



AUSTRALIAN CAPITAL TERRITORY

Interim Planning Act 1990

No. 59 of 1990

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AUSTRALIAN CAPITAL TERRITORY

Interim Planning Act 1990

No. 59 of 1990

An Act to provide for a plan and a planning authority for the Territory, and for related purposes

[Notified in ACT Gazette S98: 24 December 1990]

WHEREAS section 25 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth requires the Legislative Assembly for the Australian Capital Territory to make laws providing for the establishment of a Territory planning authority with various functions, including the function of preparing and administering a plan in respect of land:

NOW THEREFORE the Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Interim Planning Act 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on the day specified as the end of the transition period under the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth in the Proclamation of the Governor-General under section 57 of that Act.

Crown

3. This Act binds the Crown.

Interpretation

4. In this Act, unless the contrary intention appears—

“Authority” means the Australian Capital Territory Planning Authority established by this Act;

“background papers”, in relation to a draft Plan, means—

- (a) an explanatory statement;
- (b) a copy of—
 - (i) any relevant direction of the Executive;
 - (ii) any recommendation of the Conservator referred to in section 12;
- (c) if the draft Plan is inconsistent with—
 - (i) any relevant direction of the Executive; or
 - (ii) a recommendation of the Conservator referred to in section 12;a statement by the Authority of the reasons for that inconsistency; and
- (d) any other documents—
 - (i) considered by the Authority to be necessary or useful in explaining the draft Plan; and
 - (ii) designated by the Authority in writing as background papers;

“Chief Planner” means the Chief Planner for the Australian Capital Territory appointed under section 36;

“Commonwealth Planning Act” means the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“Conservator” means the Conservator of Wildlife appointed under section 7 of the *Nature Conservation Act 1980*;

“development”, in relation to land, includes—

- (a) the erection, alteration or demolition of a building on that land;
- (b) the carrying on of work on that land;
- (c) the use or change of use of that land;
- (d) the use or change of use of a building or works on that land;
- (e) the subdivision or consolidation of that land; or
- (f) the display of signs or advertising material on that land;

“draft Plan” means a draft Plan notified under section 13, as revised under paragraph 16 (1) (a) or section 20;

“formal error” means—

- (a) a clerical error;
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form;

“land” includes water, but does not include a Designated Area within the meaning of the Commonwealth Planning Act;

“National Authority” means the National Capital Planning Authority established by section 5 of the Commonwealth Planning Act;

“National Capital Plan” means the plan approved under section 19 of the Commonwealth Planning Act, being that plan as amended and in effect from time to time;

“Plan” means the plan established under Part III, as varied and in effect from time to time;

“Territory authority” means—

- (a) a body (whether corporate or not) established by or under an Act, or by the Executive; or
- (b) the holder of an office established by or under an Act, or by the Executive;

“variation”, in relation to the Plan, includes the revocation of that Plan and its substitution with a new Plan.

Stages and parts of the Plan

5. (1) In this Act, unless the contrary intention appears, a reference to the Plan is to be read as including a reference to a stage or part of the Plan.

(2) In this Act, unless the contrary intention appears, a reference to a draft Plan is to be read as a reference to—

- (a) a draft stage or part of the Plan; or
- (b) a provision—
 - (i) of a draft Plan; or
 - (ii) of a draft stage or part of the Plan.

PART II—TERRITORY PLAN—OBJECT AND EFFECT

Preparation

6. (1) The Authority shall prepare the Plan and variations to the Plan.

(2) The Authority may prepare the Plan in separate stages or parts.

Object

7. (1) The object of the Plan is to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.

(2) The Plan shall set out the planning principles and policies for giving effect to its object.

(3) For the purpose of giving effect to the object of the Plan and the principles and policies referred to in subsection (2), the Plan may—

- (a) set out specific objectives and policies;
- (b) specify purposes for which land may be used;
- (c) identify land for the purposes of Division 4 of Part III, specifying in addition the principles and policies for its development;
- (d) provide for such other matters as are relevant to—
 - (i) the exercise; or

- (ii) the administrative review of the exercise;
of the powers of the Territory, the Executive, a Minister or a Territory authority under a Territory law; and
- (e) provide for such matters as are otherwise necessary or convenient.

Effect of the Plan

8. The Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

Interim effect of draft Plan variations

9. (1) During—

- (a) the defined period; or
- (b) the period specified in the notice under section 13 of a draft Plan variation;

whichever is shorter, the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act that—

- (c) would be inconsistent with the Plan if it were varied in accordance with the draft variation; or
- (d) is inconsistent with the Plan.

(2) In subsection (1)—

“defined period” means the period commencing on the date the draft Plan variation is notified in the *Gazette* under section 13 and terminating at the expiration of the day before—

- (a) the date the draft variation comes into effect;
- (b) the date the draft variation is rejected by the Legislative Assembly; or
- (c) the date the draft variation is withdrawn under paragraph 16 (1) (c), 20 (a) or 22 (4) (b);

as the case requires.

(3) Where a draft Plan variation is deferred under paragraph 16 (1) (b) or 20 (a), this section does not apply in relation to that draft variation during the period of its deferral.

PART III—TERRITORY PLAN—ESTABLISHMENT***Division 1—Preliminary*****Application—Plan variations**

10. (1) This Part applies to a variation to the Plan in the same manner as it applies to the Plan.

(2) This Part applies to a draft variation to the Plan in the same manner as it applies to a draft Plan.

Division 2—Preparation**Application**

11. This Division does not apply in relation to a variation of the Plan under Division 4.

Conservator's recommendations

12. In preparing a draft Plan, the Authority shall consider any recommendation submitted by the Conservator.

Public consultation

13. (1) Before submitting a draft Plan to the Executive, the Authority shall cause to be published in the *Gazette*, and in a daily newspaper published and circulating in the Territory, a notice—

- (a) stating that copies of the draft Plan and the background papers are available for public inspection during a specified period of not less than 21 days at specified places;
- (b) inviting interested persons to submit written comments about the draft Plan to the Authority at a specified address and within a period of not less than 21 days; and
- (c) in the case of a draft Plan variation—
 - (i) stating the effect of section 9; and
 - (ii) specifying, for the purpose of paragraph 9 (1) (b), the maximum period (being a period of no longer than 1 year) during which the draft variation is to have an interim effect.

(2) The Authority shall make copies of the draft Plan and the background papers available for public inspection during office hours during the period, and at the places, specified in the notice.

(3) If the Authority considers that a draft Plan variation has the sole purpose of correcting a formal error in the Plan, subsections (1) and (2) do not apply, but the Authority shall obtain such information about the public attitude to the draft variation as is reasonable in the circumstances.

Consultation with the National Capital Planning Authority

14. Before submitting a draft Plan to the Executive, the Authority shall consult with the National Authority about the draft.

Public inspection of comments

15. (1) Before submitting a draft Plan to the Executive, the Authority shall cause to be published in a daily newspaper published and circulating in the Territory a notice stating that copies of any written comments—

- (a) submitted pursuant to the invitation in the relevant notice under subsection 13 (1) or otherwise; and
- (b) received from the National Authority;

are available for public inspection within a specified period of at least 21 days from the date of the notice, at specified places.

(2) The Authority shall make copies of any comments referred to in subsection (1) available, during office hours, for public inspection during the period, and at the places, specified in the notice.

Revision, deferral or withdrawal of draft Plan

16. (1) After the expiration of the period specified in the notice under subsection 13 (1) the Authority may—

- (a) revise the draft Plan;
- (b) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft Plan to the Executive; or
- (c) by notice published in the *Gazette* withdraw the draft Plan.

(2) A notice under paragraph (1) (b) or (c) in relation to a draft Plan variation shall include a statement of the effect of section 9 in relation to the deferral or withdrawal of the draft variation.

(3) In revising, deferring or withdrawing a draft Plan under subsection (1), the Authority shall consider written comments about the draft Plan received from any person or the National Authority.

(4) In addition to its power under subsection (1), the Authority may, at any time before the submission or re-submission of a draft Plan to the Executive, revise the draft Plan to correct any formal error.

(5) Where a draft Plan is deferred by notice under paragraph (1) (b), on the date specified in the notice, or as soon as practicable after the occurrence of the event specified in the notice, as the case requires, the Authority shall cause to be published in the *Gazette* a notice stating—

- (a) that the draft Plan is revived; and
- (b) in the case of a draft Plan variation—the effect of section 9 in relation to the revival of the draft variation.

Division 3—Executive approval and consideration by the Legislative Assembly

Application

17. This Division does not apply in relation to a Plan variation under Division 4.

Submission of draft Plan to Executive

18. After the expiration of the period specified in the notice under subsection 13 (1), the Authority shall submit a draft Plan to the Executive for approval, together with—

- (a) the background papers;
- (b) a written summary of each written comment about the draft Plan submitted pursuant to the invitation in the relevant notice under subsection 13 (1) or otherwise; and
- (c) a written report about its consultation with the National Authority.

Executive powers

19. (1) On receipt of a draft Plan submitted or re-submitted for approval, the Executive shall—

- (a) approve the draft Plan in the form in which it is submitted; or
- (b) return the draft Plan to the Authority together with any or all of the following written directions:
 - (i) to conduct further specified consultation;
 - (ii) to consider any relevant public report;
 - (iii) to consider any revision suggested by the Executive;
 - (iv) to revise the draft Plan in a specified manner;

- (v) to defer, by notice published in the *Gazette* the re-submission of the draft Plan to the Executive until a specified date or the occurrence of a specified event;
- (vi) to withdraw the draft Plan by notice published in the *Gazette*.

(2) A notice under subparagraph (1) (b) (v) or (vi) in relation to a draft Plan variation shall state the effect of section 9 in relation to the deferral or withdrawal of the draft variation.

Return of draft Plan to the Authority

20. If the Executive returns a draft Plan to the Authority under paragraph 19 (1) (b), the Authority shall—

- (a) comply with any Executive direction;
- (b) if the Executive gives a direction under subparagraph 19 (1) (b) (i), (ii) or (iii)—
 - (i) if the Authority thinks fit, revise the draft Plan; and
 - (ii) re-submit the draft Plan to the Executive for approval together with a written report about the Authority's compliance with the Executive direction and any revision of the draft Plan under subsection 16 (4); and
- (c) if the Executive gives a direction under subparagraph 19 (1) (b) (iv)—re-submit the draft Plan (as revised) together with a written report about any revision of the draft Plan under subsection 16 (4).

Notice of revival of deferred draft Plan

21. Where the Authority, in compliance with an Executive direction under subparagraph 19 (1) (b) (v), defers a draft Plan, on the date specified in the notice of deferral, or within a reasonable time after the occurrence of the event specified in that notice, as the case requires, the Authority shall—

- (a) cause to be published in the *Gazette*, and in a daily newspaper published and circulating in the Territory, a notice stating—
 - (i) that the draft Plan is revived;
 - (ii) in the case of a draft Plan variation—the effect of section 9 in relation to the revival of the draft Plan; and
 - (iii) the effect of any revision under subsection 16 (4); and
- (b) re-submit the draft Plan to the Executive.

Consideration of Plan by the Legislative Assembly

22. (1) A Plan shall be laid before the Legislative Assembly within 6 sitting days of its approval by the Executive, together with—

- (a) the background papers;
- (b) a copy of the summaries and report referred to in paragraphs 18 (b) and (c);
- (c) a copy of any direction given under paragraph 19 (1) (b);
- (d) a copy of any report referred to in subparagraph 19 (1) (b) (ii); and
- (e) a copy of any report referred to in paragraph 20 (c);

in relation to the Plan.

(2) If, at the expiration of 6 sitting days after a Plan is laid before the Legislative Assembly, the Assembly has not passed a resolution rejecting the Plan, the Minister shall cause to be published in the *Gazette* a notice—

- (a) specifying the date of commencement of the Plan, or the dates of commencement of the various provisions of the Plan, being a date or dates not before the date of the notice; and
- (b) specifying a place or places where copies of the Plan may be inspected or purchased.

(3) If, within 6 sitting days after a Plan is laid before the Legislative Assembly, the Assembly passes a resolution rejecting the Plan, or a provision of the Plan, the rejected Plan or provision does not come into effect.

(4) If a part only of a Plan is rejected, the Executive shall, in relation to each remaining provision of the Plan—

- (a) cause to be published in the *Gazette* a notice specifying—
 - (i) the date of commencement of the provision, being a date not before the date of the notice; and
 - (ii) a place or places where copies of the provision may be inspected or purchased; or
- (b) by notice published in the *Gazette*, withdraw the provision.

(5) The Minister shall make copies of a Plan, or any relevant provision of a Plan, available for inspection or purchase during office hours at the places and times specified in the notice under subsection (2) or paragraph (4) (a).

Commencement

23. The Plan, or a provision of the Plan, comes into effect on the date specified in the notice under subsection 22 (2) or paragraph 22 (4) (a).

Division 4—Variation of the Plan: defined land

Interpretation

24. In this Division—

“defined land” means land identified in the Plan pursuant to paragraph 7 (3) (c).

Plan variations in relation to defined land

25. (1) Upon approval of the subdivision of a parcel of defined land, the Authority shall, by notice or notices published in the *Gazette*, vary the Plan to specify the purposes for which that land may be used.

(2) A notice under subsection (1) in relation to a parcel, or part of a parcel, of land shall include a map of that parcel or part showing the purposes for which identified parts of that land may be used.

(3) A variation of the Plan under subsection (1) is to be consistent with—

- (a) the relevant subdivision and any conditions subject to which that subdivision is approved; and
- (b) the principles and policies specified in the Plan for the development of the relevant defined land.

(4) A variation of the Plan under subsection (1) takes effect from the date of its publication in the *Gazette*, or from such a later date as is specified in the notice under that subsection.

PART IV—AUSTRALIAN CAPITAL TERRITORY PLANNING AUTHORITY

Division 1—Establishment, constitution, functions and powers of Authority

Establishment

26. The Australian Capital Territory Planning Authority is established by this Act.

Constitution

27. The Authority is constituted by the Chief Planner.

Agent of the Crown

28. The Authority is an agent of the Crown.

Functions

29. (1) The functions of the Authority are—

- (a) to prepare and administer the Plan;
- (b) to keep the Plan under constant review and to propose variations to it where necessary;
- (c) to perform such other functions as are required by this Act or any other law of the Territory, or by any law of the Commonwealth; and
- (d) with the written approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas.

(2) The Authority shall perform its functions in accordance with any directions given under subsection 30 (1).

(3) The Authority shall comply with any directions given under subsection 30 (2).

Executive policy directions

30. (1) The Executive may give the Authority general directions in writing about the policies and objectives it should pursue in the performance of its functions.

(2) The Executive may give the Authority general directions in writing to review the Plan, or any specified parts of the Plan.

(3) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days.

(4) Directions not published in accordance with subsection (3) cease to have effect from the expiration of the 14th day after they are given.

(5) The Authority shall publish particulars of any directions given in a financial year in its annual report for that year.

(6) This section does not apply in relation to a direction given under section 19.

Powers

31. (1) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions.

(2) For the purposes of the performance of its functions, the Authority may, on behalf of the Territory, enter into contracts.

(3) The Authority shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Authority of an amount exceeding \$100,000.

Annual report

32. The Authority shall, after each 30 June, prepare and furnish to the Minister a report of the operations of the Authority during the year ending on that date.

Delegation

33. The Authority may, by instrument, delegate all or any of the Authority's powers to a public servant or to the holder of an office established by or under an Act.

Staff

34. The Authority is to be assisted in the performance of its functions by public servants.

Effect of irregularity of appointment of Chief Planner

35. Anything done by or in relation to the Authority is not invalid because—

- (a) there is a defect or irregularity in or in connection with the appointment of the Chief Planner; or
- (b) that appointment had ceased to have effect.

Division 2—Chief Planner

Chief Planner

36. (1) The Minister shall, by instrument, appoint a person to be Chief Planner for the Australian Capital Territory.

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

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

(4) A retiring Chief Planner is eligible for re-appointment.

Acting Chief Planner

37. (1) The Minister may, by instrument, appoint a public servant to act as Chief Planner—

- (a) during a vacancy in the office of Chief 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 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 to do so for more than 12 months.

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

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

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

Remuneration and allowances

38. (1) The Chief 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 Planner; or

(b) an allowance of a particular kind if there is such a subsisting determination relating to an allowance of that kind to be paid to the Chief Planner.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

(4) This section does not apply where the Chief Planner is the Head of Administration or an Associate Head of Administration.

Leave of absence

39. The Minister may, by writing, grant leave of absence to the Chief Planner on specified terms and conditions as to remuneration or otherwise.

Disclosure of interests

40. (1) The Chief Planner shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

(2) If the Chief Planner has or acquires a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Planner shall give written notice to the Minister of that interest.

Other employment, remuneration, business etc.

41. (1) Except with the written permission of the Minister, the Chief Planner shall not—

- (a) accept or continue to hold an office in or under the Government of the Commonwealth, another Territory or a State, or in or under any public or municipal corporation;
- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with any business whether carried on by any corporation, company, firm or individual;
- (c) engage in or undertake any business, whether as principal or agent;
- (d) engage or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged;

- (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of his or her office as Chief Planner or as a public servant; or
- (f) accept or engage in any remunerative employment other than in connection with the duties of his or her office as Chief Planner or as a public servant.

(2) Nothing in this section is to be taken to prohibit the Chief Planner from becoming a member or shareholder of any incorporated company, or of any company or society of persons.

Resignation

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

Termination of appointment

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

(2) The Minister shall terminate the appointment of the Chief 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 40 or 41; or
- (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 1 year.

PART V—MISCELLANEOUS

Delegation

44. The Executive may, by instrument, delegate any or all of its powers or functions under this Act, except the power to make regulations, to any specified Minister or Ministers.

Regulations

45. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART VI—REPEAL AND TRANSITIONAL

Interpretation

46. In this Part—

“commencement date” means the date of commencement of this Act;

“interim authority” means the Interim Territory Planning Authority established by the *Interim Territory Planning Act 1988* as in existence immediately before the commencement date.

Repeal of provisions of the *Interim Territory Planning Act 1988*

47. Sections 3 to 17 (inclusive) of the *Interim Territory Planning Act 1988* are repealed.

Legal proceedings

48. (1) Where, before the commencement date, a cause of action by or against the interim authority had arisen but proceedings in respect of that cause of action had not been instituted before that date, proceedings in respect of that cause of action may be instituted by or against the Authority.

(2) Where, before the commencement date, proceedings by or against the interim authority had been instituted in a court, tribunal, commission or other body but those proceedings had not been completed before that date, those proceedings may be continued by or against the Authority.

(3) In proceedings instituted or continued pursuant to this section, each party to the proceedings has the same rights, and is subject to the same obligations, as if the Authority were the interim authority and the proceedings had been continued by or against the interim authority.

Rights and liabilities

49. The rights, privileges, obligations and liabilities of the interim authority immediately before the commencement date are, on and after that date, the rights, privileges, obligations and liabilities of the Authority.

Contracts and agreements

50. A contract or agreement entered into by the interim authority and in force immediately before the commencement date continues in force and has effect, on and after that date, as if—

- (a) the Authority were substituted for the interim authority as a party to the contract or agreement; and
- (b) any reference in the contract or agreement to the interim authority were (except in relation to matters that occurred before that date) a reference to the Authority.

NCDC policy variations

51. (1) This section applies in relation to an area of land where—

- (a) a part of the Plan affecting that area is in substantially the same terms as an NCDC policy;
- (b) before the commencement date, the interim authority had—
 - (i) submitted a copy of a draft variation of that NCDC policy to the National Authority; and
 - (ii) published a notice in the *Gazette* and in the principal daily newspaper published and circulated in the Territory inviting interested persons to make written representations about the draft variation within a period specified in the notice; and
- (c) the Executive declares, by instrument, that this section is to apply in relation to that area.

(2) Where this section applies in relation to an area of land, the relevant draft variation to the NCDC policy is, for the purposes of Part III in its application in relation to that area—

- (a) to be taken to be a draft variation to the part of the Plan corresponding to that policy, being a draft variation—
 - (i) notified in accordance with section 13; and
 - (ii) in relation to which the National Authority has been consulted in accordance with section 14; and
- (b) not to have any effect under section 9.

(3) Where—

- (a) this section applies to a draft variation to an NCDC policy in relation to an area of land; and

- (b) before the commencement of this Act, that draft variation was submitted to the Executive for approval;

that draft variation is, in its application in relation to that area, to be taken to be a draft variation to the part of the Plan corresponding to that policy which has been submitted to the Executive in accordance with section 18.

(4) A notice under paragraph (1) (c) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(5) In this section—

“NCDC policy” has the same meaning as in Part X of the Commonwealth Planning Act.

[Presentation speech made in Assembly on 29 November 1990.]