

Australian Capital Territory

Construction Occupations (Licensing) Unit Title Site Assessment Code of Practice 2016

Disallowable instrument DI2016–243

Made under the

Construction Occupations (Licensing) Act 2004, section 126A (Codes of practice)

1 Name of instrument

This instrument is the *Construction Occupations (Licensing) Unit Title Site Assessment Code of Practice 2016*.

2 Commencement

This instrument commences on the day after notification.

3 Code of practice

I approve the Unit Title Site Assessment Code of Practice in the Schedule.

4 Disapplication of Legislation Act, s47 (5) and 47 (6)

The *Legislation Act 2001*, sections 47 (5) and 47 (6) do not apply in relation to an instrument applied, adopted or incorporated under this instrument.

Mick Gentleman
Minister for Planning and Land Management
23 August 2016



Australian Capital Territory

Unit title site assessment code of practice

made under the

Construction Occupations (Licensing) Act 2004

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Part 1 Preliminary

1 Name of code

This code is the *Construction Occupations (Licensing) Unit Title Site Assessment Code*.

2 Offences and other consequences of contravening this code

The *Construction Occupations (Licensing) Act 2004*, provides offence and other enforcement mechanisms that can result from a contravention of this code.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

Part 2 Important concepts

3 Application to assessors

In this code references to an *assessor* includes a reference to an entity who, under the *Construction Occupations (Licensing) Act 2004*, holds a licence that authorises the holder to provide the relevant assessment service, where the assessment may only be done by the licence holder.

4 Object of code

An object of this code is to prescribe requirements for assessing the compliance of site, how the site correlates with relevant documents, and in some cases to provide methodologies for making the assessment.

5 Code scope—correlation with scope of development approval

If a provision of this code purports to require development to have been undertaken in a way that is in excess of the minimum requirements of a relevant development approval, the provision of this code may be taken to only require the development to have been done in accordance with the minimum requirement of the approval, unless a requirement of another law or of a lease or licence requires to the contrary.

Examples of other law

Building Act 2004
Planning and Development Act 2007

Note An example is part of the code, 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).

6 Meaning of certain terms—correlation with *Unit Titles Act 2001*

A term used in this code has the same meaning as the term has in the *Unit Titles Act 2001*, unless this code provides a different meaning for the term.

Note A term used in this code has the same meaning as the term has in the *Construction (Occupations) Licensing Act 2004*, (see the *Legislation Act*, s 148).

Part 3 Site Assessment

7 Parcel and documents to be assessed

The assessor must determine if the relevant parcel and the relevant planning documents relating to the parcel comply with the relevant provisions of this code.

8 Site correlation with site plan and relevant development approval

- (1) An assessor must not take a parcel including a building's footprint to comply with this section if the parcel, or something in relation to the parcel, does not correlate with the respective site plan and relevant development approval or if the site plan does not correlate with the relevant development approval.
- (2) Nothing in this section requires an assessor to measure on site where something is in relation to something else, but this section does require an assessor to look at the outside of any building and other relevant things, if any, at the parcel and to see if they appear to correlate with the site plan and relevant development approval, and to see if they correlate.

Example

The assessor looks at the outside wall of a block of apartments, and notes that the relevant plans show that the wall is, or was to be, located 1.55m off the adjacent block boundary, and that a fence is located on that boundary. The assessor may take the fence as indicating the location of the boundary, unless the assessor has a reasonable suspicion that is not the case, and may take the wall as being the required 1.55m off the boundary if the assessor believes, without necessarily measuring the distance, that the wall appears to be at about that distance.

The assessor notices that the corner of a balcony projects out from the wall, but the projection is not shown on the site plan. The assessor need not measure the location of the balcony but can deduce that its location does not correlate with the site plan.

Note An example is part of the code, 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).

- (3) Apart from the requirements of subsection (2), nothing in this section requires an assessor to recheck matters that ought to have been checked under the *Building Act 2004* or its predecessor in purpose, as part of erecting or altering a building or obtaining a certificate under that Act that permits occupancy or use of a building.

Note The *Building Act 2004*, requires that certain work in relation to buildings be inspected for compliance with that Act, but it does not require checks to be made on certain things that are not buildings, such as certain landscaping and paving. That Act also exempts certain buildings from its relevant provisions.

9 Address schedule

- (1) This section applies if the numbering of a proposed unit is, or will be, different to its number shown in the site plan.
- (2) An assessor must not take a parcel to comply with this section if the site plan for the parcel does not have attached to it a schedule stating the number of each proposed unit shown in the site plan and the corresponding number that the proposed unit has or will have.

Note an address schedule must not be drafted onto the site plan, but may be attached separately to the site plan, and need not be prepared by a surveyor.

10 Survey certificate required

An assessor must check—

- (a) if all buildings at the parcel are shown in the respective site plan, or if not in the site plan, in a registered surveyor's certification under the *Unit Titles Regulation 2001*, section 2E (1) (j); and
- (b) if such a building is shown in a certification, the certification is attached to the relevant unit title assessment report.

11 Encroachment beyond parcel boundaries—unleased land

- (1) An assessor must not take a building to comply with this section if—
 - (a) any part of the building, including a footing or basement, encroaches under, on or over unleased land; and
 - (b) the full extent of the encroachment, other than any part that is an authorised existing attachment, has not been approved.
- (2) Nothing in this section requires an assessor to measure on site where something is in relation to something else.
- (3) A movable part of a building, including a door, gate, flap, hatch, retractable shading or sheltering device, encroaches for the purposes of subsection (2) if it encroaches to any extent in any of its positions of normal use even if it fails to encroach in another position, including the closed or retracted position.

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- (4) In this section:

approved, for an encroachment, means in compliance with a relevant development approval and the requirements of a licence granted under *Planning and Development Act 2007*, permitting the use of unleased land for the encroachment.

authorised existing attachment—see *Unit Titles Act 2001*, section 20 (7).

12 Encroachment beyond parcel boundaries—leased land

- (1) An assessor must not take a building on a parcel to comply with this section if—
- (a) any part of the building, including a footing, basement, awning, downpipe, eave, fascia, or guttering, encroaches under, on or over leased land that is not within the parcel; and
 - (b) the full extent of the encroachment, is not the subject of a transfer and grant of easement registered by the registrar-general under the *Land Titles Act 1925* and noted on the site plan.
- (2) Nothing in this section requires an assessor to measure on site where something is in relation to something else.
- (3) A movable part of a building, including a door, gate, flap, hatch, retractable shading or sheltering device, encroaches for the purposes of section (1) (a) if it encroaches to any extent in any of its positions of normal use even if it fails to encroach in another position, including the closed or retracted position.

13 Proposed unit vertical dimension limitation—within a parcel and over or under a unit

An assessor must not take a parcel to comply with this section if—

- (a) a proposed unit for the parcel is subject to a vertical dimension limitation under the *Unit Titles Regulation 2001*, section 5 (Diagrams—manner of subdivision); and
- (b) the nature of the limitation is not stated on the site plan.

Examples—statement of nature of limitation

1. The site plan shows a plan view of the roof of a building encroaching into an adjoining proposed unit 3 with an accompanying notation that unit 3 is subject to a vertical dimension limitation up to the underside of that roof.
2. The site plan also shows a buried rainwater tank encroaching into proposed unit 3 with an accompanying notation that proposed unit 3 is subject to a vertical dimension limitation down to the top of that tank.

Note An example is part of the code, 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).

14 Letter boxes—compliance with plan

- (1) An assessor must not take a parcel to comply with this section if—
 - (a) letter boxes for the parcel fail to comply with relevant development approval, if any; or
 - (b) every letterbox for the parcel is not located wholly within the parcel; or
 - (c) every letterbox for the parcel is not located wholly within its respective proposed unit boundary (the *unit*) or is not located within proposed common property, or is not partly in the respective proposed unit and partly in the proposed common property, or if mail cannot be reasonably placed into and retrieved from each letterbox without entering another proposed unit; or
 - (d) the parcel does not have a letter box for every proposed unit and for the proposed owners corporation, or if each of those letterboxes is not legibly and durably labelled in accordance with the site plan or for the owners corporation, as the case requires.
- (2) Nothing in this section requires an assessor to measure on site where something is in relation to something else, but this section does require an assessor to look at, or for, letterboxes as depicted in relevant plans to see if they comply with relevant plans and to see if the letter boxes otherwise comply with this section.

15 Identification signage

- (1) An assessor must not take a parcel to comply with this section if—
 - (a) each proposed unit, and each proposed non-adjacent unit subsidiary, (the *unit* and *subsidiary*) do not each have a sign visible to a person standing near the main entrance to the unit and to the subsidiary indicating the proposed street address unit number for each; or
 - (b) each vehicle space that is shown on the site plan or relevant development approval as a visitor parking space does not have a sign visible to a person standing near the main entrance to the space indicating “visitor parking”, “visitor” or “v”. For this paragraph, 2 or more spaces may rely on a lesser number of signs provided the signs makes it clear that the spaces are for visitors rather than being for a proposed unit subsidiary.

- (2) In this section:

sign means an indicator that is legible to a reasonable person in daylight and sufficiently durable to remain so for 30 years or more without maintenance.

street address means the respective number stated in the address schedule.

vehicle space—see section 16 (Vehicle spaces and storage areas—quantity, location and delineation).

16 Vehicle spaces and storage areas—quantity, location and delineation

- (1) This section applies to a parcel that is the subject of a relevant approved plan, if compliance with the plan required the provision of 1 or more of a vehicle space or a storage area.
- (2) An assessor must not take a parcel to comply with this section if the vehicle space or storage area, as the case requires, is not—
 - (a) provided in the quantity and location required by the approved plans; and
 - (b) delineated so its boundaries or proposed boundaries are readily discernable and in compliance with the site plan.

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- (3) Nothing in this section requires an assessor to measure on site where something is in relation to something else, but this section does require an assessor to look at the vehicle spaces and storage areas to see if they correlate with the site plan and approved plans.

- (4) In this section:

delineated includes delineated by a wall, fence, door, screen, roof, ceiling, cage or other enclosure in the absence of other discernable indicator of a boundary, or proposed boundary, pavement markings.

pavement marking—

- (a) means a marking that has at least the same day time visibility, wear, and colour change limits as suggested in the performance limits under *Australian Standard AS 4049.5 Paints and related materials—Pavement marking materials, Part 5: Performance assessment of pavement markings*, as in force from time to time; and
- (b) includes the use of compliant contrasting colours of paving, or raised dot road lane markers including raised dots, or pavement paint.

sign means an indicator that is legible to a reasonable person in daylight and sufficiently durable to remain so for 30 years or more without maintenance.

storage area means an enclosed space in a proposed non-adjacent unit subsidiary that is intended for storage, and includes a storage cage.

vehicle space means a space in a proposed non-adjacent unit subsidiary that is specifically intended for vehicles, and includes a car parking space or a bicycle storage space.

- (5) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard, or an Australian/New Zealand Standard, applied, adopted or incorporated as in force from time to time under this section.

17 Location of certain things

An assessor must not take a parcel to comply with this section if the approved plans for the parcel requires any of the following things and 1 or more of those things is not located in accordance with the plans:

- outdoor lighting for an area proposed as a common area
- a fence, including a gate, for a boundary or a proposed boundary

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- an outdoor waste enclosure or area designated for storage of rubbish or waste for recycling, intended for use by occupants of 2 or more proposed units.

18 Tank for multiple units—additional requirements

- (1) This section applies to a parcel that has a tank intended for use by occupants of 2 or more proposed units.
- (2) An assessor must not take the parcel to comply with this section if—
 - (a) the tank is not located wholly within the parcel; and
 - (b) the tank is not located wholly in proposed common property; or
 - (c) if located within, or partly within, a proposed unit, the tank's location is not noted on the site plan; and
 - (d) the tank imposes on the proposed unit a vertical dimension limitation without compliance with section 13 (Proposed unit vertical dimension limitation—within a parcel and over or under a unit).

19 Service areas to be screened

- (1) An assessor must not take a parcel to comply with this section if the parcel has a service area that is not screened from public view.
- (2) In this section:

screened from public view, for a thing, means the thing is not readily visually discernable to a person standing at any point on the ground of a road within 100m of the thing in daylight, because of a visual barrier that is opaque or translucent but sufficiently visually obscuring, or perforated but sufficiently visually obscuring.

service area means an area for building plant and building services, waste collection, clothes drying, and includes the area occupied by a:

- water heater
- air conditioner
- plant room
- lift motor room
- waste hopper enclosure
- bin enclosure
- clothes line.

20 Access

- (1) An assessor must not take a parcel to comply with this section if—
 - (a) the parcel has a proposed trafficable common area that cannot be readily walked into without walking within another block or within a proposed unit; or
 - (b) each proposed unit for the parcel is not accessible by walking directly from adjacent common property or from unleased land; or
 - (c) each proposed non-adjacent unit subsidiary (a *single*) is not accessible by walking directly from adjacent common property, or, for 2 or more singles that adjoin each other and are for the same proposed unit (a *multiple*) at least 1 single comprising the multiple is not accessible as for a single if all singles comprising the multiple are accessible by walking from that 1 single.
- (2) In this section:

trafficable, in relation to an area, means the area would normally be accessible to people to walk to and around in.