

# Development Assessment (Processes and Consultation)

- Overview
- DA processes
- Consultation
- Challenges



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# Overview

- ACT Planning system comprises three assessment tracks for development assessment:
  - Impact Track
  - Merit Track
  - Code Track
- Certain developments exempt from the requirement for a DA
- All DA's are assessed against the relevant provisions of the Planning and Development Act 2007 and the relevant Planning Codes within the Territory Plan.
- Code provisions aim to provide a degree of balance between certainty (Rules) and flexibility (Criteria)
- Important to discern between DA and BA processes

# DA Assessment Tracks

- The Territory Plan, the *Planning and Development Act* and *Planning and Development Regulation* together establish what type of development is:
  - EXEMPT from the need for development approval,
  - ASSESSABLE development, or
  - PROHIBITED development
- For ASSESSABLE development, the Territory Plan furthermore establishes whether a particular type of development is to be assessed in the:
  - CODE Track,
  - MERIT Track,
  - IMPACT Track,as well as the relevant Code within the Territory Plan that is to be used to assess a DA for that type of development.

# DA Process: Lodgement and key steps

- Pre-lodgement processes:
  - Pre-lodgement Community Consultation
  - Pre-app advice – Gateway team  
(optional and commercial-in-confidence)
  - EIS exemption for some applications in the Impact Track
- Key steps in DA process:
  - Lodgement (e-development only)
  - Public Notification and Entity Referrals
  - Assessment (including MPRG referral)
  - Determination (approval, conditional approval, refusal)
  - Endorsement of plans (s165)



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# DA Process: Decision Making

- Development Approval can be given only if the proposal is consistent with the:
  - Territory Plan
  - *Planning and Development Act 2007*
  - *Planning and Development Regulation 2008*
  - Crown lease
- The Territory Plan and the Planning and Development Act and Regulation establish the statutory environment for the assessment and determination of DAs
- Section 120 of the *Planning and Development Act 2007* contains matters to be considered by planning and land authority when making a decision.
- Decisions must not be inconsistent with the Territory Plan.



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# DA Process: Decision Making (cont.)

- Assessment and analysis of the DA is undertaken by an assessment officer. The officer may also be the delegate, or may refer the decision to an appropriate delegate.
- Internal work instruction establishes the level of decision-making that may be exercised by officers based on the level of seniority, and also when advice needs to be sought from a higher level panel (e.g. MPRG or Decision Assurance Panel).
- Ensure that decision-making occurs at a level of seniority appropriate to the type of decision being made.
- Peer review process and established conflict of interest protocol
- Statutory timeframes for decision: 30 / 45 working days

# DA Process: Post-DA Processes

- Corrections (s196)
- Amendments (s197)
- Reconsideration applications (s193)
- 1<sup>st</sup> and 3<sup>rd</sup> party appeals (ACAT)
  - Merit-based review of decision
  - Some decisions excluded from 3<sup>rd</sup> party appeal
  - Mediation and/or Hearing
  - 120 days for Tribunal to make a new decision
- Administrative review / ADJR (Supreme Court)
  - Judicial review of process and points-of-law
  - Unlimited timeframe



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# DA Process: Ministerial call-in

- s158 – 161 Ministerial call-in powers
- May exercise call-in powers if in the Minister's opinion:
  - application raises a major policy issue
  - development that have a substantial effect on the achievement of the object of the TP
  - approval or refusal will provide substantial public benefit
- Minister direct ACPLA in writing (s158)
- Normal referral and notification process
- Within 3 sitting days after decision, Minister must present a statement to the Legislative Assembly.
- Minister's decision is not subject to 3<sup>rd</sup> party appeal



# Consultation

- Two possible consultation processes:
  - Pre-lodgement community consultation
  - Statutory notification of DA
- Pre-lodgement community consultation primarily intended to provide proponent an opportunity to **engage** with community to identify and resolve key issues prior to lodgement of DA
- Statutory notification is structured to provide:
  - an opportunity for affected parties to formally voice their concerns about a development proposal,
  - the planning and land authority an opportunity to identify and consider representations made about a development proposal.

# Consultation (Pre-lodgement)

- Pre-lodgement consultation currently limited to:
  - a building for residential use with 3 or more storeys and 15 or more dwellings;
  - a building with a gross floor area of more than 5000m<sup>2</sup>;
  - a building or structure more than 25m above finished ground level;
  - a variation of a lease to remove its concessional status.
- Currently no statutory guidelines for pre-lodgement community consultation – form to be completed to report on manner of consultation e.g. letter box drop, community council presentation, public exhibitions etc.
- Proponent required submit form or supporting report to demonstrate that pre-lodgement community consultation has occurred.



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# Consultation (Statutory Notification)

- Statutory public notification (in the Merit Track) comprise of:
  - Minor Notification(s153), or
  - Major Notification (s155)
- Minor notification:
  - letters sent to adjoining neighbours
  - 10 working days to make a representation
- Major notification:
  - a sign is placed at the property (contractor)
  - a notice is placed on the EPD website
  - letters are sent to adjoining neighbours
  - 15 working days in which to make a representation
  - DA finder app

# Consultation (Statutory Notification)

- All representations received in time are considered
- Representations received out of time not considered, but extenuating circumstances sometimes considered
- A representation is a summary of a concerns, issues, or possible impacts identified by the person making the representation
- A representation does not require an assessment of the DA
- Representations extend the timeframe for the decision to commence with 28 days – if there are third party appeal rights. (Positive representations also extends timeframe.)
- Representations generally available on public register and provided to proponent to respond to.



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# Consultation (Statutory Notification)

- Suppression of representation (or a part thereof) in certain circumstances, e.g. safety, damage, or trade secrets (s411)
- Key issues identified through representations are normally responded to in the Notice of Decision.
- If a decision is appealed in the ACAT, a party that made a representation would normally be entitled to join proceedings
- Amendment applications – discretionary notification (substantially-the-same and additional impacts)
- Reconsideration applications only notified to those persons that has made representations on the initial DA
- Certain circumstances for re-notification or extended notification



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# DA Assessment Challenges

- Perceived agreements or expectations from pre-DA processes and meetings.
- Maintaining an independent role:
  - Community thinking that EPD is on the side of the developers.
  - Developers thinking that EPD is on the side of the community.
- Application of entity advice or conflicting entity advice.
- Maintaining a consistent approach to the assessment process
- Continuous improvement - audit and peer review
- Workload and statutory timeframes:
  - 1100+ DAs in Merit Track
  - 700+ Exempt declarations



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# Plot Ratio

- **What is plot ratio?**
  - Plot ratio used to control bulk and scale of development. (Other controls e.g. setbacks, open space, height etc . also assist controlling bulk and scale.)
- **Where is plot ratio applied?**
  - precinct and development codes of the Territory Plan
  - does not apply to residential blocks under 500m<sup>2</sup> (i.e. midsize and compact blocks)
  - can apply in other zones, e.g. commercial zones use plot ratio to constrain the overall footprint of the development
- **What is not included in plot ratio?**
  - not all parts of a building e.g. balconies, basement car park, unroofed structures
  - Development exempt from the requirement for a DA (Schedule 1 of the *Planning and Development Regulation 2008* )

# Plot Ratio (Territory Plan Definitions)

- **Plot ratio:**

*...the gross floor area in a building divided by the area of the site.*

- **Gross Floor Area (GFA)** *means the sum of the area of all floors of the building measured from the external faces of the exterior walls, or from the centre lines of walls separating the building from any other building, excluding any area used solely for rooftop fixed mechanical plant and/or basement car parking.*
- Note : If residential proposal does not include a garage or carport, 18m<sup>2</sup> (the size of an average single garage) is included in the calculation of GFA.
- **Building** includes:
  - *an addition to a building;*
  - *a structure attached to a building; and*
  - *a part of a building.*
- **Site** *means a block, lease or other lawful occupation of land, or adjoining blocks, leases or lawful occupancies in the event of these being used for a single undertaking or operation, but excludes the area of any access driveway or right-of-way*



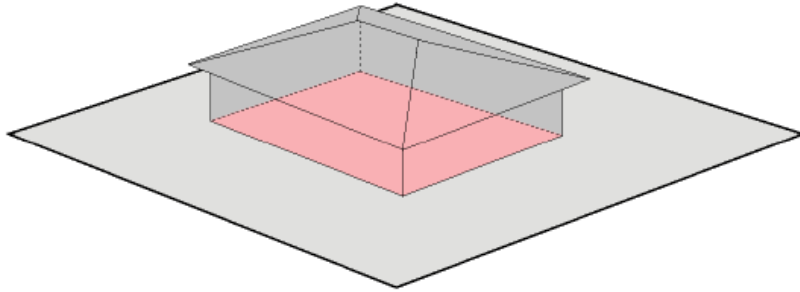
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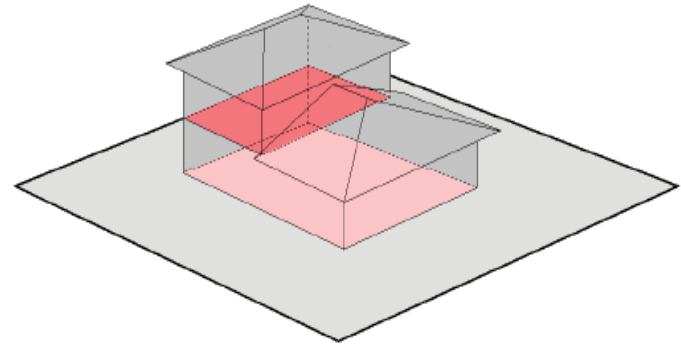




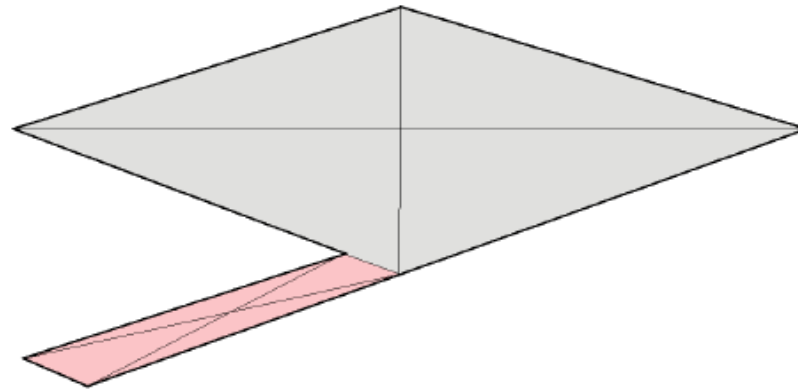
# Plot Ratio (examples)



*A single dwelling on a block – red: gross floor area*



*A double storey single dwelling – Red: gross floor area (i.e. sum of all floors)*



*A battleaxe block – red: not considered part of the site for purposes of plot ratio*

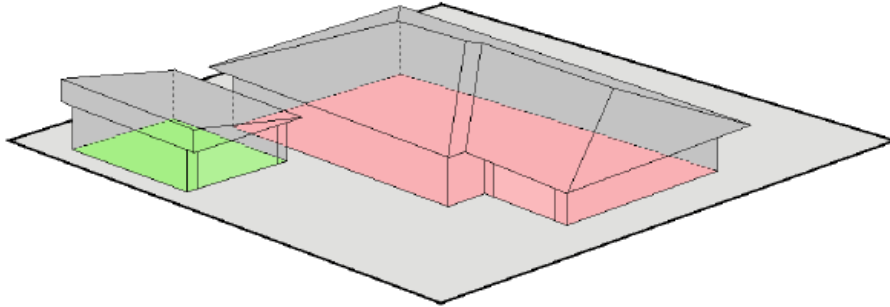


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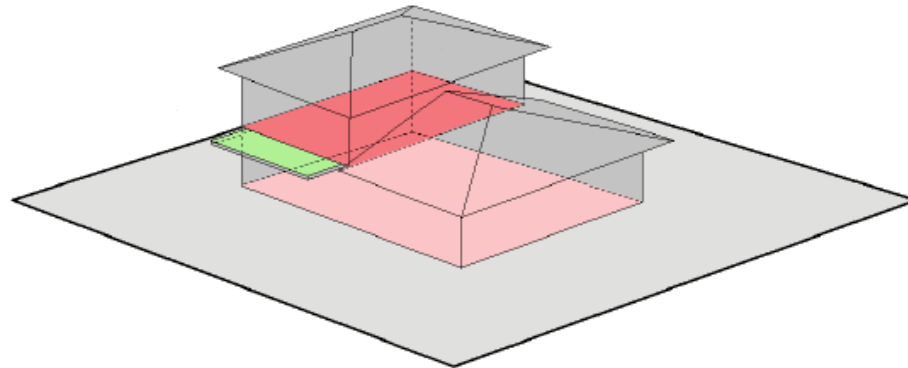
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# Plot Ratio (examples)



*A pre-existing single dwelling may add a exempt development (green) approval which exceeds plot ratio as long as it meets the prescribed criteria of Schedule 1 of the Planning and Development Regulation 2008.*



*A double storey single dwelling. Red – gross floor area, green – balconies do not contribute to gross floor area*



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# Thank you and any questions?

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