

## AUSTRALIAN CAPITAL TERRITORY

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### **Territory plan on track for March implementation planning reform in the act: Implementation of the planning and development act**

From 31 March 2008, the *Planning and Development Act 2007* (ACT) (the Act) in conjunction with the revised Territory Plan, has replaced the *Land (Planning and Environment) Act 1991* (ACT), the *Planning and Land Act 2002* (ACT) and the existing Territory Plan. One of the most significant changes for those engaged in the development/construction industry will be adaptation of the development assessment process, with development proposals to be funnelled through one of three assessment channels:

*Exempt development:* for which a development application is not required (though building approval may be).

*Prohibited development:* for which a development application cannot be lodged nor received on the basis that the proposed development is prohibited in a particular zone.

*Assessable development:* which is broken down into three sub-categories:

1. Code assessable development: must be assessed against code specific and inflexible requirements. Development falling within this sphere will not be subject to public consultation, nor will it be open to third party review.

2. Merit assessable development: requires a level of public consultation and third parties

may appeal only where they are able to demonstrate that approval would cause them material detriment.

3. Impact assessable development: under which a proposed development will undergo

a broad level of assessment and public scrutiny, including the preparation of an environmental impact statement. Again, while subject to third party appeal, an objector must be able to demonstrate that they made a representation during the development application process (or had reasonable grounds for not doing so), and that the development could cause them material detriment.

### **Impact on authorised uses**

While Crown leases remain the central source of land tenure within the Territory, and uses permitted on the terms of Crown leases will not be withdrawn or amended, Crown lessees will need to obtain development approval in respect of use which:

- while authorised by the Crown lease, require that earthworks or other construction works are undertaken (which are themselves assessable);
- is a new use authorised by the Crown lease but not permitted by the Territory Plan; or
- is a new use not authorised by the Crown lease but permitted by the Territory Plan.

### **Extension of development approval**

An issue arising under the new framework is its treatment of extensions of time for existing development approvals. Under the Act, where a person has development approval in place (granted under the preceding legislation), the approval may only be extended once and the application for the extension must be made:

- before the approval expires; and
- not later than six months after commencement day (being 31 March 2008).

Extension of times for compliance with building and development requirements

Another contentious issue is the impact of planning reform on the availability and cost of extending times for compliance with Crown lease building and development provisions, (implemented through the *Planning and Development Legislation Amendment Act 2008* (ACT), notified on 18 March 2008).

Crown leases may contain a provision which requires that a Crown lessee undertake a development within a particular timeframe. Prior to the introduction of the Act, a Crown lessee could request an extension of time for compliance for a comparatively nominal

fee. However, the Act will now stipulate that:

- The ACT Planning and Land Authority (ACTPLA) may only approve an extension if satisfied that it will not cause an unacceptable delay to another land release or development;
- ACTPLA may not approve an extension for more than the prescribed period (currently three years); and
- The fee which must accompany the extension application will be equal to five times the rateable amount for the property over the period sought.

Submissions on this issue are being prepared by a number of industry groups.