

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

BUILDING (AMENDMENT) ORDINANCE 1987

No. 20, 1987

The Building Ordinance 1972 ("the Principal Ordinance") provides for the regulation of building work and builders in the Territory. The Principal Ordinance provides amongst other things:

- . for the appointment of a Building Controller, Deputy Building Controllers and Building Inspectors to enforce its provisions;
- . that builders are required to be licensed;
- . that building work may only be carried out with a building permit issued by the Building Controller. The permit will only be issued if the Building Controller is satisfied that the building plans comply with the various requirements of the Principal Ordinance, including the requirement that the plans comply with the Building Manual. The permit allows building work in accordance with the plans approved by the Building Controller;
- . for the inspection of buildings by the Building Inspectors. In particular, section 36 requires:
 - (1) the Building Controller to specify in a building permit all of the stages of the building work when the building must be inspected. These stages are set out in the schedule to the Principal Ordinance; and
 - (2) the builder to have the building work inspected when any stage specified in the permit has been reached. The builder is not allowed to proceed with the building until the work has been inspected;
- . that once the building work has been satisfactorily completed, the Building Controller shall issue a Certificate of fitness for occupancy or use (certificate of fitness) under section 53 of the Principal Ordinance. After this certificate has been issued the Building may be used.

The Building (Amendment) Ordinance 1987 ("the amending Ordinance") amends sections 36 and 53 of the Principal Ordinance so that

- . the system of inspection provided for under section 36 is simplified. In particular, the amendments give the Building Controller a discretion as to whether inspections at any

stage should be specified in the building permit. In addition, the amendments remove the requirement that each stage specified in the building permit must be inspected. The effect of these amendments is that the previous system of compulsory checking of each stage of building is replaced by a system of random checking of building work. This should provide for greater efficiency in the use of resources in the administration of the Principal Ordinance and should reduce delays in the inspection of building work.

the provisions for the issue of a certificate of fitness under section 53 are strengthened. The Building Controller is now able to require further work to be done on a building so that it complies with the strict requirements of the Principal Ordinance even when the Building Controller has issued a certificate of fitness because the work substantially complies with building requirements. In addition, the Building Controller is now able to require a statement from a builder who has completed a stage of the building work specified in the building permit or who has applied for a certificate of fitness, that the work has been carried out in compliance with the requirements of the building permit.

The amending Ordinance also updates a reference to a Commonwealth Department and makes a number of consequential amendments.

Details of the amending Ordinance are set out in the attachment.

BUILDING (AMENDMENT) ORDINANCE 1987

EXPLANATION OF SECTIONS

Sections 1 and 2 deal with citation and interpretation.

Section 3 amends section 6(3) of the Principal Ordinance by omitting the reference to the Department of Works and replacing it with a reference to the Department of Housing and Construction. This is required as a result of the change in the name of that Department. The effect of the amendment is to provide that the Principal Ordinance does not apply to building work done by the Department of Housing and Construction.

Section 4 amends section 36 of the existing Ordinance to:

- . substitute a new sub-section 36(1). The effect of the amendment is to remove the requirement for the Building Controller to specify in the permit each of the relevant inspection stages set out in the schedule to the Principal Ordinance. Instead, the Building Controller is given a discretion to specify in the permit each stage of the building work when the holder of the building permit must notify the Building Controller under new sub-section 36(5). Accordingly, the Building Controller may, in the exercise of his or her discretion, grant a building permit which does not specify any stages of inspection (eg. if the application for a building permit is made after the work has been completed).
- . delete sub-section 36(2), which allows the Building Controller to specify that more than one stage of building work may be inspected at one time. The provision is no longer required because the Building Controller is not required to specify any stage as requiring inspection and is therefore not required to arrange for the inspection of any one stage.
- . delete from sub-section 36(3) a proviso that the section applies "notwithstanding the specification of stages for inspection under this section". This is consequential upon the removal of compulsory inspection stages.
- . delete sub-sections 36(5) to (9) (inclusive) and insert new sub-sections 36(5) and (6).

New sub-section 36(5) provides that the holder of a building permit is not to proceed beyond the stage in the building work specified in the permit unless the builder has given the Building Controller an opportunity to inspect the work in either of the following manners:

- (1) the builder may give the Building Controller notice that the stage has been reached. The Builder may proceed beyond that specified stage 2 working days (i.e. a day other than a Saturday, Sunday or public holiday - see new sub-section 36(6)) after the notice has been given;
- (2) the builder may give the Building Controller notice that the builder expects a stage specified in the permit to be reached some time between 2 and 4 working days after the notice is given. The builder may proceed beyond that specified stage if the stage is reached during that time.

In either case, if the building work is inspected and found to be inadequate (i.e. it does not comply with the conditions of the building permit as set out in section 40 of the Principal Ordinance) the Building Controller may require the builder to rectify the deficiency under section 46 of the Principal Ordinance.

Previously, the builder was required to give notice once the stage was reached and could not proceed until the work had been inspected or a period of 4 days had passed.

Section 5 inserts into section 40 of the Principal Ordinance a new paragraph 40(ea). The effect of the amendment is to provide that a building permit is issued upon the condition that the builder notifies the Building Controller under new sub-section 36(5) when each stage of the building work specified in the permit has been completed or is expected to be completed.

Section 6 deletes sub-section 44(2) of the Principal Ordinance. The deletion is a necessary consequence of revised section 53(4) (see below section 8). The effect of the amendment is to allow the Building Controller to require work to be done to make the building strictly comply with building standards after a notice has been issued to stop work on that building. Previously, under sub-section 44(2) the Building Controller can only require work to be done to make the building structurally sufficient, safe and stable for its purpose.

Section 7 amends section 46 of the Principal Ordinance by replacing a reference to sub-section 36(6) by a reference to sub-section 36(5). This amendment is consequential on the amendments to section 36 of the Ordinance: see section 4 above. The effect of the amendment is to allow the Building Controller to issue a notice to carry out building work if new sub-section 36(5) is breached (i.e. if the builder does not notify the Building Controller that a stage of the building work specified in the building permit has been completed).

Section 8 amends section 53 of the Principal Ordinance to:

- . allow the Building Controller to issue a certificate of fitness when completed building work is not strictly in accordance with the prescribed requirements but is substantially in accordance with those requirements. The effect of the amendment is to prevent the Building Controller from giving his or her approval to building work which is not substantially (at least) in accordance with prescribed requirements.
- . alter sub-section 53(3) by omitting the proviso that the section is subject to the next 2 succeeding sub-sections. This amendment is a necessary consequence of the replacement of the next succeeding sub-section and the insertion of an additional sub-section by this section - see below. It is not intended that this amendment will have the effect of enabling the Building Controller to issue a certificate under sub-section 53(3) regardless of the remaining provisions of section 53. Rather this power should be construed as being subject to the other provisions of the Ordinance in accordance with the usual principles of interpretation.
- . delete sub-section 53(4) and insert new sub-sections 53(4) and (4A).

New sub-section 53(4) provides that

- (i) when building work is substantially, but not strictly, in accordance with the prescribed requirements for the building work; and
- (ii) the Building Controller has issued a certificate of fitness pursuant to sub-section 53(3) for that work, the Building Controller may give the applicant for the certificate for fitness written notice requiring the applicant to carry out certain work necessary to ensure that the building strictly complies with the any prescribed requirement for building works. The notice must specify the work which needs to be done and a time for the completion of that work.

New sub-section 53(4A) makes it an offence for a person to fail to comply with a requirement of a notice under sub-section 53(4). A maximum penalty of \$400 is provided. The section also provides for a continuing offence for each day after the first on which the person fails to comply. A maximum penalty of \$50 for each day is provided.

insert into sub-section (9) a new paragraph which provides that a certificate by either:

- (i) a registered architect; or
- (ii) a licensed builder whose class of licence authorises him or her to carry out the relevant building work,

which certifies that the building work complies with the conditions of the building permit issued for that work - is evidence of that fact for the purposes of the section.

amend sub-sections 53(10) and (11) to expressly provide that applications for building certificates under those provisions should be made by the person who owns the land which has been built on.

Section 9 inserts new sections 53A, 53B and 53C into the Principal Ordinance.

New sub-section 53A enables the Building Controller to require:

- (a) a builder notifying the Building Controller that a stage in the construction of a building is complete, under section 36(5); or
- (b) an applicant for a certificate of fitness under section 53,

to make a statement about whether all of the building permit conditions have been complied with. If all of these conditions have not been complied with the statement should set out the extent of the failure to comply.

Section 53B requires the Building Controller to give a statement of reasons to the owner of a parcel of land if the Building Controller refuses to issue a certificate of fitness under section 53 for building work on that land. The statement of reasons must include a notification of the owner's right of appeal against the decision to the Administrative Appeals Tribunals - see section 53C below.

Section 53C provides for a right of appeal to the Administrative Appeals Tribunal against a decision of the Building Controller refusing to issue a certificate of fitness under section 53 of the Ordinance.