planning and land authority.

A 'notifiable activity', in relation to a block of land, is defined to means damaging or demolished a building or structure on the land; or simulating a violent incident in relation to the land; or simulating an emergency response in relation to the land.

**Section 1.103 Utility and telecommunications services**

Section 1.103 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to utility and telecommunications services, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.103 allows for the following developments if the development complies with the general exemption criteria that are applicable to the development. It covers the installation of a connection of not more than 50 metres connecting a consumer's premises (including land) to an electricity, water, sewerage, gas or telecommunications service.

This is intended to allow for pipes, cables, wires, or other connecting conductors or conduits to be provided to connect between a service network or main and the land that is the consumer's premises, such as a block of leased land, provided that the distance between the premises and the service being connected to the premises along the connecting conductor or conduit does not exceed 50 metres. The 50 metre limit is intended to permit minor trenching of buried services, or minor stringing of overhead services. Such services have relatively little potential for adverse visual or environmental detriment compared to the provision of longer lengths of service connections. It is not intended that any length of the consumer's service on or over leased land or under, on, in or over the consumer's buildings on leased land be counted as part of the 50 metre length limitation.

The section also covers the installation of an electricity, water, sewerage, gas or telecommunications service in accordance with an approved estate development plan. This recognises that the potential for relevant adverse outcomes of such development would have been dealt with and mitigated during the process leading to the approval of that plan, and it is, therefore, unnecessary to delay the development by requiring a development approval as well.

The section also applies to maintenance work on an electricity, water, sewerage, gas or telecommunications service. This recognises that the potential for relevant adverse outcomes of such development is relatively insignificant, particularly in view of the existence of the mechanisms to protect consumer and community interests provided by utility licensing and regulation laws, and environmental protection laws. Delaying such work by requiring a development approval is, therefore, not warranted.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.104 Landscape gardening**

Section 1.104 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to landscape gardening ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.104 allows for landscape gardening, other than the construction of a retaining wall, that affects the landscape of land. It applies to landscape gardening that is on land leased for residential purposes or prescribed landscaping (whether or not the land is leased for residential purposes).

The section provides that if the landscape gardening affects an existing public pedestrian access way, footpath or bicycle path—the landscape gardening must maintain the existing public access to the access way, footpath or bicycle path. This is to ensure that the amenity provided by those facilities is preserved, particularly where lessees undertake landscape gardening on the road verge between the front boundary of the land and the nearby kerb of a road These verges often carry a pedestrian access way, footpath or bicycle path.

The section is intended to cover minor landscape gardening such as regrading of the ground, cultivating plants, establishing garden beds, erosion protection work, paving, making garden steps and landings, improving soils, adding ground treatments, adding garden and lawn borders and edgings, creating rockeries,

enhancing natural features, and the like. Provision of a retaining wall is excluded from the exemption provided by the section as retaining walls are covered by other schedule 1 provisions.

The section also stipulates the parameters that apply if the landscape gardening is ***prescribed landscaping*** and defines that term. It includes a landscape structure (other than a retaining wall), or earthworks, if the vertical distance from the top of the structure or earthworks to the natural ground level is not more than—

(i) if the top of the structure or earthworks is below the **natural ground level**—0.4 metre; or

(ii) if the top of the structure or earthworks is above the **finished ground level**—1.2metres.

The intent of those height parameters is to mitigate the potentially adverse impacts that larger structures might have on neighbours and streetscapes.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the other general exemption criteria at sections 1.10 and 1.12 to1.18, of schedule 1. However, 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. This allows landscape gardening around the home, under overhead power lines, and over buried sewer or storm water mains and the like within easements etc, provided the development does not involve the construction or installation of a structure.

**Section 1.105 Works under *Water Resources Act* by non-territory entities**

Section 1.105 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain water resources work, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.105 allows for certain prescribed development to give effect to relevant directions under the *Water Resources Act 2007*. Other provisions in schedule 1 provide that certain work to protect waterways is exempt from requiring a development approval if the work is undertaken by, or for, the Territory. This section complements that provision by exempting the same kinds of work when done by other entities as directed under the relevant provisions of the *Water Resources Act 2007*. The reasons for such exemptions are the same as those explained for the other exemptions in schedule 1 that cover development to protect waterways (refer section 1.93).

This section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

**Section 1.106 Resiting of buildings with development approval**

Section 1.106 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to resiting of development-approved buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.106 allows for the horizontal resiting of a building on a block in prescribed matters are complied with. For example, it permits up to a 150mm horizontal resiting of a building in relation to a development for which a development approval has been given under the *Planning and Development Act 2007*. Such resiting may be necessary to provide a 150mm construction tolerance to facilitate the construction of buildings with modular materials such as bricks. For example, standard sizes of brickwork can be used rather than having to cut bricks into non-standard sizes in order to construct a length of wall to an exact 1mm tolerance. It also caters for human error and normal construction tolerances in erecting buildings, permitting walls to deviate from being perfectly straight or plumb, for example.

The section also stipulates however, that its parameters do not apply to resiting within specified dimensions close to block boundaries (i.e. within 900 of the block boundary). This is necessary to reduce the risk of boundary encroachment.

The section also provides that for the exemption to apply, the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

### Section 1.107 Resiting of exempt buildings

Section 1.107 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to certain exempt buildings, ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.107 allows for up to a 50mm horizontal resiting of a building in relation to a building which, apart from the section, is exempt from requiring development approval because of its location. Such a criterion might be in a code under the territory plan, for example, and might include a clearance dimension showing the minimum distance the building can be set back from a feature such as a block boundary. It may be lawful then to build the building up to that clearance dimension, but any encroachment would ender the building non-compliant with the code.

The provision is necessary to provide a 50mm construction tolerance. It caters for human error, permitting walls to deviate from being perfectly straight or plumb for example, within normal tolerances.

The section stipulates that its parameters do not apply to resiting within specified dimensions close to block boundaries. That is necessary to prevent the risk of boundary encroachment.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1. As is the case with this and other exemptions in schedule 1, they are subject to other laws. Licensing under the *Construction Occupations (Licensing) Act 2004* may be required to undertake building works. The *Building Act 2004* may require that building work be carried out in accordance with the Building Code of Australia.

### Section 1.108 Home businesses conducted from residential leases

Section 1.108 of schedule 1 prescribes some of the technical parameters which must be complied with to make development in relation to home businesses ***exempt development***. As explained above (refer Part 1.3), for a development to be exempt from requiring a development approval, it must comply with each general exemption criterion in schedule 1, part 1.2 (Exempt developments), and any other criterion in part 1.3 of the schedule that applies to the development (see schedule 1, section 1.18).

Section 1.108 allows for the conduct of a home business from a residential lease if not more than 2 people work on the lease at any time, and anyone who works on the lease in the business genuinely lives on the lease. These parameters are intended to help preserve the residential scale and nature of the area where the business is conducted.

The section also requires all goods and materials relating to the business (other than goods or materials kept on another lease) to be kept in buildings or structures that are lawfully on the lease and in a way that the goods and materials cannot be seen from outside the lease, and for the area of the lease used for the business (including storage) is not more than $40m^2$. These parameters are also intended to help preserve the residential scale and nature of the area where the business is conducted, and to protect streetscapes and neighbours from the potentially adverse visual and amenity impacts that storage of business goods and materials could produce.

The section also requires any vehicles at the lease for the purposes of the business to be parked on the lease in a driveway, garage, carport or location screened from any part of the road on which the lease is located, or if the business is operated from a unit under the *Unit Titles Act 2001*—in parking for the unit, and requires that the conduct of the business not generate more than 5 vehicle arrivals each day at the lease, averaged over a period of 7 days. These parameters are intended to protect the area from the adverse impacts from vehicle parking and noise. They are also to help reduce congestion of residential streets by parked cars.

The section also stipulates that the conduct of the business complies with the *Environment Protection Act 1997*. That is intended to help mitigate the potential for adverse impacts on the environment where the business is conducted, particularly potential for adverse effects of noise and other pollution on neighbours.

The section also provides that for the exemption to apply the development must comply with the applicable requirements in the general exemption criteria, sections 1.10–1.18, of schedule 1.

**Section 1.109 Designated areas—developments not involving lease variations**

Section 1.109 of schedule 1 prescribes some of the technical parameters which must be complied with to make developments in designated areas, ***exempt development***.

Section 1.109 allows for a development in a designated area if the development does not involve the variation of a lease. That recognizes that the Australian Government, rather than the ACT Government has responsibility for controlling

development in designated areas, other than development involving the variation of a lease.

**Part 1.4** is reserved.

**Part 1.5** is the tables of exempt signs referred to in s1.55 and 1.57.

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