

# DEVELOPMENTS IN THE A.C.T.

## **The Land (Planning and Environment) Act 1991**

The *Land (Planning and Environment) Act 1991* was passed by the ACT Legislative Assembly on 17 December 1991. Formal parts of the Act were gazetted on 15 January 1992, and the remainder of the provisions of the Act will come into force on 2 April 1992 unless gazetted earlier by the Minister.

The Act is the culmination of years of preparation by the fledgling body politic established by the Commonwealth in the *Australian Capital Territory (Self Government) Act 1988*. The process of obtaining public comment began in late 1989, when initial draft bills were released. In the Territory's short independent political history, the process has spanned the life of three governments, and differences within the Alliance Government (a Liberal Party-Residents Rally coalition) over aspects of the then Bill were partly responsible for the fall of that Government on 6 June 1991. The result of the high level of public consultation is an Act which itself mandates a high level of continued public consultation on the whole range of planning matters with which it deals.

The Act contains Parts headed "Planning", "Heritage", "Environmental Assessments and Inquiries", "Land Administration" and "Approvals and Orders".

### **Planning**

This Part formally establishes the ACT Planning Authority ("the ACTPA"), which replaces the National Capital Development Commission and the interim planning bodies set up since the abolition of the NCDC on the introduction of self government. The functions of the ACTPA are to administer, review and propose variations to the Territory Plan, which is the plan setting out the planning principles and policies for ensuring "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". The ACTPA, which is constituted by a Chief Planner, is required to perform its functions according to general directions issued by the Executive as to the appropriate policies and objectives to be observed.

The draft Territory Plan, which has been in the course of preparation by the Territory authorities as directed by the Commonwealth in the

legislation which introduced self government, was released for public comment in October 1991. It is an extremely detailed policy document, based on the division of Territory Land (land not reserved to the Commonwealth, and land not subject to the planning control of the Commonwealth through the National Capital Planning Authority ("the NCPA") into "Predominant Land Use Zones" ("PLUZs"). Notwithstanding the PLUZ system, the existing rights of Crown Lessees will remain as contained in their Crown Leases. A change of use proposed by a Crown Lessee will be assessed by the relevant Minister with regard to the PLUZ concerned and also to such things as general and precinct controls, land use controls, general performance policies, land use specific performance policies and area specific policies, which are also set out in the Territory Plan. The Crown Lease will continue to be the source of rights and obligations of lessees in the Territory, and the value added to land by reason of permitted land use changes will be captured by the system of payment of "betterment tax" for such permissions (as explained below).

Territory authorities must not do any act, or approve the doing of any act, that is inconsistent with the Territory Plan. In turn, the Territory Plan must not be inconsistent with the National Capital Plan, which is the planning document issued by the NCPA. The NCPA has powers of supervision at the very broad Territory planning level; complete planning control in respect of so-called "Designated Areas"; and complete control of National Land (land retained by the Commonwealth for its own purposes).

The statutory procedures for bringing a variation to the Territory Plan into existence are complex and technical. They require initial preparation of the variation by the ACTPA; a process of public consultation before submission to the ACT Executive; consultation with the NCPA; revision, deferral or withdrawal by the ACTPA after the period for public comments; submission to the Executive for approval with accompanying documents; and mandatory referral to an "appropriate committee of the Legislative Assembly" when finally submitted. The ACT Executive has powers to approve the draft variation when it is submitted to it, or to return it to the ACTPA with any of a number of directions.

In an attempt to accommodate technical irregularities which might arise in relation to the process of varying the Territory Plan, the Act precludes any legal challenge to the validity of any provision of the Territory Plan if such challenge is not commenced within three months after the date of commencement of the variation.

## Heritage

The Territory Plan is required to incorporate a Heritage Places Register. That Part of the Act dealing with heritage sets out the requirements for considering a place for inclusion on the Register. The effect of inclusion of a place on the Register is to limit the ability of a Crown Lessee to change the character of the place, and to increase the penalties for any unapproved work or similar activities in respect of the place.

A Heritage Council is established under the Act, with the function of considering places for inclusion in the Register and maintaining the Register. The Council may of its own volition, or pursuant to an application from any person, consider a place for inclusion. Again, a detailed procedure for public notification of proposals of the Council, including notification to persons affected by such proposals, is stipulated in the Act.

The Part also provides for the acquisition of heritage places and objects by the ACT Executive, and has special provisions relating to the protection of Aboriginal heritage. An interesting feature of the Act is the ability of the Territory to pay compensation to a Crown Lessee affected by entry of a place as Aboriginal heritage in the Register. Information concerning Aboriginal heritage will be restricted information where its public disclosure would be likely to have a significant adverse effect on Aboriginal tradition or the heritage significance of the place.

## Environmental Assessments and Inquiries

The ACT Environment Minister is provided with significant powers under this Part to require preliminary assessments and full environmental impact statements in relation to any particular development proposal, and to refer environmental matters to a panel for inquiry and report.

Persons applying for an approval which becomes subject to directions by the Minister for the preparation of environmental impact statements will be required to make copies of assessments publicly available for sale. The Minister may also direct that certain consultation take place in relation to the environmental assessment of a proposal; convene meetings for the purposes of discussing proposals with proponents and other interested persons; and may direct that a proponent engage the services of a consultant specified by the Minister to undertake the assessment. Panels established to inquire into and report about the environmental impact of a proposal have the power to summon witnesses, to inspect books and documents and to enter premises pursuant to warrant to search and inspect those premises.

## Land Administration

This Part of the Act supersedes the long-standing, and in many instances archaic, provisions of the *City Area Leases Act 1936* which is to be repealed. It is a comprehensive legal codification of the requirements for the granting of Crown Leases, variations of Crown Leases, the rights of Crown Lessees at the end of the term of their leases, and other matters relating to compliance with Crown Leases and the powers of the Executive. Particular attention has been paid to the ability of the Executive to make a direct grant of a Crown Lease to an applicant (other than by auctioning, calling tenders for or conducting a ballot for the grant of a lease) due to a perception by some parts of the community that previous administrations may have been overly generous in their land dealings with some Crown Lessees. A direct grant can now only take place in accordance with specified criteria. The ACT Executive is not empowered to grant a lease of land other than for its market value, or its full market rental value, except when granting leases to community organisations, for special purposes, or as a renewal of a lease for residential purposes. There is a sliding scale of payments (commonly known as "betterment tax") which must be made for the grant of a variation of a Crown Lease which increases the value of the land leased. The scale is a proportion of the value of the increase, decreasing from 100% to 50% as the age of the Crown Lease concerned reaches 20 years.

## Approvals and Orders

This Part of the Act sets out the requirement to obtain approvals to undertake "controlled activities", and the framework within which those approvals are to be handled. This Part also sets out the powers of the ACT Government to make orders and the penalties for non-compliance with such orders.

Controlled activities include work affecting a place on the Heritage Register; the variation of a Crown Lease; and the design and siting of buildings. There will be a public register of applications for approval of controlled activities. The relevant authorities must give notices of applications to conduct controlled activities to occupiers of places adjoining the place to which the application relates, as well as publishing notice of the application in a daily newspaper and forwarding requests for approval to so-called "concurring authorities" in order to obtain their views.

An interesting feature of the power to issue orders in respect of land is that such orders may be expressed to bind subsequent lessees or occupiers of land, and in that case must be registered on the title held by the Registrar of Titles to give notice

to persons intending to deal with any interest in the subject land.

Significant rights of review of decisions are provided to applicants and to formal objectors and other interested persons under the Act. Such appeals may be made to the ACT Administrative Appeals Tribunal and, on further appeal available to an aggrieved party, to the Supreme Court of the Australian Capital Territory.

#### ***The Air Pollution (Amendment) Act 1991 and the Water Pollution (Amendment) Act 1991***

These Acts allow the ACT Pollution Control Authority ("the PCA") to issue pollution abatement notices to facilitate the early rectification of emissions or discharges.

The Act provides for penalties of \$25,000 for a body corporate and \$5,000 or 6 months gaol or both for a natural person failing to comply with a notice issued by the PCA.

Decisions of the PCA under these Acts are subject to review by the ACT Administrative Appeals Tribunal.

#### ***The Air Pollution (Amendment) Act (No. 2) 1991***

This Act enforces the terms of an agreement between the ACT Government and the Australian Institute of Petroleum that the ACT be supplied with "Sydney" metropolitan grade leaded petrol, with a maximum lead content of 0.40 grams per litre, at no extra cost to ACT motorists.

A petroleum retailer is able to request a written warranty from the supplier certifying that the product complies with the Act. The penalty where a supplier fails to do so is \$1,000. Penalties for a failure to comply with other provisions of the Act are \$2,500-\$50,000 for a body corporate and \$500-\$10,000 for a natural person.

#### ***The Ozone Protection Act 1991***

This Act complements the Commonwealth *Ozone Protection Act 1989* by regulating activities that present a significant risk to the emission of ozone depleting substances such as CFCs and halon in the ACT. It is consistent with the legislation of other States and Territories in this respect, and creates penalties of up to \$25,000 for failures to comply.

The Act creates a number of offences in relation to the discharge of ozone depleting substances and the licensing of all work being undertaken with such substances. The Act also provides for phase out dates for ozone depleting substances; the appointment of inspectors; and the specification of their powers and those of the PCA in enforcing the Act. The Authority is granted the power to issue warning notices and ozone protection notices and is able to acquire and dispose of ozone depleting substances. Where acquisition occurs in accordance

with the Act the Government is required to pay compensation for the material.

A decision by the Authority to issue an ozone protection notice or to vary or not to vary an ozone protection notice is reviewable by the ACT Administrative Appeals Tribunal.

#### ***The Heritage Objects Act 1991***

The identification and conservation of objects of heritage significance that are in the public domain in the ACT is regulated by this new Act. A Register of Heritage Objects is to be established to include manufactured and natural objects that have heritage significance to the ACT. It will complement the Heritage Places Register established under the *Land (Planning and Environment) Act 1991*.

The Act provides for consultation on the placing of objects on the Register and the confidentiality of information which might threaten the security of particularly sensitive or valuable items. Unregistered Aboriginal objects are protected under the Act. There are monetary penalties for a failure to comply with provisions of the Act.

It is claimed that the Act is unique to the ACT and the ACT Government believes that it provides a model for other States and Territories to follow.

#### ***Draft Territory Plan - Environmental and Heritage Factors***

The draft Territory Plan was released by the ACT Planning Authority in October 1992 and defines land use policies and development control criteria for all land within the ACT, apart from land which is "designated" under the National Capital Plan and subject to the Commonwealth National Capital Planning Authority.

The Territory Plan will provide a framework for land use, development and environmental management for the ACT. It contains a number of planning principles which are intended to operate concurrently with the principles and policies contained in the National Capital Plan, while giving emphasis to the objects of the Territory Plan. These principles encompass strategic directions; a planning framework; environmental planning principles; social planning principles; and specific land use principles.

The environmental planning principles in the Plan relate to air and water quality; noise and vibration; light; energy conservation; waste management; flora and fauna; geotechnical constraints; soil conservation; hydrology; hazards; micro-climate impacts; and the cumulative effects of land uses or developments.

There is also a recognition of the need to conserve

significant elements of the Aboriginal and European cultural heritage of the ACT.

These principles are to be considered by the ACT Planning Authority in deciding land use and development policy for the ACT.

### **Greenhouse Strategy - Draft Framework**

In January 1992 the ACT Government released a draft Greenhouse Strategy which provides a framework for action and options for consideration in meeting the greenhouse effect.

The draft document focuses on ways to reduce energy consumption and, therefore, achieve a reduction in the level of greenhouse gas emissions in the ACT, in three key areas of consumption - transport; domestic; and commercial, including government.

In seeking to reduce energy consumption in the commercial sector the draft Strategy notes that the draft Territory Plan will require energy conservation plans for new buildings. It also suggests that consideration be given to establishing energy efficiency ratings for commercial buildings, perhaps as part of a national scheme, and that consideration be given to introducing mandatory energy guidelines relating to the design, siting and development of new commercial facilities. It also proposes that energy pricing reflect the environmental costs associated with its production and use and that consideration be given to energy production options, for example, cogeneration for large individual buildings and building clusters.

The document also addresses waste minimisation; community education program; coordination within the ACT and with the Commonwealth, States and Territories; and a strategic approach to planning and research on the greenhouse effect.

In the area of waste minimisation the draft Strategy proposes that consideration be given to introducing charges for public access to waste disposal facilities and that improvements be made in kerbside collection of recyclable materials. In this regard, it should be noted that a previous Legislative Assembly report proposed the regulation of waste separation at source. It is also proposed that charging policies for garbage collection and disposal be reviewed with the objective of restructuring them to comply with the user pays principle, that is, people who minimise waste and/or recycle should pay less. The ACT Government has instituted a period of public consultation on the draft strategy which closes in April 1992.

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## **DEVELOPMENTS IN TASMANIA**

The Tasmanian elections are now over with the result that a new majority Liberal government is in power with 19 seats compared to Labor's 11 and the Greens' 5. In effect, Labor lost 2 seats to the Liberals while the Greens retained their representation in the Parliament. The effect of this on planning and environment reforms which are proceeding under the previous government are not known; and it is still uncertain whether the low priority given to planning and environment issues during the previous period of Liberal government will be repeated during the new one. My gut feeling is that the proposed reforms have gone too far now to be simply shelved by the incoming Liberal government.

I think there has been an increasing awareness even in conservative circles that out of date planning legislation hinders development. Shortly before losing office the government issued several discussion papers:

1. "A Review of the Environment Protection Act";
2. "Study of the Environment Reporting in Tasmania";
3. "Environment Management and Planning Legislation. An Overview".

Information on exemptions under the Environment Protection Act and a draft planning bill and Environmental Management and Planning Commission Bill have also been produced.

I will be proceeding early in the new Parliament to seek the commitment of the new Liberal government to proceeding with these much needed reforms. Copies of the proposals can be either obtained from my office or by writing to the Department of Environment and Planning in Hobart.

**Dr Gerry Bates**  
**Tasmania**