

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Brendan Smyth)

Projects of Territory Importance Bill 2008

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Projects of Territory Importance Bill 2008

A Bill for

An Act to facilitate the moving of projects of Territory importance from a location to another to allow for their effective delivery and, consequently, to allow for the usual planning processes to be shortened

1 **Preamble**

- 2 1 Canberra is a growing, thriving city.
- 3 2 It is an important part of planning for the ACT that the planning
4 system be responsive to achieving good outcomes for ACT residents
5 and for businesses prepared to invest in the ACT.
- 6 3 Some projects undertaken in the ACT have a major impact within
7 the Territory, whether because they provide fundamental
8 infrastructure, because they bring significant benefit to the Territory,
9 or because they are otherwise projects of Territory importance.
- 10 4 If the ordinary planning process for projects of Territory importance
11 is followed, it may not always be possible to deliver the projects
12 within the timeframes necessary because of an oversight, a change
13 in circumstances or for another genuine reason.
- 14 5 If a project of Territory importance cannot be delivered in a
15 particular place within the timeframe necessary, that project and
16 related benefits may be lost to the Territory.
- 17 6 If there is a threat that a project of Territory importance may be lost
18 to the Territory, all the work done, expense incurred and time
19 invested in the project may be lost.
- 20 7 A project of Territory importance that has stalled, or is going to
21 stall, because of its location may be able to be delivered at another
22 location, but work done to deliver the project at the originally
23 proposed location cannot currently be used at the 2nd location, and
24 the planning process therefore needs to start again. This may
25 discourage investors and investment in the ACT.

- 1 8 The Legislative Assembly considers that—
- 2 • there should be a mechanism to facilitate the delivery of
- 3 projects of Territory importance outside the ordinary planning
- 4 process if the reason for non-delivery of the projects is an
- 5 inappropriate location and another appropriate location is
- 6 available
- 7 • the mechanism should only be used in exceptional
- 8 circumstances, and then only with community support
- 9 • the mechanism should contain safeguards that are adequate to
- 10 protect ACT residents while also allowing for flexibility
- 11 • the Legislative Assembly can adequately oversee such a process
- 12 and represent the views of the community.
- 13 9 For these reasons, the Legislative Assembly wishes to put in place a
- 14 mechanism to facilitate the delivery of projects of Territory
- 15 importance at locations other than those originally intended.

The Legislative Assembly for the Australian Capital Territory therefore enacts
as follows:

1 **1 Name of Act**

2 This Act is the *Projects of Territory Importance Act 2008*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

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

7 **3 Dictionary**

8 The dictionary at the end of this Act is part of this Act.

9 *Note 1* The dictionary at the end of this Act defines certain terms used in this
10 Act, and includes references (*signpost definitions*) to other terms
11 defined elsewhere.

12 For example, the signpost definition ‘*development approval*—see the
13 *Planning and Development Act 2007*, dictionary.’ means that the term
14 ‘development approval’ is defined in that dictionary and the definition
15 applies to this Act.

16 *Note 2* A definition in the dictionary (including a signpost definition) applies to
17 the entire Act unless the definition, or another provision of the Act,
18 provides otherwise or the contrary intention otherwise appears (see
19 Legislation Act, s 155 and s 156 (1)).

20 **4 Notes**

21 A note included in this Act is explanatory and is not part of this Act.

22 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
23 notes.

5 Meaning of *project of Territory importance*

In this Act:

project of Territory importance means a project that—

(a) has a major impact within the Territory, whether because the project does 1 or more of the following or otherwise:

(i) provides critical infrastructure;

(ii) provides important economic, or sustainable environmental, development;

(iii) encourages substantial capital investment;

(iv) increases and diversifies employment opportunities; or

(b) is prescribed by regulation.

6 What is a *certificate of importance*?

In this Act:

certificate of importance, for a project, means a certificate prepared under section 8 for the project.

Note A certificate of importance must contain certain things and have commissioners certificates attached (see s 9), and has the effect mentioned in s 12 if approved by the Legislative Assembly under s 11.

7 When certificates of importance may be prepared

(1) A certificate of importance may be prepared under section 8 for a project if—

(a) the Ministers who may jointly prepare a certificate under that section are satisfied on reasonable grounds that—

(i) the project is a project of Territory importance; and

(ii) substantial progress has been made in gaining development approval for the project; and

- 1 (iii) the actions taken to achieve the progress have been taken
- 2 in the genuine belief that the project will be delivered in a
- 3 particular place; and
- 4 (iv) it is not reasonably practicable in all the circumstances to
- 5 deliver the project in the place; and
- 6 (b) a senior commissioner of the independent competition and
- 7 regulatory commission certifies in writing under section 10 that
- 8 the commissioner is satisfied that the project is a project of
- 9 Territory importance; and
- 10 (c) the commissioner for the environment certifies in writing under
- 11 section 10 that the commissioner is satisfied that the
- 12 environmental impact of the project at the 2nd location is not
- 13 significantly worse than the environmental impact of the
- 14 project at the originally proposed location; and
- 15 (d) the human rights commissioner certifies in writing under
- 16 section 10 that the commissioner is satisfied that the impact of
- 17 the project on human rights at the 2nd location is not
- 18 significantly worse than the impact of the project on human
- 19 rights at the originally proposed location.
- 20 (2) In deciding whether substantial progress has been made in gaining
- 21 development approval for a project, the Ministers must consider the
- 22 following:
- 23 (a) the time taken to achieve the progress;
- 24 (b) the amount expended to achieve the progress;
- 25 (c) the stage that has been reached in seeking development
- 26 approval;
- 27 (d) the extent of consultation undertaken in seeking development
- 28 approval.

- 1 (3) To remove any doubt, a commissioner considering whether to give a
2 certificate for a project under subsection (1) (b), (c) or (d) must not
3 consider the merits of the project.

4 **8 Preparing certificates of importance**

- 5 (1) The Minister responsible for economic development and the
6 Minister responsible for planning must jointly prepare a certificate
7 of importance for a project, if satisfied that it is appropriate to do so.
- 8 (2) However, if the Minister responsible for economic development and
9 the Minister responsible for planning are the same person—
- 10 (a) that person and the Chief Minister must jointly prepare the
11 certificate of importance; or
- 12 (b) if that person is the Chief Minister—the Chief Minister and
13 1 other Minister must prepare the certificate of importance.
- 14 (3) A certificate of importance (including the attached commissioner
15 certificates) is a notifiable instrument.

16 *Note 1* A certificate of importance for a project must have the commissioner
17 certificates for the project attached (see s 9 (3)).

18 *Note 2* A notifiable instrument must be notified under the Legislation Act.

19 **9 Content of certificates of importance etc**

- 20 (1) A certificate of importance for a project must contain the following:
- 21 (a) a statement of the reasons for preparing the certificate,
22 including a description of why the originally proposed location
23 for the project is no longer suitable and why the 2nd location is
24 suitable;
- 25 (b) a description of each planning law that is to be modified and
26 how it is to be modified;
- 27 (c) anything else prescribed by regulation.

1 (2) The certificate of importance may contain anything else the
2 Ministers consider necessary.

3 (3) The certificate of importance must have the commissioner
4 certificates for the project attached.

5 **10 Commissioner certificates**

6 (1) This section applies if—

7 (a) a Minister asks a commissioner in writing for a commissioner
8 certificate for a project; and

9 (b) the request includes an outline of the project.

10 (2) The commissioner must—

11 (a) give the Minister a certificate—

12 (i) if the commissioner is a commissioner of the independent
13 competition and regulatory commission—certifying that
14 the project is a project of Territory importance; or

15 (ii) if the commissioner is the commissioner for the
16 environment—certifying that the environmental impact of
17 the project at the 2nd location is not significantly worse
18 than the environmental impact of the project at the
19 originally proposed location; or

20 (iii) if the commissioner is the human rights commissioner—
21 certifying that the impact of the project on human rights
22 at the 2nd location is not significantly worse than the
23 impact of the project on human rights at the originally
24 proposed location; or

25 (b) if not satisfied in relation to a matter required to be included in
26 the commissioner's certificate under paragraph (a)—give the
27 Minister written notice refusing to give a commissioner
28 certificate for the project.

- 1 (3) The commissioner must comply with subsection (2) within 7 days
2 after—
- 3 (a) the day the Minister asks the commissioner for the
4 commissioner certificate; or
- 5 (b) if the commissioner asks for further information that the
6 commissioner reasonably needs to decide whether to give the
7 commissioner certificate for the project—the day the further
8 information is given to the commissioner.
- 9 (4) However, the commissioner need not comply with subsection (2)
10 if—
- 11 (a) the commissioner has asked the Minister in writing for further
12 information that the commissioner reasonably needs to decide
13 whether to give the commissioner certificate for the project;
14 and
- 15 (b) the Minister has not given the commissioner the information.
- 16 (5) A regulation may prescribe what the outline of a project under
17 subsection (1) (b) must or may include.

18 **11 Approval by Legislative Assembly**

- 19 (1) The Legislative Assembly may, by motion carried by at least
20 12 members, approve a certificate of importance notified under the
21 Legislation Act.
- 22 (2) In this section:
- 23 *certificate of importance* includes an amendment of a certificate of
24 importance.

25 **12 Effect of certificates of importance**

- 26 (1) A certificate of importance for a project comes into force on the day
27 after the day the certificate is approved under section 11.

- (2) When the certificate of importance for a project comes into force, it modifies a planning law in relation to the project as stated in the certificate to allow the project to be delivered in a place (the **2nd location**) other than the place (the **originally proposed location**) originally intended.

Example of possible modification

a modification of the *Planning and Development Act 2007* to allow a development application to be made for the project in the 2nd location using appropriate material prepared for a development application for the project in the originally proposed location

Note An example is part of the Act, 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) Without limiting subsection (2), the certificate of importance for a project may modify the operation of a planning law in relation to the project by suspending the law's operation in relation to the project as stated in the certificate.

- (4) However, a modification may allow something done for a project to be delivered at the originally proposed location to be used for a development application for delivering the project at the 2nd location only if, in all the circumstances, it is appropriate for the thing to be used.

Example of when use of something done would be appropriate

an environmental impact statement for delivering a project at the originally proposed location that deals with the waste produced by the completed project, if the location of the project does not affect the waste

Example of when use of something done would not be appropriate

a development application for delivering a project at the originally proposed location that has been referred to the commissioner for the environment, who has given advice under the *Planning and Development Act 2007*, s 149 that the commissioner supports the application, if the 2nd location contains significant Aboriginal heritage places and the originally proposed location does not

1 **13 No right of review**

- 2 (1) This section applies in relation to a project for which a certificate of
3 importance has been given.
- 4 (2) To remove any doubt, a decision to approve an application for
5 development approval for the project or part of the project, or any
6 other decision made in relation to the project, is not a reviewable
7 decision under the *Planning and Development Act 2007*,
8 section 407.

9 **14 Notice of end of project**

- 10 (1) This section applies if a project for which a certificate of importance
11 has been approved under section 11 is delivered in the 2nd location
12 for the project.
- 13 (2) The Minister must, by motion, advise the Legislative Assembly that
14 the project has been delivered.
- 15 (3) The certificate of importance for the project expires on the day the
16 Minister advises the Legislative Assembly under subsection (2).

17 **15 Regulation-making powers**

18 The Executive may make regulations for this Act.

19 *Note* A regulation must be notified, and presented to the Legislative
20 Assembly, under the Legislation Act.

21 **16 Planning and Development Act 2007, section 407,**
22 **definition of *reviewable decision*, new paragraph (b) (iii)**

23 *insert*

- 24 (iii) a decision by the planning and land authority or Minister
25 in relation to development for which a certificate of
26 importance has been approved under the *Projects of*
27 *Territory Importance Act 2008*, section 11 (Approval by
28 Legislative Assembly).

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- Chief Minister
- commissioner for the environment
- human rights commissioner
- independent competition and regulatory commission
- Legislation Act
- Minister (see s 162)
- under.

2nd location, for a project—see section 12.

certificate of importance—see section 6.

commissioner means—

- (a) the commissioner for the environment; or
- (b) the human rights commissioner; or
- (c) a senior commissioner of the independent competition and regulatory commission.

commissioner certificate, for a project, means a certificate given under section 10 (2) (a) for the project.

development approval—see the *Planning and Development Act 2007*, dictionary.

originally proposed location, for a project—see section 12.

planning law means—

- (a) the *Environment Protection Act 1997*; or
- (b) the *Nature Conservation Act 1980*; or

- 1 (c) the *Planning and Development Act 2007*; or
2 (d) a Territory law prescribed by regulation.
3 ***project*** means something that requires, or a part of which requires,
4 development approval.
5 ***project of Territory importance***—see section 5.
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2008.
- 2 **Notification**
Notified under the Legislation Act on 2008.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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