



Australian Capital Territory

# Planning and Development Amendment Regulation 2010 (No 1)

**Subordinate Law SL2010-8**

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

Dated 9 March 2010.

ANDREW BARR  
Minister

JOY BURCH  
Minister

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**Planning and Development Act 2007**

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Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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**1 Name of regulation**

This regulation is the *Planning and Development Amendment Regulation 2010 (No 1)*.

**2 Commencement**

This regulation commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This regulation amends the *Planning and Development Regulation 2008*.

**4 New section 110 (1) (aa)**

*insert*

(aa) the proposed use of the land is compatible with Territory or Commonwealth government policies applicable to the proposed use; and

**5 New section 122 (1) (aa)**

*insert*

(aa) the proposed use of the land is compatible with Territory or Commonwealth government policies applicable to the proposed use; and

**6 Section 175 (2) (b)**

*omit*

(if any)

**7 Sections 300 and 301**

*substitute*

**300 Period for deemed refusal of application for controlled activity order—Act, s 351 (4)**

- (1) This section applies to a controlled activity other than an activity mentioned in section 301 or section 302.
- (2) The period is 20 working days after the end of the 10-working day period within which the lessee may give the planning and land authority written reasons under the Act, section 350 (4) (b).

**301 Period for deemed refusal of application for controlled activity order if development application approved—Act, s 351 (4)**

- (1) This section applies if—
  - (a) an activity is a controlled activity mentioned in the Act, schedule 2, item 1, 3 or 4; and
  - (b) a development application has been made in relation to the controlled activity within 20 working days after the day the planning and land authority gives a show cause notice under the Act, section 350 (3); and
  - (c) the development application is approved.

- (2) The period is 10 working days after the day the approval takes effect.

*Note* For when an approval takes effect, see the Act, div 7.3.9. If the approval is made by order of the ACAT, see the *ACT Civil and Administrative Tribunal Act 2008*, s 69.

**302 Period for deemed refusal of application for controlled activity order if development application refused—  
Act, s 351 (4)**

- (1) This section applies if—
- (a) an activity is a controlled activity mentioned in the Act, schedule 2, item 1, 3 or 4; and
  - (b) a development application has been made in relation to the controlled activity within 20 working days after the day the planning and land authority gives a show cause notice under the Act, section 350 (3); and
  - (c) the development application is refused.
- (2) The period is 20 working days after the day the development application is refused.
- (3) For this section, a development application is *refused* on the latest of the following days that apply to the development application:
- (a) if there is no right to make a reconsideration application or apply to the ACAT for review of the decision on the development application—the day notice of the decision to refuse is given to the applicant;
  - (b) if there is a right to make a reconsideration application and—
    - (i) no application is made—the day the period for making the reconsideration application ends; or

- (ii) an application is made—the day notice of the decision to refuse, as confirmed or substituted on reconsideration, is given under the Act, section 195;
- (c) if there is a right to apply to the ACAT for review of the decision on the development application and—
  - (i) no application is made—the day the period for making the application for review ends; or
  - (ii) an application is made—
    - (A) the day the decision to refuse the development application, as confirmed, varied or substituted by the ACAT, takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or
    - (B) the day the application for review is withdrawn, dismissed or struck out.

**303 Period for deemed decision not to make controlled activity order—Act, s 354 (1) (b)**

- (1) This section applies to a controlled activity other than an activity mentioned in section 304 or section 305.
- (2) The period is 20 working days after the end of the 10-working day period within which the lessee may give the planning and land authority written reasons under the Act, section 353 (4) (a).

**304 Period for deemed decision not to make controlled activity order if development application approved—Act, s 354 (1) (b)**

- (1) This section applies if—
  - (a) an activity is a controlled activity mentioned in the Act, schedule 2, item 1, 3 or 4; and



- 
- (b) a development application has been made in relation to the controlled activity within 20 working days after the day the planning and land authority gives a show cause notice under the Act, section 353 (2); and
  - (c) the development application is approved.
- (2) The period is 10 working days after the day the approval takes effect.

*Note* For when an approval takes effect, see the Act, div 7.3.9. If the approval is made by order of the ACAT, see the *ACT Civil and Administrative Tribunal Act 2008*, s 69.

**305 Period for deemed decision not to make controlled activity order if development application refused—  
Act, s 354 (1) (b)**

- (1) This section applies if—
- (a) an activity is a controlled activity mentioned in the Act, schedule 2, item 1, 3 or 4; and
  - (b) a development application has been made in relation to the controlled activity within 20 working days after the day the planning and land authority gives a show cause notice under the Act, section 353 (2); and
  - (c) the development application is refused.
- (2) The period is 20 working days after the day the development application is refused.
- (3) For this section, a development application is *refused* on the latest of the following days that apply to the development application:
- (a) if there is no right to make a reconsideration application or apply to the ACAT for review of the decision on the development application—the day notice of the decision to refuse is given to the applicant;

- (b) if there is a right to make a reconsideration application and—
  - (i) no application is made—the day the period for making the reconsideration application ends; or
  - (ii) an application is made—the day notice of the decision to refuse, as confirmed or substituted on reconsideration, is given under the Act, section 195;
- (c) if there is a right to apply to the ACAT for review of the decision on the development application and—
  - (i) no application is made—the day the period for making the application for review ends; or
  - (ii) an application is made—
    - (A) the day the decision to refuse the development application, as confirmed, varied or substituted by the ACAT, takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or
    - (B) the day the application for review is withdrawn, dismissed or struck out.

**8 Section 400 (1)**

*substitute*

- (1) The Legislation Act, section 47 (5) does not apply to the City West precinct deed.

**9 Section 400 (3), definition of *street furniture agreement***

*omit*

**10 Schedule 1, section 1.4 (2) (b)**

*substitute*

- (b) section 1.15 (Criterion 5—compliance with lease and development approvals).

**11 Schedule 1, section 1.10 (d)**

*substitute*

- (d) section 1.15 (Criterion 5—compliance with lease and development approvals);

**12 Schedule 1, new section 1.11 (1A) and (1B)**

*insert*

- (1A) Subsection (1) (a) does not apply if the location of a part of a building or structure in an easement or proposed easement is agreed to, in writing, by—
- (a) for an easement—
    - (i) the owner of the land benefited by the easement; or
    - (ii) the person in whose favour the easement is registered.
  - (b) for a proposed easement—
    - (i) the person who, on registration of the easement, would be the owner of the land benefited by the easement; or
    - (ii) the person in whose favour the easement is proposed to be registered.
- (1B) Subsection (1) (b) does not apply if the location of a part of a building or structure in a utility infrastructure access or protection space is agreed to, in writing, by the utility benefited by the utility infrastructure access or protection space.

**13 Schedule 1, section 1.11 (2), definition of *utility infrastructure access or protection space***

*omit*

operator

**14 Schedule 1, section 1.11 (2), definition of *utility rule*, new note**

*insert*

*Note* Technical codes made under the *Utilities Act 2000* are accessible at [www.icrc.act.gov.au](http://www.icrc.act.gov.au). Rules for the service and installation of electricity and water and sewerage are accessible at [www.actewagl.com.au](http://www.actewagl.com.au).

**15 Schedule 1, new section 1.14 (2) and (3)**

*insert*

- (2) A development (other than a class 10 building or structure) must not—
- (a) be located at a place or on an object included in the heritage register or under a heritage agreement; or
  - (b) cause any part of a building or structure (other than a class 10 building or structure) to be located at a place or on an object included in the heritage register or under a heritage agreement.

- (3) In this section:

***heritage agreement***—see the *Heritage Act 2004*, section 99.

***heritage register***—see the *Heritage Act 2004*, section 20.

*Note* The ACT Heritage Register is accessible at [www.tams.act.gov.au](http://www.tams.act.gov.au).

**16 Schedule 1, section 1.15 heading**

*substitute*

**1.15 Criterion 5—compliance with lease and development approvals**

**17 Schedule 1, section 1.15 (1) (a)**

*substitute*

- (a) a condition of a development approval for a development on the block to which the relevant development relates; or

*Note* A development application may be approved subject to conditions (see Act, s 162 (1) (b)). For requirements about, and examples of, conditions, see the Act, s 165.

**18 Schedule 1, section 1.23, except heading**

*omit everything before paragraph (a), substitute*

A designated development (other than a development to which section 1.22 applies) for the maintenance of a building or structure if—

**19 Schedule 1, section 1.23 (a), example 2**

*omit*

**20 Schedule 1, section 1.23 (a), note 1**

*omit*

or roofs

**21 Schedule 1, section 1.23 (b)**

*after*

criteria

*insert*

, other than section 1.14 (2) (Criterion 4—heritage and tree protection),

**22 Schedule 1, section 1.30 (1) (b)**

*after*

2 driveways

*insert*

across the road verge

**23 Schedule 1, section 1.55 (d)**

*omit*

**24 Schedule 1, section 1.57 (1) (d)**

*omit*

**25 Schedule 1, section 1.58 (1) (d)**

*omit*

**26 Schedule 1, sections 1.55 to 1.58 (as amended)**

*relocate to subdivision 1.3.2.4 as sections 1.62 to 1.64A*

**27 Schedule 1, new subdivision 1.3.2.4 heading**

*after section 1.61, insert*

**Subdivision 1.3.2.4 Other structures**

**28 Schedule 1, section 1.65**

*substitute*

**1.65 Public works signs excluded—div 1.3.3**

This division does not apply to the putting up, attaching or displaying of a sign that is for public works under section 1.90.

**29 Schedule 1, section 1.77**

*omit*

**30 Schedule 1, section 1.78**

*omit everything before paragraph (a), substitute*

**1.78 Lease variations—subdivisions**

The variation of a lease for the purpose of subdividing the land if—

**31 Schedule 1, section 1.90**

*substitute*

**1.90 Public works**

- (1) A designated development for public works carried out by or for the Territory if—
  - (a) the development does not require an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*; and
  - (b) the designated development complies with the general exemption criteria that are applicable to the development.

*Note 1 Designated development*—see s 1.2.

*Note 2* Other territory laws must be complied with (see s 1.4).

*Note 3 General exemption criteria*—see s 1.10.

(2) In this section:

***ancillary sporting structure***—

- (a) means a structure that is designed, or can be used, in relation to playing organised sport; but
- (b) does not include a grandstand.

**Examples**

goal posts, sight screens, fencing

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***bicycle parking facility*** means a structure built for parking a bicycle with a height not more than 2.4m.

***landscaping*** means work that affects the landscape of land if the work does not involve any of the following:

- (a) clearing an area of native vegetation of more than 0.5ha;

*Note* ***Clearing*** native vegetation—see the *Nature Conservation Act 1980*, s 74.

- (b) clearing a tract of a forest or arboretum.

***playing field*** means an open space that is designed, or can be used, for playing organised sport.

**Examples—playing fields**

tennis court, football oval, athletics track, basketball court, cricket oval

***public works*** means—

- (a) installation or maintenance of street and park furniture; or
- (b) maintenance of a road or car park; or



- (c) construction or maintenance of a footpath, bicycle path, bicycle parking facility, walking track or other pedestrian area; or

**Examples—construction or maintenance of other pedestrian area**

tree planting and repaving, reconstruction of kerbs and gutters

- (d) maintenance of stormwater drainage or a flood mitigation structure; or

**Examples**

stormwater canals and drains, floodways, flood gates, bank protection, earth levees, reservoirs, detention basins

- (e) maintenance of a water quality treatment device; or

**Examples**

litter traps, bioretention systems, wetlands, wetponds, pollutant traps, swales, buffer strips, infiltration trenches

- (f) installation or maintenance of an ancillary sporting structure on or beside a playing field; or

- (g) maintenance of a playing field; or

**Example**

resurfacing oval with artificial grass

- (h) bushland regeneration, landscaping, gardening, tree planting, tree maintenance, tree removal or fire fuel reduction, construction or maintenance of a fire trail; or

- (i) construction, installation or maintenance of a water tank; or

- (j) installation or maintenance of a temporary structure for an event.

**Examples**

marquee, portable toilet, stage, tent, television screen, scaffolding

*street and park furniture* means the conventional equipment of urban streets and parks.

**Examples**

- 1 a seat, bench, table, rubbish bin, recycling bin, barbecue, public toilet, playground equipment, gazebo, bridge, staircase, boardwalk, rotunda, stage, shade sail, water fountain, bus shelter
- 2 a bollard, planter box, street tree guard and root cover, guard rail, portico, awning, canopy, flagpole, pergola
- 3 a parking meter, parking ticket machine, street sign, parking control sign, traffic control device, telephone kiosk, streetlight, playing field light, variable messaging sign

**1.90A Public artworks**

- (1) A designated development for the installation of a public artwork if—
  - (a) the development is funded completely or partly by the Territory; and
  - (b) the public artwork will be located on territory land or land occupied by the Territory; and
  - (c) the chief executive of the administrative unit responsible for municipal services has agreed, in writing, to the location of the public artwork; and
  - (d) the public artwork has a height of not more than—
    - (i) for an artwork located adjacent to an arterial road or proposed arterial road—12m above finished ground level; or
    - (ii) in any other case—6m above finished ground level; and
  - (e) the development does not require an environmental authorisation or environmental protection agreement under the *Environment Protection Act 1997*; and
  - (f) the public artwork is not a habitable structure; and

- (g) the designated development complies with the general exemption criteria, other than section 1.17 (Criterion 7—no multiple occupancy dwellings), that are applicable to the development.

*Note 1* **Designated development**—see s 1.2.

*Note 2* **General exemption criteria**—see s 1.10.

- (2) In this section:

**arterial road** means a road with a speed limit of at least 80km/h.

**Examples**

limited access road, parkway, freeway

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**public artwork** means an artwork to be displayed in a place open to and accessible by the public.

**Examples**

sculpture, statue, structure, painting

**32 Schedule 1, section 1.91**

*omit*

**33 Schedule 1, section 199M, note**

*substitute*

*Note* A water tank may also be exempt under s 1.62.

**34 Schedule 1, new section 1.112**

*in division 1.3.7, insert*

**1.112 Subdivisions—Unit Titles Act**

The subdivision of land under a unit title application under the *Unit Titles Act 2001*.

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**Endnotes**

**1 Notification**

Notified under the Legislation Act on 12 March 2010.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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