

AUSTRALIAN CAPITAL TERRITORY

Interim Territory Planning Ordinance 1988

No. 88 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 15 December 1988

N. M. STEPHEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to establish an Interim Territory Planning Authority and for related purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Interim Territory Planning Ordinance 1988*.¹

Commencement

2. (1) Sections 1 and 2 commence on the date on which this Ordinance is notified in the *Gazette*.

(2) The remaining provisions of this Ordinance commence on a date to be fixed by the Minister by notice in the *Gazette*.

(Ord. 89 /88)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Interpretation

3. (1) In this Ordinance, unless the contrary intention appears—

“Chief Territory Planner” means the Chief Territory Planner appointed under section 8;

“Interim Authority” means the Interim Territory Planning Authority established by this Ordinance;

“public servant” means—

- (a) before Self-Government Day—a person who is an officer or employee within the meaning of the *Public Service Act 1922*; and
- (b) on and after Self-Government Day—a public servant within the meaning of the Self-Government Act.

(2) Expressions used in this Ordinance that are defined in section 4 of the *Australian Capital Territory (Planning and Land Management) Act 1988* have in this Ordinance the same respective meanings as they have in that Act.

(3) On and after Self-Government Day, a reference to the Minister shall be read as a reference to the member of the Executive for the time being administering this Ordinance.

PART II—ESTABLISHMENT, POWERS AND CONSTITUTION OF INTERIM AUTHORITY

Establishment of Interim Authority

4. There is established by this Ordinance an authority by the name of the Interim Territory Planning Authority.

Ministerial directions

5. (1) The Minister may give the Interim Authority general directions in writing as to the performance of its functions.

(2) Particulars of any directions given in a financial year shall be included in the annual report of the Interim Authority for that year.

Powers of Interim Authority

6. The Interim Authority has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its

functions under the *Australian Capital Territory (Planning and Land Management) Act 1988*.

Constitution of Interim Authority

7. The Interim Authority shall be constituted by a Chief Territory Planner.

Chief Territory Planner

8. (1) The Minister shall, by instrument, appoint a person to be Chief Territory Planner.

(2) The Chief Territory Planner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(3) The Chief Territory Planner holds office on such terms and conditions (in respect of matters not provided for by this Ordinance) as are determined by the Minister in writing.

(4) A person who has attained the age of 65 years shall not be appointed to be Chief Territory Planner and a person shall not be appointed to be Chief Territory Planner for a period that extends beyond the date on which the person will attain the age of 65 years.

(5) An appointment shall not be made under subsection (1) until on or after Self-Government Day.

Acting Chief Territory Planner

9. (1) The Minister may, by instrument, appoint a person who is a public servant to act as Chief Territory Planner—

- (a) during a vacancy in the office of Chief Territory Planner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chief Territory Planner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as Chief Territory Planner is not invalid because—

- (a) the occasion for the person's appointment had not arisen;

- (b) there is a defect or irregularity in or in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

(3) A public servant who is acting as Chief Territory Planner shall continue to be paid the remuneration and allowances payable to him or her as a public servant, but shall also be paid—

- (a) so much of any remuneration payable to the Chief Territory Planner as exceeds the remuneration that so continues to be paid;
- (b) so much of any allowance payable to the Chief Territory Planner as exceeds the corresponding allowance that so continues to be paid; and
- (c) if an allowance is payable to the Chief Territory Planner in respect of which there is no corresponding allowance payable to the public servant—that allowance.

Remuneration and allowances

10. (1) The Chief Territory Planner shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Chief Territory Planner; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Chief Territory Planner.

(3) In subsection (2), “determination” means a determination of the Remuneration Tribunal.

Leave of absence

11. (1) The Minister may grant leave of absence to the Chief Territory Planner on such terms and conditions as to remuneration or otherwise as the Minister determines.

(2) For the purposes of subsection (1)—

- (a) a grant of leave of absence; and
- (b) the determination of the terms and conditions of that grant;

shall be in writing.

Resignation

12. The Chief Territory Planner may resign office by writing signed by him or her and delivered to the Minister.

Disclosure of interests

13. The Chief Territory Planner shall give written notice to the Minister of all direct or indirect pecuniary interests that the Chief Territory Planner has or acquires in a matter being considered, or about to be considered, by the Interim Authority.

Termination of appointment

14. (1) The Minister may terminate the appointment of the Chief Territory Planner for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Territory Planner if he or she—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 13;
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (d) engages in paid employment outside the duties of his or her office without the approval of the Minister.

Delegations

15. The Chief Territory Planner may, by instrument, delegate all or any of his or her powers under this Ordinance—

- (a) if the delegation is made before Self-Government Day—to a public servant or any person from time to time holding, occupying or performing the duties of, a specified office or position that is established by or under a law in force in the Territory (other than a law of the Commonwealth); or
- (b) if the delegation is made on or after Self-Government Day—to a public servant or any person from time to time holding, occupying or

performing the duties of, a specified office or position that is established by or under an enactment.

Advisory Committees

16. On the recommendation of the Chief Territory Planner, the Minister may appoint committees to give advice to the Interim Authority or to assist it in the performance of its functions.

Annual report

17. (1) The Chief Territory Planner shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of the operations of the Interim Authority during the year ending on that date.

(2) The Minister shall cause a copy of each report furnished under subsection (1) to be laid before the Assembly within 15 sittings of the Assembly after the day on which the Minister receives the report.

Other Ordinances—amendments

18. The Ordinances specified in the Schedule are amended as set out in the Schedule.

Transitional

19. (1) Notwithstanding the repeal of sections 10 to 13A (inclusive) of the *Buildings (Design and Siting) Ordinance 1964* effected by this Ordinance, those sections continue to apply in relation to an application lodged under section 13 of that Ordinance and received by the Minister before the commencement date.

(2) Where—

(a) this Ordinance amends a provision of another Ordinance;

(b) at any time before the commencement date—

(i) any act was done; or

(ii) a decision was made;

under that provision by the Commission; and

(c) the act or decision had effect immediately before the commencement date;

then, on and after the commencement date, the act or decision has effect as if it had been done or made by the Interim Authority under the provision as amended by this Ordinance.

(3) In an instrument made, granted or issued before the commencement date under the *Building Ordinance 1972* or the *Buildings (Design and Siting) Ordinance 1964* and having force and effect immediately before that date, a reference to the Commission shall, on and after that date, be read (except in relation to matters that occurred before that date) as a reference to the Interim Authority.

(4) In this section—

“commencement date” means the date of commencement of section 18;

“Commission” means the National Capital Development Commission.

SCHEDULE
AMENDMENTS OF ORDINANCES

Section 18

Building Ordinance 1972

Subsection 5 (1) (definition of “the Commission”)—

Omit the definition.

Subsection 5 (1)—

Insert the following definitions:

“ ‘Designated Area’ has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988*;

‘Interim Authority’ means the Interim Territory Planning Authority;”.

Subsection 6 (3)—

Omit all the words after “Construction”.

Section 31—

(a) After subsection (1) insert the following subsections:

“(1A) The Building Controller shall not grant a building permit for building work involving the demolition in whole or in part of a building—

(a) where the land on which the building work is to be carried out is a Designated Area—if the work is prohibited by section 12 of the *Australian Capital Territory (Planning and Land Management) Act 1988*; or

(b) in any other case—unless the Interim Authority has approved that work.

“(1B) The Interim Authority may refuse to approve building work involving the demolition in whole or in part of a building (other than a building in a Designated Area) if the Interim Authority believes on reasonable grounds that—

(a) the building is of scientific, aesthetic, architectural or historic interest, or otherwise of cultural significance; and

(b) it would not be in the public interest to grant that approval.”.

(b) Add at the end the following subsection:

“(3) Where the Interim Authority makes a decision refusing approval under subsection (1B) it shall, within 14 days after the date of the decision, cause written notice of the decision to be given to the applicant.”.

After section 31—

Insert the following section:

Review of decision of Interim Authority

“31A. (1) Application may be made to the Administrative Appeals Tribunal for the review of a decision of the Interim Authority refusing approval under subsection 31 (1B).

“(2) A notice under subsection 31 (3) shall—

SCHEDULE—continued

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

“(3) The validity of a decision to which a notice under subsection 31A (3) relates shall not be taken to be affected by a failure to comply with subsection (2).

“(4) Section 27 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a decision of the Interim Authority referred to in subsection (1).”.

Paragraphs 43 (1) (f) and 46 (1) (e)—

Omit “Commission”, substitute “Interim Authority”.

Subsections 47 (3) and (4)—

Omit “Commission”, substitute “Interim Authority”.

Buildings (Design and Siting) Ordinance 1964

1. Section 3 (definition of “the Commission”)—

Omit the definition.

Section 3—

Insert the following definitions:

“ ‘Designated Area’ has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988*;

‘Interim Authority’ means the Interim Territory Planning Authority;”.

Section 4—

After subsection (1) insert the following subsection:

“(1A) This Ordinance does not apply in relation to a building on land that is a Designated Area.”.

Subsection 5 (1)—

After “City Area” insert “, other than a Designated Area,”.

Subsection 5 (2)—

Omit the subsection.

Subsection 6 (2)—

Omit the subsection, substitute the following subsections:

“(2) The Interim Authority may refuse to grant approval of a proposal with respect to the external design and siting of a building or a proposal with respect to alterations affecting the external design and siting of a building if the Interim Authority believes on reasonable grounds that—

SCHEDULE—continued

- (a) the building is of scientific, aesthetic, architectural or historic interest, or otherwise of cultural significance; and
 - (b) it would not be in the public interest to grant that approval.
- “(3) The Interim Authority shall not grant an approval under this Ordinance if satisfied that an approval would be inconsistent with—
- (a) the Territory Plan or an NCDC policy, within the meaning of Part IV and Part X, respectively, of the *Australian Capital Territory (Planning and Land Management) Act 1988*; or
 - (b) a provision, covenant or condition (being a condition relating to the external design and siting of a building) included in a lease granted or issued under a law in force in the Territory.”.

Paragraph 8 (a)—

Omit all the words after “1972”, substitute the following:

“unless—

- (i) proposals with respect to the external design and the siting of the proposed building, or of the building as proposed to be altered, have been approved by the Interim Authority; or
- (ii) if the proposed building or building as proposed to be altered is in a Designated Area—the work the subject of the proposals is not prohibited by section 12 of the *Australian Capital Territory (Planning and Land Management) Act 1988*;

and the building or alteration to which the approval or permit relates is to be in accordance with those proposals; or”.

Sections 10 to 13A (inclusive)—

Repeal the sections, substitute the following sections:

Notification of decisions

“10. (1) Where the Interim Authority has refused approval under this Ordinance, or has granted approval subject to conditions, it shall, within 28 days of the date of the decision, cause notice in writing of the decision to be given to the applicant.

“(2) A notice under subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies—include a statement to the effect that the applicant may request a statement pursuant to section 28 of that Act.

“(3) The validity of a decision to which a notice under subsection (1) relates shall not be taken to be affected by a failure to comply with subsection (2).

Review by Administrative Appeals Tribunal

“11. (1) Application may be made to the Administrative Appeals Tribunal by an applicant for approval under this Ordinance for a review of a decision of the Interim Authority—

SCHEDULE—continued

- (a) granting the approval subject to conditions; or
- (b) refusing the approval.

“(2) Section 27 of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to any decision of the Interim Authority referred to in subsection (1).”.

2. The following provisions of the *Buildings (Design and Siting) Ordinance 1964* are amended by omitting “Commission” (wherever occurring) and substituting “Interim Authority”:

Subsection 6 (1), paragraphs 6 (1) (b) and (c), section 7 and subsections 9 (1), (2) and (3).

City Area Leases Ordinance 1936

Paragraph 11A (2) (b)—

Omit all the words from and including “repugnant” to and including “Canberra”, substitute “inconsistent with the National Capital Plan, the Territory Plan or an NCDC policy, within the meaning of Part III, Part IV and Part X, respectively, of the *Australian Capital Territory (Planning and Land Management) Act 1988*”.

Nature Conservation Ordinance 1980

Paragraph 52C (2) (e)—

Omit the paragraph, substitute the following paragraph:

- “(e) the National Capital Plan, the Territory Plan or an NCDC policy, within the meaning of Part III, Part IV and Part X, respectively, of the *Australian Capital Territory (Planning and Land Management) Act 1988*”.

Schools Authority Ordinance 1976

Paragraph 7 (1) (g)—

Insert at the end “and”.

Paragraph 7 (1) (h)—

Omit the paragraph.

Electricity and Water Ordinance 1988

Section 7—

Omit all the words from and including “the policies” to and including “Capital”, substitute “the Territory Plan or an NCDC policy, within the meaning of Part IV and Part X, respectively, of the *Australian Capital Territory (Planning and Land Management) Act 1988*”.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 21 December 1988.