

Australian Capital Territory

# Planning and Development Amendment Regulation 2018 (No 1)

Subordinate law SL2018–21

made under the

Planning and Development Act 2007, s 426 (Regulation-making power)

## EXPLANATORY STATEMENT

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This explanatory statement relates to the *Planning and Development Amendment Regulation 2018 (No 1)* (the amendment regulation) as made by the Executive. It has been prepared to assist the reader of the amendment regulation and to help inform any debate on it. It does not form part of the amendment regulation and has not been endorsed by the Legislative Assembly.

This statement must be read in conjunction with the amendment regulation. It is not, and is not meant to be, a comprehensive description of the amendment regulation. What is said about a provision is not taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Background

Variation to the Territory Plan No 352 (V352) makes changes to various development tables, codes and definitions in the Territory Plan. V352 was undertaken as part of continued monitoring and updating of the Territory Plan.

V352 refined the definition of ‘building line’ to clarify that courtyard walls, fences, and retaining walls, although they may be attached to the building, are not deemed to be part of the building and therefore do not establish the building line for an anticipated development.

The Territory Plan and the *Planning and Development Regulation 2008* (the regulation) use the term ‘behind the building line’ as a condition within provisions in various development codes and sections of the regulation. The regulation provides that the definition of ‘building line’ is the Territory Plan definition.

Prior to the making of V352, swimming pools in front yards had long been considered to be exempt from requiring development approval if they were located behind a courtyard wall, on the basis that the courtyard wall forms part of the main building. Building approval for a swimming pool is, however, required under the *Building Act 2004* in terms of public safety and integrity of construction work.

## Overview

The clarification of the definition of ‘building line’ in V352 has raised concerns regarding the development approval status of the construction of swimming pools in front yards behind courtyard walls. V352 may result in the unintended consequence that pools which are constructed in front of a building line but behind a courtyard wall may require development approval as they will be treated as being forward of the building line.

The intention of the amendment regulation is to clarify the longstanding approach that front yard swimming pools behind courtyard walls remain exempt from development approval. The amendment regulation does not affect whether the pool requires a building approval under the Building Act.

The aim of the amendment regulation is consistent with the broader objective of ensuring that there is no unwarranted imposition of red tape in development approvals and in particular no unwarranted regulatory burden on home owners who may wish to install a swimming pool in their front yard.

## Amendment regulation

Schedule 1 of the regulation provides for types of development that are exempt from requiring development approval under the *Planning and Development Act 2007*.

Section 1.54 of schedule 1 currently exempts swimming pools from requiring development approval where the following criteria are met:

### 1.54 Swimming pools

- (1) A designated development for a swimming pool on a block if—
  - (a) no part of the pool, or an associated structure is—
    - (i) between a front boundary and a building line for the block; ...

Clause 4 of the amendment regulation substitutes section 1.54 (1) (a) (i) of schedule 1 of the regulation to permit courtyard walls to constitute a building line for this section only, thereby clarifying that swimming pools behind courtyard walls are exempt from the requirement to obtain development approval.

The amendment regulation does not create a new category of exempt development, rather it clarifies the qualifying criteria to retain existing development rights.

The benefits of the amendment regulation include:

- no unnecessary regulatory burden on members of the public who wish to install a swimming pool in their front yards;
- no unnecessary increase in resource demands for the assessment of swimming pools, which are currently development application exempt; and
- continuation of current accepted industry practice for assessment and building approval certification of swimming pools behind courtyard walls.

## Human rights

The amendment regulation does not engage human rights and is merely intended to continue current practice regarding approval of swimming pools behind courtyard walls.

## **Outline of provisions**

### **Clause 1 Name of regulation**

This clause provides that the name of the regulation is the *Planning and Development Amendment Regulation 2018 (No 1)*.

### **Clause 2 Commencement**

This clause provides that the regulation commences on the day after its notification day.

### **Clause 3 Legislation amended**

This clause provides that the regulation amends the *Planning and Development Regulation 2008*.

### **Clause 4 Schedule 1, section 1.54 (1) (a) (i)**

This clause substitutes section 1.54 (1) (a) (i) of the regulation. The intent of clause 4 is to provide an exemption from development approval for swimming pools constructed between a courtyard wall and a building line of a block, so long as no part of the pool (or associated structure) is located between the courtyard wall and the front boundary of the block; that is, the entire pool must be located *behind* the courtyard wall for the exemption to apply.