

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

INTERIM TERRITORY PLANNING ORDINANCE 1988

No. 88, 1988

Subsection 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Australian Capital Territory.

Part X of the Australian Capital Territory (Planning and Land Management) Act 1988 ("the Act") envisages the establishment of an interim Territory planning authority ("Interim Authority") during the period between the abolition of the National Capital Development Commission and the enactment by the Legislative Assembly for the Australian Capital Territory ("the Assembly") of its own planning legislation in accordance with section 25 of the Act.

Section 56 of the Act provides for the Interim Authority to be established by an Interim Territory Planning Ordinance 1988. The Interim Territory Planning Ordinance 1988 ("the Ordinance") gives effect to the provisions of the Act.

The details of the provisions of the Ordinance are as follows:

Section 1 cites the short title of the Ordinance.

Section 2 provides for the commencement of the Ordinance on a date to be fixed by the Minister by notice in the Gazette.

Section 3 contains definitions to assist in the interpretation of the Ordinance.

Section 4 establishes the Interim Territory Planning Authority.

Section 5 enables the Minister to give the Interim Authority general directions as to the performance of its functions and requires the Interim Authority to include particulars of any such directions in its annual report.

Section 6 defines the powers of the Interim Authority in terms of its functions under the Act.

Section 7 provides that the Interim Authority shall be constituted by a Chief Territory Planner.

Section 8 provides for the appointment of the Chief Territory Planner by the relevant Territory Minister after Self-Government Day as defined in the Act:

- subsection (1) sets a period of 5 years as the maximum period of appointment as Chief Territory Planner;

- subsection (2) enables the Minister to determine the terms and conditions of employment of the Chief Territory Planner (other than in relation to matters covered by the Ordinance);
- subsection (3) prevents the appointment of a person who has attained 65 years of age or the appointment for a period which extends beyond the date on which the person attains 65 years.

Section 9 enables the Minister to make acting appointments to the office of Chief Territory Planner. This power may be exercised by a Commonwealth Minister before Self-Government Day:

- subsection (1) defines the circumstances in which an acting appointment may be made;
- subsection (2) ensures that any defect or irregularity in a person's appointment or the circumstances giving rise to the appointment do not affect the exercise of powers by a person purporting to act as Chief Territory Planner;
- subsection (3) enables a public servant who is acting as Chief Territory Planner to receive any difference between the remuneration and allowances payable to him or her as a public servant and the remuneration and allowances payable to the Chief Territory Planner.

Section 10 provides for the remuneration and allowances payable to the Chief Territory Planner to be as determined by the Remuneration Tribunal but, if there is no such determination in subsidence, ~~he or she is to be paid such remuneration and allowances as are prescribed in the regulations.~~

Section 11 allows the Minister to grant the Chief Territory Planner leave of absence on terms and conditions determined by the Minister.

Section 12 enables the Chief Territory Planner to resign office by notice delivered to the Minister.

Section 13 provides that the Chief Territory Planner disclose to the Minister all relevant direct or indirect pecuniary interests.

Section 14 provides for the termination of the appointment of the Chief Territory Planner:

- subsection (1) allows the Minister to terminate the appointment for misbehaviour or for physical or mental incapacity;
- subsection (2) requires the Minister to terminate the appointment for the reasons specified in paragraphs (a) to (d).

Section 15 enables the Chief Territory Planner to delegate his or her powers under the Ordinance to members of staff.

Section 16 enables the Minister, on the recommendation of the Chief Territory Planner, to establish advisory committees.

Section 17 requires the Chief Territory Planner to prepare an annual report on the operations of the Interim Authority and furnish it to the Minister who is required to table it before the Assembly.

Section 18 amends a number of Ordinances specified in the Schedule to this Ordinance consequential upon the proposed repeal of the National Capital Commission Act 1957 and the enactment of this Ordinance. Details of each amendment are set out in Attachment A. Included in the Schedule are amendments to the Building Ordinance 1972 and the Buildings (Design and Siting Ordinance) 1964 which ensure that heritage considerations are taken into account when approval is sought under those Ordinances for the alteration or demolition of a building.

Section 19 makes transitional provision arising from the transfer of responsibility for design and siting matters from the National Capital Development Commission to the Interim Authority.

**ISSUED BY THE AUTHORITY OF THE
MINISTER OF STATE FOR THE ARTS
AND TERRITORIES**

Schedule to Interim Territory Planning Ordinance

The Schedule amends the following Ordinances:

Building Ordinance 1972

The amendments to this Ordinance, inter alia, omit references to the National Capital Development Commission and substitute references to the Interim Authority.

New subsection 31(1A) prevents the Building Controller from granting a building permit for the demolition of a building unless, as appropriate, the National Capital Planning Authority or the Interim Authority has approved the proposal.

New subsection 31(1B) enables the Interim Authority to refuse to grant approval for the demolition of a building if it considers it would be in the public interest to do so on heritage grounds.

New section 31A enables applicants, who are refused approval by the Interim Authority for the demolition of a building, to appeal to the Administrative Appeals Tribunal for a review of the decision.

Buildings (Design and Siting) Ordinance 1964

The amendments to this Ordinance, inter alia, omit references to the National Capital Development Commission and substitute references to the Interim Authority .

The amendments to section 3 insert new definitions consequent on other amendments to this Ordinance.

Consistent with the provisions of section 12 of the Australian Capital Territory (Planning and Land Management) Act 1988, new subsection 4(1A) restricts the operation of this Ordinance to areas of the Territory which are not Designated Areas within the meaning of that Act. Designated Areas are the responsibility of the National Capital Planning Authority. The amendments to subsections 5(1) and (2) are consequential upon the proposed new subsection 4(1A).

New subsections 6(2) and (3) enable the Interim Authority to refuse to grant design and siting approval for alterations to a building on any of the following grounds:

- that it would be in the public interest to do so for heritage considerations;
- that approval would be inconsistent with the Territory Plan or an NCDC policy as defined by the Australian Capital Territory (Planning and Land Management) Act 1988; and
- that approval would be inconsistent with a condition in a lease relating to the design and siting of a building.

The amendments to paragraph 8(a) prevent the Building Controller from granting a building permit for alterations to a building unless, as appropriate, the National Capital Planning Authority or the Interim Authority has approved the proposal.

Existing sections 10 to 13A (inclusive), which provide for appeals against refusal to grant design and siting approval to be heard by a Design and Siting Review Committee, are repealed. In lieu thereof, new sections 10 and 11 provide for such appeals to be heard by the Administrative Appeals Tribunal.

City Area Leases Ordinance 1936

The amendment to paragraph 11A(2)(b) is consequential upon the provisions of the Australian Capital Territory (Planning and Land Management) Act 1988.

Nature Conservation Ordinance 1980

The amendment to paragraph 52C(2)(e) is consequential upon the provisions of the Australian Capital Territory (Planning and Land Management) Act 1988.

Schools Authority Ordinance 1976

The amendments to paragraph 7(1)(g) and (h) are consequential upon the provisions of the Australian Capital Territory (Planning and Land Management) Act 1988.

Electricity and Water Ordinance 1988

The amendment to section 7 is consequential upon the provisions of the Australian Capital Territory (Planning and Land Management) Act 1988.