

**Regulatory Impact Statement**

***Planning and Development Amendment Regulation 2009 (No 2)***  
***Subordinate Law 2009-8***

**Prepared in accordance with the**  
***Legislation Act 2001, section 34***

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## Overview

This regulatory impact statement relates to substantive elements of the *Planning and Development Amendment Regulation 2009 (No 2)* (proposed law).

The changes made by the proposed law to the *Planning and Development Regulation 2008* (the regulation) are a continuation of the wider planning system reforms launched by the ACT Minister for Planning in 2004.

The main aim of the reforms was to improve timeliness, transparency and efficiency in the planning processes.

One of the ways the *Planning and Development Act 2007* (the Act) achieves this aim is by allowing straightforward developments of low significance to be exempt from requiring a development approval (DA) (see section 133). The Act removes the requirement for development approval for those projects where the development approval process adds nothing of any significance, for example, for new single residences in Greenfield sites and small structures such as sheds, garages and pergolas. This is because there is little value added in requiring a DA in such cases. The DA process merely verifies that the development is compliant with the relevant codes but does not enhance the quality of the proposed development. The DA process does not alter the proposed design.

The proposed law adds exemptions for specified building work on existing school sites. It does this by amending schedule 1 of the regulation. Schedule 1 is made under section 20 of the regulation. The exempting of a range of developments at public and non-public schools in the proposed law are in addition to a number of exemptions already set out in schedule 1 of the regulation.

The proposed law includes DA exemptions for school buildings such as libraries, halls and gymnasiums and for things other than buildings such as flag poles, bike enclosures, etc.

A regulatory impact statement was prepared and tabled for the regulation and authorising law.

The following is information about the proposed law as required by section 35 of the *Legislation Act 2001*.

### **(a) The authorising law**

The provisions in this proposed law are authorised by the following sections of the Act:

- section 133 What is an exempt development?;
- section 134 Exempt development-no need for development application or approval; and
- section 426 Regulation-making power.

**(b) Policy objectives of the proposed law**

On 3 February 2009, the Commonwealth announced its \$14.7b *Building the Education Revolution* funding package which is a component of the \$42b *Nation Building and Jobs Plan* (the “Cth Plan”). The funding for the Cth Plan is the subject of the *Appropriation (Nation Building and Jobs) Act (No. 1) 2008-2009* (Cth) and the *Appropriation (Nation Building and Jobs) Act (No. 2) 2008-2009* (Cth). It is understood that the *Commonwealth Plan* is intended to provide a stimulus to the national economy to mitigate the effects of the current global financial crisis. The *Commonwealth Plan* provides funding of various projects including a significant amount of funding for new or upgrading of buildings in existing schools. The funds are granted on the condition that they be spent or be committed for spending within a short time period.

ACT Government funding will also be available for school related projects. Given the time frames required by the *Commonwealth Plan* and the availability of the ACT government project funding, it is necessary to amend the regulation in order to limit the potential for individual projects to stall as a result of delays in the development assessment or appeals process.

The proposed law exempts certain building work in existing schools from the need to obtain a development approval.

“School” is to include any primary (including pre-schools) or secondary government or non-government schools (including schools run by Churches or similar religious organisations).

As the proposed law also reflects policy objectives of the Act, a brief summary of the pertinent policy objectives behind the Act is provided.

*Policy objectives behind the Act*

One of the key policy objectives of the Government in the development of the Act was to make the planning system simpler, faster and more effective. Pages 2-3 of the Revised Explanatory Statement for the Act states that:

“The Bill is intended to make the Australian Capital Territory’s (ACT’s) planning system simpler, faster and more effective. The Bill will replace the existing *Land (Planning and Environment) Act 1991* (the Land Act) and the *Planning and Land Act 2002*.

The objective of the Bill 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 most significant change under the Bill is simplified development assessment through a track system that matches the level of assessment and process to the impact of the proposed development. As well as being simpler, more consistent, and easier to use, this system is a move towards national leading practice in development assessment ...

The Government wishes to reform the planning system to save homeowners and industry time and money and give them greater certainty about what they need to do if they require development approval. ...

The new system will have less red tape and more appropriate levels of assessment, notification and appeal rights. This will make it easier to understand what does and does not need approval, what is required for a development application and how it will be assessed. ...”

One of the methods for achieving a simpler, faster, more effective planning system was for the law to permit more developments to proceed without having to go through the development approval process. This approach was noted on page 3 of the Revised Explanatory Statement for the Act:

“The proposed reforms are:

- \* ***More developments that do not need development approval*** [emphasis added]
- \* Improved procedures for notification of applications and third party appeal processes that reduce uncertainty
- \* Clearer assessment methods for different types of development
- \* Simplified land uses as set out in the territory plan
- \* Consolidated codes that regulate development
- \* Clearer delineation of leases and territory plan in regulating land use and development
- \* Enhanced compliance powers. ...”

The objective for a simpler, faster, more effective planning system is relevant to concepts of “orderly development” and “economic aspirations of the people of the ACT” which are embedded in the object of the Act (section 6):

#### **“6 Object of Act**

The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—

- (a) consistent with the social, environmental and economic aspirations of the people of the ACT; and
- (b) in accordance with sound financial principles.”

#### *Policy objectives of the proposed law*

The main policy objective of the proposed law is to ensure efficiency in the uptake of additional Commonwealth and Territory funding that is only available for a limited period of time and has the important purpose of stimulating the economy. The main objective behind the additional funding is to stimulate the economy in order to cushion the Territory (and Australia) from the current global financial crisis. Therefore, time is of the essence if the additional funding is to serve its purpose and it was imperative that development approval processes did not delay commencement of projects.

The policy objectives of the proposed law are also to further the policy objective behind the Act, that is, a planning system that is simpler, faster, and more effective. The Act has now been in operation since 31 March 2008 and through monitoring of

the operation of the Act and in consultation with industry it is evident that greater efficiencies can be achieved ahead of broader DA exemptions. The proposed law introduces changes that enhance the operation of the existing DA exempt process.

In summary, the reforms are consistent with one of the principal aims behind the authorising law, which was to create a planning and development assessment system that is simpler, faster and more effective. The exempt category offers significant savings in time, effort and costs for those who were previously required to obtain development approval under the *Land (Planning and Environment) Act 1991*.

### **(c) Achieving the policy objectives**

The proposed law achieves the policy objectives by amending the regulation to exempt specified building work on existing schools from the need to obtain a DA.

The proposed law was anticipated in announcements made by the ACT Minister for Planning on 19 February 2009 and thereafter.

Schedule 1 of the *Planning and Development Regulation 2008* made under s20 of the regulation already exempts a number of matters from the need to obtain development approval (DA). The proposed law amends schedule 1 so that it also exempts certain developments on existing schools sites.

The proposed law includes DA exemptions for school buildings such as libraries, halls and gymnasiums and for things other than buildings such as flag poles, bike enclosures, etc.

The exemptions apply as follows:

#### **1. DA exemptions for school main buildings:**

- Apply to both private and public schools;
- The exemption will only apply for 4 years unless specifically extended by the ACT Legislative Assembly;
- If a school project does not meet the physical parameters required for the DA exemption set out in this amending regulation or the project affects a regulated tree<sup>1</sup> or heritage site<sup>2</sup>, a DA is required.
- if a school project does not meet one of the general exemption criterion (set out in ss1.10-1.18 of schedule 1 to the regulation), a DA is required (eg if the proposal contravenes the Heritage Act (s1.14 of schedule 1) then a DA is required)

#### **2. DA exemptions for school projects other than main buildings, for example, bike enclosures, flag poles**

- Apply to both private and public schools;
- The exemptions will apply indefinitely but must be reviewed by the planning and land authority after 4 years;

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<sup>1</sup> see the *Tree Protection Act 2005*

<sup>2</sup> see the *Heritage Act 2004*

- If a school project does not meet the physical parameters required for the DA exemption set out in this amending regulation or the project affects a regulated tree or heritage site, a DA is required.
- if a school project does not meet one of the general exemption criterion (set out in ss1.10-1.18 of schedule 1 to the regulation), a DA is required (eg if the proposal contravenes the Heritage Act (s1.14 of schedule 1) then a DA is required)

The reason for the time limit of 4 years for exemptions for main building school projects is related to the source of funding for these sorts of projects. It is anticipated that Commonwealth and Territory funding sources will be available for government school projects of this type with the intention that the funding be spent in the short term over the next 4 years for the benefit of schools and the economy of the Territory as a whole. In some cases, failure to utilise the funds could risk loss of the funds resulting in reduced benefits to schools and the economy.

The other exemptions for projects such as installing flag poles are to apply indefinitely, subject to review. Such projects are relatively minor in comparison with school main buildings and as such, it is appropriate for these matters to be exempt irrespective of the immediate issue of funding. As a result, these exemptions apply indefinitely with the proviso that their operation is to be reviewed by the authority after a period of 4 years.

The various parameters set out in this amending regulation were formulated with reference to present community facilities zoning controls in the Territory Plan and in consultation with ACT Department of Education and independent schools representatives.

The main rationale for the determination of the parameters was to ensure protection of the amenity of adjoining areas (for example, minimisation of overlooking or overshadowing) and to ensure school sportsgrounds and ovals could not be built on because they are used outside school hours.

#### **(d) Consistency of the proposed law with the authorising law**

The authorising law, section 133(c) of the Act (What is an exempt development?), entitles the regulation to prescribe development that is exempt from requiring development approval.

Under s133 of the Act, section 20 of the regulation (Exempt developments—Act, s 133, def exempt development, par (c)), specifies development that is DA exempt. In summary, under s20 of the regulation schedule 1 lists exempt development. Development may also be exempt notwithstanding non-compliance with schedule 1 provided the non-compliance meets criteria in schedule 1A. Note: the development tables of the Territory Plan may also specify development that is DA exempt (refer s133) and development specified in s134 of the Act is also DA exempt.

The proposed law includes new DA exemptions for certain building works in existing schools. As the parameters of the exemptions are tightly prescribed in the proposed law, the proposed law is consistent with the authorising law.

As indicated above, the proposed law is also consistent with the Government objectives behind the making of the Act and the objects stated in section 6 of the Act.

**(e) the proposed law is not inconsistent with the policy objectives of another territory law.**

The proposed law is not inconsistent with the policy objectives of another territory law. 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 legislation (see section 1.4 of schedule 1). 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*. Work may also be required to be done by the holders of relevant licences issued under the *Construction Occupations (Licensing) Act 2004*.

**(f) Reasonable alternatives to the proposed law**

There were 2 alternatives to the proposed law.

New legislation could have been passed but it was considered more efficient to use a legislative framework that was already in place, that is, section 133 of the Act relating to exempt development.

Alternatively, the authority could have modified the DA process administratively. Reforms to the DA process to make it more efficient are continuing but the greatest time can be gained by removing the DA process altogether by exemption. DA changes cannot change the time taken to go through the processes associated with the DA process.

Utilising the existing exemption legislative framework maximises the timeliness of the reforms and given that the exemptions only apply to existing school campuses, the risk of adverse impacts on the public is contained.

**(g) Brief assessment of benefits and costs of the proposed law**

The reforms delivered by the proposed law are twofold - increased flexibility in applying the DA exemption framework and a reduced need for obtaining a DA for development achieving significant benefits to the community through:

**1. Construction cost benefits**

The regulation, through removal of DA requirements will permit construction work to commence relatively earlier in the relevant project. This will improve timeliness of construction work and reduce related costs.

**2. Reduction in DA application fees and timeframes**

Schools can save application fees that would be incurred if they had to lodge a development application for development approval. Further, by not requiring a development approval, the proposed law allows development to commence sooner, thus reducing the overall timeframe for the development.

However, these cost savings may be reduced if there is an increase in fees charged by building certifiers to determine if the building/s are DA exempt when the certifier is assessing the development for building approval (BA) under the *Building Act 2004*.

Development approvals have statutory timeframes, may require public notification, referral to other agencies and formal amendment if there is an existing DA. The proposed law reduces timeframes by removing the need for a DA and reduces associated costs, other than the application fee. For example, for a DA that requires public notification, fees are levied to cover the public notification process. Public notification fees range from \$215 for *minor* notification to \$830 for *major* notification. The proposed law removes the need for these fees for development proposals that will no longer require development approval.

### **3. Other general benefits**

The proposed law broadens the circumstances in which DA exempt development can occur and ensures consistency in the application of the exempt development framework.

Further, the proposed law, by ensuring greater certainty, provides an opportunity for the planning and land authority to direct limited resources to the assessment of more complex development proposals. This has a flow-on benefit of delivering greater efficiencies by allowing building to commence sooner and costs to be kept to a minimum.

The proposed law also represents a further implementation of the underlying principles of the planning reform as agreed upon by the community and Government<sup>3</sup>, and is a timely response to the Commonwealth's \$14.7b *Building the Education Revolution* funding package.

#### **(h) Brief assessment of the consistency of the proposed law with Scrutiny of Bills Committee principles**

The legislative reform introduced by the Act was comprehensive and the Act and regulations formed an integral part of a single package of planning reforms. The regulation, which is to be amended by the proposed law, was developed more or less concurrently with the Act and gave effect to matters the Act allows to be prescribed by regulation.

General principles of the authorising law have been assessed by the Human Rights Commissioner and all issues responded to.

The matter that needs to be addressed by this Regulatory Impact Statement in terms of consistency with the Committee's principles is:

#### ***A reduction in ability to comment on proposed development***

Development in the merit and impact tracks must be publicly notified and open to public comment (see section 121 and 130 of the Act).

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<sup>3</sup> For more details of the reforms see the Regulatory Impact Statement for the *Planning and Development Regulation 2008*.



The proposed law, by broadening the circumstances in which development may occur without development approval, will impact on the ability to comment on such development. There is no public notification process for DA exempt development as it does not require development approval.

It is the government's view that such an impact is justified in all the circumstances. It is crucial that the Territory take advantage of the funding that is presently available. Furthermore, the impact of the proposed law is ameliorated by the fact that an exemption only applies to existing schools and if the defined parameters in the proposed law are strictly met. As stated above, those parameters were formulated with a view to delivering acceptable community outcomes.

The impacts of the proposed law are justified on the basis that the funding provided by the Commonwealth and the Territory government needs to be spent in a limited time-frame and because the use of the exemption power in circumstances such as these was envisaged at the time of making the Act.

### **Conclusion**

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the *Legislation Act 2001*. An Explanatory Statement for the proposed law has been prepared for tabling.