

Delivery of Greenfields Land Supply

Minister for the Environment and Sustainable Development, Simon Corbell MLA

Minister for Economic Development, Andrew Barr MLA

Received by Cab Sec	[Date/ Time]
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Key Issue:

Measures to improve the rate of greenfields land releases.

Recommendations:

- We recommend the Committee **NOTE:**
 - that a Cabinet Submission on the delivery of Gungahlin dwelling sites is being progressed by the Economic Development Directorate (EDD);
 - the adoption of a Memorandum of Understanding (MOU) between EDD and the Environment and Sustainable Development Directorate (ESDD) to streamline delivery of planning, environmental approvals and development.
- We further recommend that the Committee **AGREE:**
 - that a Cabinet Submission be brought forward on appropriate statutory and practice changes that can be made in relevant legislation to facilitate streamlined delivery of the Government’s land release objectives.

Discussion Points:

- Land release targets and revenue for 2011-2012 are significantly down from original estimates, however the mid-year review anticipates returns are expected to be maintained over the four-year budget cycle.
- Achieving anticipated returns over the period to 2015 requires delivery of 7,295 dwelling sites for 2012-13. This is an extremely ambitious target, far higher than any previous single-year’s delivery (the highest being 5048 sites in 2010-2011).
- The land release process (mapped at **Attachment A**), as in most other jurisdictions, is necessarily undertaken over a number of years to ensure robust and transparent planning designs to deliver a range of Government objectives (eg sustainability, affordability) as well as obtaining the necessary environmental approvals. Such approvals are administered through the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (where relevant) and the ACT Government’s own *Planning and Development Act 2007*.
- A review of the current land release program and processes has identified a number of measures that can be implemented to support delivery over the forward years.
- The proposed measures go to key matters such as:
 - providing clarity on the roles, responsibilities and deliverables of the key Directorates;

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- achieving an agreed coordinated approach to gaining environmental clearances at both ACT and Commonwealth level; and
- streamlining and rationalising Territory Plan processes to the minimum set necessary to ensure statutory compliance and delivery of Government commitments.

Future Action

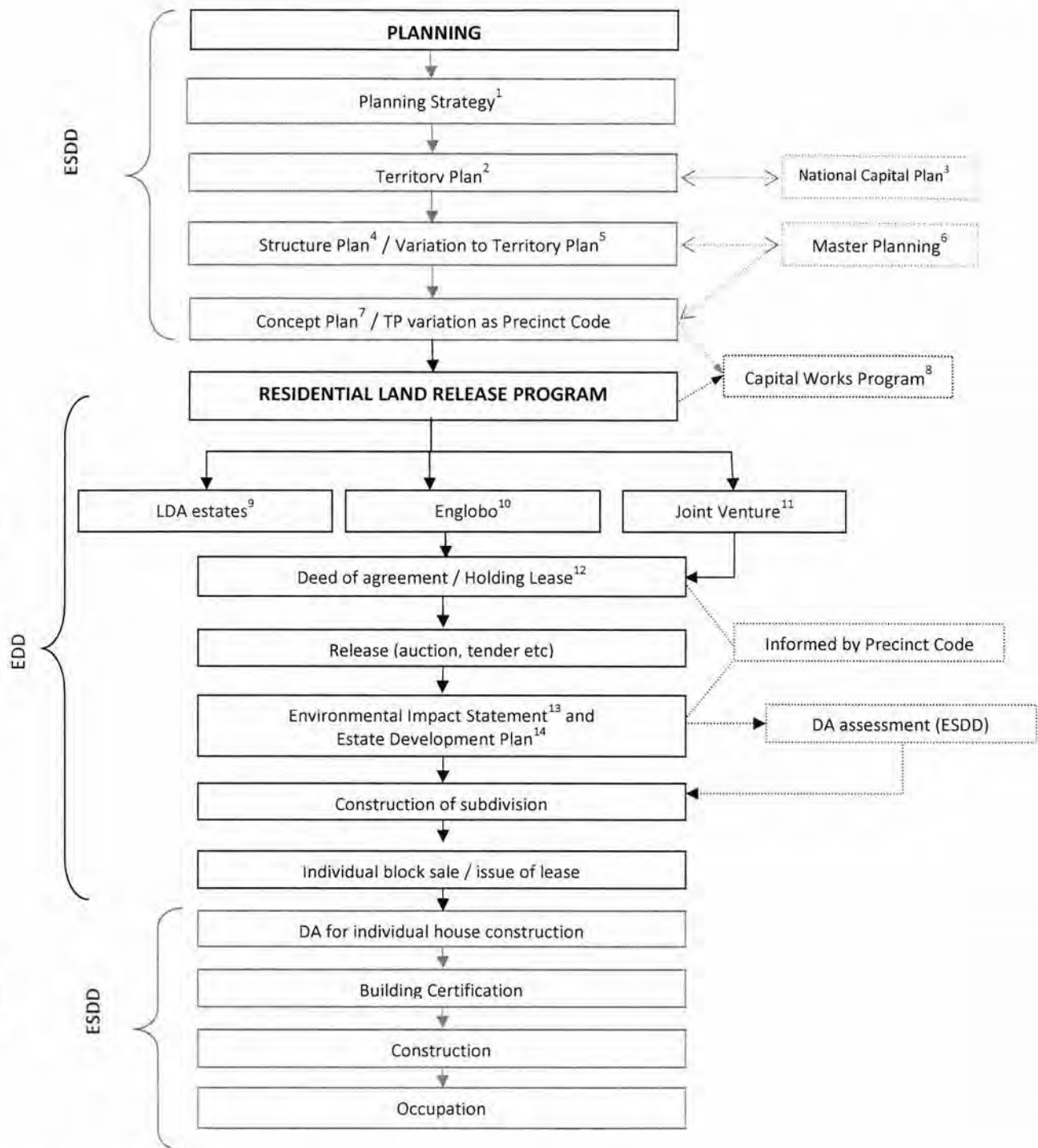
- Short term measures (**Attachment B**) will work towards delivering land currently in the pipeline, particularly in Molonglo Stage 2 and Gungahlin. A number of these measures will also support identified, longer term actions to deliver the land supply program to 2015 and beyond.
- Longer term measures have also been identified (**Attachment C**) to address more systemic issues that have impacted on the delivery of land targets.
- A separate paper has been prepared for the Urban Development Committee (11/499) relating to a Memorandum of Understanding (MOU) between the Environment and Sustainable Development Directorate (ESDD) and the Economic Development Directorate (EDD) to clarify responsibilities across the range of activities common to both Directorates.
- Actions identified to progress land release in Gungahlin included in **Attachment B** will be the subject of a separate Cabinet Submission for decision.
- A separate Cabinet Submission on the progress of the delivery of Molonglo is under preparation.

Minister Corbell _____ Date ___/___/___

Minister Barr  _____ Date 22 / 2 / 12

EXISTING LAND SUPPLY PROCESS

ATTACHMENT A



- 1 The Planning Strategy is a statutory document that sets out long term planning policy and goals.
- 2 The Territory Plan is a statutory instrument that provides the policy framework administering planning in the ACT consistent with strategic directions set by the Government. It must not be inconsistent with the National Capital Plan.
- 3 The National Capital Plan is the strategic plan for Canberra and the ACT, prepared by the National Capital Authority under s.10 of the Commonwealth *Australian Capital Territory (Planning and Land Management) Act 1988*. It sets out the planning principles, policies and detailed conditions of planning, design and development for designated areas of particular importance.
- 4 A Structure Plan is a statutory planning document (approved by Cabinet) that sets out principles and policies for development of identified future urban areas. It establishes broad land use boundaries and zones, trunk infrastructure requirements and identifies broad planning issues relevant to future development.
- 5 Variations to the Territory Plan are statutory processes that occur to amend policy and/or technical elements of the Plan.
- 6 Master planning is a process that develops desirable land uses, based on analyses of matters such as land capability, population growth, ecological and heritage conditions, economic impacts, transport capabilities, water supply and the like.
- 7 A Concept Plan is a (non-mandatory) document that gives statutory effect to master planning outcomes.
- 8 The infrastructure outcomes of future urban area planning (as agreed by Cabinet in Structure and Concept Plans) is incorporated into capital works delivery by EDD.
- 9 – 11. The Land Development Agency as development proponent determines how new suburbs will be delivered; wholly by Government (LDA), as an englobo development by a private developer or as a joint venture between the LDA and a private developer.
- 12 The mode of delivery determines whether a holding lease (for government developments) or deed of agreement (private developments) is prepared however the purpose of both documents is to establish key requirements for the development of the land to meet Government's agreed outcomes for the land.
- 13 Development proponents are responsible for the gaining of environmental approvals under ACT and Commonwealth legislation. Generally, an EIS (or other necessary approval) will be gained while planning of the estate is being undertaken. Environmental approvals are required before DAs for estate construction can be lodged.
- 14 An Estate Development Plan details how the suburb will be subdivided and constructed (roads, block boundaries, open space, transport etc) and is assessed as a Development Application.

Short term measures

The identified measures that can be taken in the shorter term cover both actions that will more immediately support delivery of land currently in the pipeline, while others provide groundwork for the longer term measures identified in Attachment C.

- **A Memorandum of Understanding (MOU) between ESDD AND EDD.**

An agreed MOU by the Directors-General of the Environment and Sustainable Development (ESDD) and Economic Development (EDD) Directorates will unequivocally clarify the respective roles and responsibilities in relation to land planning, environmental approvals and development. In clarifying those responsibilities, the MOU will not only reduce duplication and transaction times, it will signal a shift to a 'proponent/regulator' approach (common in other jurisdictions) where the strategic or structural planning activities are undertaken by the planning authority and more specific site planning is the role of those who develop land.

The MOU will also cover other areas of interaction between the Directorates.

- **Bring infrastructure planning and design together with capital works delivery for land releases.**

Infrastructure planning and design for land release is currently carried out by ESDD on behalf of EDD, a matrix approach to management of a key input to site planning that splits responsibilities and reporting and can result in duplication of effort and increased transaction times. Consistent with the approach being taken in the MOU, an appropriate transfer of engineering planning and design functions, responsibilities and resources from ESDD to EDD is expected to overcome those issues and bring efficiencies and focussed responsibility for site planning.

- **Improve governance and decision-making for land release**

To further support the operation of the MOU, the existing Land Supply Committee governance structure should become the principal arrangement for land release processes and project decision-making, with its role and processes documented and clearly understood by all participating Directorates and agencies.

- **Finalise planning for Molonglo Stage 2**

ESDD will finalise the Planning and Design Framework for Molonglo Stage 2 by the end of March 2012 for transfer to EDD for implementation, subject to consideration by Cabinet. Planning work currently underway for the Molonglo Group Centre will be finalised by the end of June 2012, with its uplift to the Territory Plan through the technical amendment process shortly thereafter.

EDD will ensure timely implementation of the Matters of National Environmental Significance (NES) Plan agreed by the Commonwealth for all land development works.

EDD, with the assistance of ESDD, will ensure necessary EIS documentation for trunk infrastructure is lodged with ESDD as soon as possible. The design and approval of this infrastructure is required before future land releases in Molonglo can take place.

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- **Review legal options for accelerating delivery of Gungahlin suburbs**

Legal advice has been sought from the Government Solicitor in relation to the transition provisions for approvals issued under the Commonwealth environmental legislation that was superseded by the *Environment Protection Biodiversity and Conservation Act, 1999* (EPBC Act). The former National Capital Development Commission submitted, and had approved, an EIS by the relevant Commonwealth environment agency in January 1989.

Preliminary legal advice indicates that actions likely to permit, cause, promote or facilitate the activities described in the EIS approved under the earlier Commonwealth legislation may not require further assessment under the EPBC Act. Where this is confirmed, it may facilitate environmental approvals being sought under ACT legislation only.

Where this advice is not feasible, EDD proposes to continue with timely separate EPBC Act referrals for Kenny and Throsby and a combined referral for Jacka, Taylor and Kinleyside, as previously agreed by the Urban Development Committee of Cabinet. An option exists for a single, Strategic Assessment of the various referrals under the EPBC Act that would be pursued should the ACT Government prefer this approach.

A separate Cabinet Submission will detail these options and seek Government agreement to the 'Gungahlin Avoid Mitigate Offset Report' that proposes a biodiversity conservation strategy for the remaining areas of Gungahlin to meet requirements under the EPBC Act.

- **Streamline environmental approval processes with the Commonwealth.**

Existing bilateral arrangements with the Commonwealth in relation to EIS assessments and approvals effectively allow the Commonwealth to rely on ACT Government processes to satisfy their requirements under the EPBC Act. Additional environmental assessment and approval mechanisms such as Strategic Assessments exist in both ACT and Commonwealth legislation and are designed to operate at a higher, program level (such as new land release areas) to facilitate broader-scale environmental management, with a commensurate level of detail and assessment being provided.

Renegotiating the bilateral agreement to include strategic assessments and other relevant approval mechanisms under the *Planning and Development Act 2007* (PD Act) to operate in a similar way, would offer more streamlined environmental approval options for land release programs.

On the best available information at this time, it is estimated that the use of such commonly agreed mechanisms has the potential to save approximately 12 months in the assessment process (effectively the equivalent of time taken to develop and assess an EIS). Agreeing through these negotiations a mechanism to support concurrent consideration of development applications and EISs could potentially provide a further time saving of three months.

These agreed outcomes could also legitimately support use of Environmental Significance Opinions and EIS exemptions under the PD Act. Work will be undertaken to develop appropriate consideration criteria to support such decision making, with those criteria being incorporated in regulation.

- **Commence investigation and planning for land releases beyond 2015**

ESDD will commence early investigation work for those areas currently identified as future urban areas in the Spatial and Territory Plans, to support sufficient forward planning for their release.

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- **Providing clarity in Directorate and other agency development assessment requirements**

TAMSD is currently reviewing its 'hard' infrastructure standards and ongoing support for this activity should be provided. Part of this work is to identify potential time and cost savings that can be achieved from the implementation of national, rather than ACT specific, standards.

A number of other Government bodies have input to, and assessment responsibilities for, estate development. Government bodies with responsibilities in heritage, tree management, emergency services and the like, will document their assessment considerations and processes to provide greater clarity for estate development proponents. Greater clarity in requirements for proponents of estate construction plans will enable more streamlined satisfaction of government requirements and smoother approval processes.

- **Revise land release planning structures and processes.**

This review would seek to remove duplication from existing planning processes by clarifying the Structure Planning process and deliverables with a view to removing the Concept Planning process. A Structure Plan would, in effect, be redefined to include only those critical elements such as zonings, trunk infrastructure requirements and some mandatory land uses (such as schools, recreation facilities and the like) that ensure delivery of the Government's broader outcomes. Land release proposals could therefore move more quickly to estate development planning and approval. While elements of the Concept Plan would still need to be carried out as part of the site design process, the removal of statutory processes to uplift Concept Plans into the Territory Plan could remove up to six months from the land release process.

This process would also include a review of the operation of existing Codes that aim to deliver the Government's broader urban policy outcomes. Where land release is currently subject to the development of suburb specific codes, consistent quality outcomes can be delivered in land release through the use of more generic codes that address subdivision design, water and energy efficiency and the like.

While this process could commence in the shorter term, its beneficial effects are most likely to be seen in the medium to longer term

Longer term measures

The measures identified here are of a more complex nature, requiring either legislative intervention or larger-scale change to processes and operations, including across Directorates.

- **Using strategic environmental assessment processes.**

Strategic Environmental Assessment (SEA) processes exist in both ACT and Commonwealth legislation and operate at a higher, program level (such as land release) to facilitate broader-scale environmental management of land development. Successful negotiation of bilateral arrangements with the Commonwealth would provide scope for these processes to be used to deliver future land releases, the benefits of which include clearer and earlier identification of environmental issues; city-wide clarity on land offsets and development boundaries; a refinement of EIS triggers; and removing the need for multiple environmental processes.

- **Amendments to the *Planning and Development Act 2007* to facilitate simpler delivery.**

A number of existing mandated processes can impact on the timely delivery of land planning and release. Appropriate consideration will be given to the following amendments to the Act:

- Allowing concurrent lodgement and assessment of Development Applications and Environmental Impact Statements. Based on currently available information, it is estimated this could save up to three months from the current process. It could be pursued in the shorter term if agreed;
- Preserving environmental approvals for a five year period, provided specified ecological criteria can be met (this may require amendments to the *Nature Conservation Act*). This could support time savings by not having to repeat underlying studies that can take as much as 12 months to produce;
- Providing simpler mechanisms to uplift planning outcomes into the Territory Plan in cases where public consultation has already been undertaken and the plan and supporting studies have been tabled in the Assembly. Territory Plan variations can currently take up to 18 months and can require processes to be repeated; simpler processes for adopting already agreed outcomes could provide substantial time savings ; and
- The removal of third party appeal provisions for impact assessments (such as Estate Development Plans and trunk infrastructure), where public consultation has already been undertaken through planning and environmental studies. This could be pursued in the shorter term if agreed.

- **Exempting greenfields development from planning legislation and creating a statutory role for the Co-ordinator General.**

More broadly, consideration could be given to defining the role and responsibilities of the Co-ordinator General, including whether that role should be incorporated into relevant legislation. Cabinet should be given the opportunity to consider critical project legislation for projects identified as critical to achieving the Government's objectives for the Territory (that could cover greenfields development where it would contribute to meeting Government social, environmental and economic objectives).

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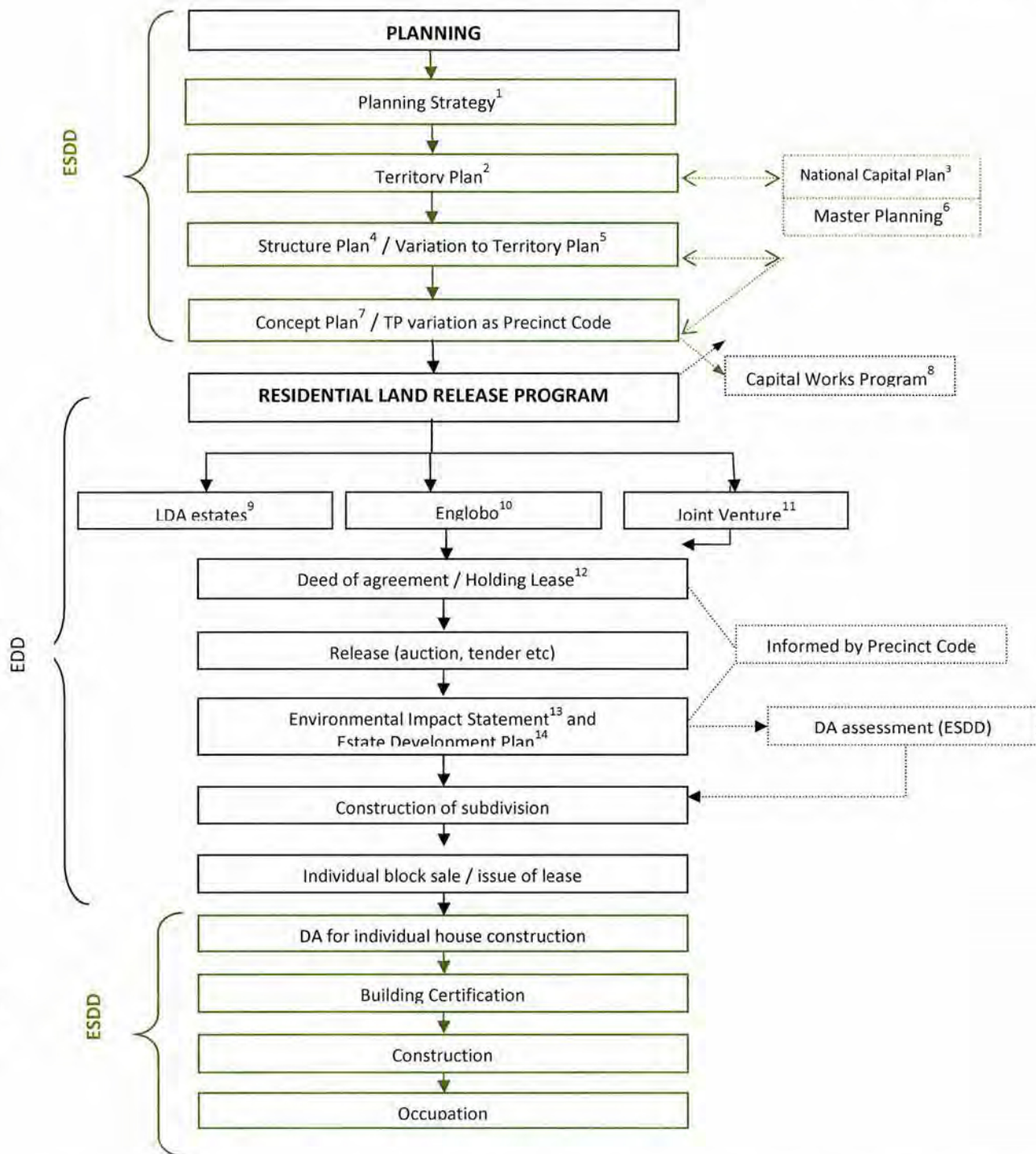
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Minister Corbell's signature  Date 22/2/10

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- **Amendments to the *Planning and Development Act, 2007* to facilitate simpler delivery.**

A number of existing mandated processes can impact on the timely delivery of land planning and release. Appropriate consideration will be given to the following amendments to the Act:

- Allowing concurrent lodgement and assessment of Development Applications and Environmental Impact Statements. Based on currently available information, it is estimated this could save up to three months from the current process. It could be pursued in the shorter term if agreed;
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More broadly, consideration could be given to defining the role and responsibilities of the Co-ordinator General, including whether that role should be incorporated into relevant legislation. Cabinet should be given the opportunity to consider critical project legislation for projects identified as critical to achieving the Government's objectives for the Territory (that could cover Greenfields development where it would contribute to meeting Government social, environmental and economic objectives).