

Town and Country Planning (General Interim Development) Ordinance (1945 EPI 1)

[1945-1]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Note**

The *Town and Country Planning (General Interim Development) Ordinance* is deemed to be a deemed environmental planning instrument under the *Environmental Planning and Assessment Act 1979 No 203*.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

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New South Wales

Part 1 Preliminary

Citation

1 Name of Ordinance

This Ordinance may be cited as the *Town and Country Planning (General Interim Development) Ordinance*.

2 Division into Parts

This Ordinance is divided into Parts as follows:

PART 1—PRELIMINARY

PART 2—DEVELOPMENT PERMITTED BY THIS ORDINANCE

PART 3—DEVELOPMENT WHICH MAY BE PERMITTED BY THE INTERIM DEVELOPMENT AUTHORITY

PART 4—SUPPLEMENTARY PROVISIONS

SCHEDULES

Interpretation

3 Definitions

In this Ordinance, unless the contrary intention appears:

Advisory committee has the meaning ascribed to it in Part 12A of the Act.

Area includes county district to the council of which has been lawfully delegated the power to prepare a scheme under Part 12A of the Act.

Existing building means:

- (a) a building on land included or deemed to be included in a scheme for the preparation of which a resolution has taken effect or has been deemed to have taken effect or a direction has been given by the Minister, as the case may be, and erected before the date upon which the said resolution took effect or was deemed to take effect or before the date upon which notice of the said direction was published in the Gazette, or
- (b) a building the erection of which was commenced before and lawfully completed after such date, or
- (c) a building lawfully erected after such date in pursuance of a contract made before that date, or
- (d) a building the erection of which is permitted by or under this Ordinance and which has been erected.

Government department includes any statutory body representing the Crown.

Interim development authority means the council of the area in which the land proposed to be developed is situated and includes the Minister in any case where he is authorised by or under the Act to permit interim development; and **development, interim development** and **interim development application** have the meanings ascribed to them respectively in Division 7 of Part 12A of the Act: Provided that in the Cumberland County District the interim development authority shall in respect of development by a Government department affecting three or more areas, be the Cumberland County Council.

Mine has the meaning ascribed to it in the *Mines Inspection Act 1901-1945*, and the *Coal Mines Regulation Act 1912-1941*, but does not include a quarry.

Public utility undertaking means any of the following undertakings carried on or permitted or suffered to be carried on by or by authority of any Government department or by or under any Commonwealth or State Act, that is to say:

- (a) railway, tramway, road transport, water transport, air transport, wharf, harbour or river undertakings,
- (b) undertakings for the supply of water, hydraulic power, electricity or gas,

and any reference to a person carrying on any such undertaking shall be deemed to include a reference to a council, Government department, company, firm or authority carrying on such undertaking.

Quarry has the meaning ascribed to it in the *Mines Inspection Act 1901-1945*.

Scheme means a scheme other than a scheme varying a prescribed scheme.

The Act means the *Local Government Act 1919*, as amended by subsequent Acts.

War damage has the same meaning as in the *National Security (War Damage to Property) Regulations* made under the (Commonwealth) *National Security Act 1939-1943*.

3A Excluded land

This Ordinance does not apply to land to which the following environmental planning instruments apply:

Tenterfield Local Environmental Plan 1986

Part 2 Development permitted by this Ordinance

4 Permitted development

(1) Except as provided in and subject to clause 5 of this Ordinance, interim development of the following classes may be carried out, that is to say:

Class I—Development (other than the erection of permanent buildings or the construction of roads and bridges) which may be carried out under powers conferred by any Act being an Act which specifically designates the land in respect of which those powers may be exercised.

Class II—Development by a person carrying on a public utility undertaking, expressly permitted or authorised to be carried out by the competent authority under any Commonwealth or State Act, before the provisions of Division 7 of Part 12A of the Act became applicable to the land upon which such development was so permitted or authorised.

Class III—The rebuilding, restoration or replacement of buildings and plant which have sustained war damage or damage by fire, flood, lightning, storm or accident, except operations of this kind involving:

- (a) an increase in the size of any building as it existed immediately before the occurrence of the damage, or
- (b) the alteration (other than minor alteration) of the exterior of any such building.

Class IV—The carrying out of alterations to existing buildings and of operations required for the maintenance of existing buildings except alterations affecting the exterior of, or required in connection with an alteration of the use of, any existing building.

Class V—Development of any description specified in Schedule 1 to this Ordinance.

Class VI—Development by the Housing Commission of New South Wales.

(2) For the purpose of this clause any development authorised by or under an Act subject

to the grant of any consent or approval shall not be deemed to be so authorised unless and until that consent or approval is obtained.

Exceptions from permitted development

5 Exceptions from permitted development

- (1) Subject to this clause the provisions of subclause (1) of clause 4 of this Ordinance shall not apply in the following circumstances, that is to say, where the Governor:
 - (a) is satisfied that it is expedient having regard to any proposal for the redevelopment of any locality or to any special circumstances affecting that locality, that development of any description specified in subclause (1) of the said clause 4 should not be carried out in that locality unless permission therefor is granted on application made under this Ordinance, or
 - (b) is satisfied that it is expedient having regard to the provisions which in his opinion are likely to be or ought to be included in the scheme, that any development by a person carrying on a public utility undertaking, being development of Class II and not being development of any other class specified in subclause (1) of the said clause 4, should not be carried out unless permission therefor is granted on application made under this Ordinance, or
 - (c) is satisfied, on representations made by the interim development authority, that it is expedient having regard to provisions proposed to be included in the scheme, that any development, being development of Class III and not being development of any other class specified in subclause (1) of the said clause 4, should not be carried out unless permission therefor is granted on application made under this Ordinance,

and the Governor directs that the relevant provisions of the said subclause shall not apply to that development.

- (2) A direction under paragraph (a) of subclause (1) of this clause may relate to development of any one or more of the classes specified in subclause (1) of the said clause 4, or to development of any particular description comprised in any of those classes:

Provided that no such direction shall have effect in relation to the following development, that is to say:

- (a) in the case of development of Class III, the restoration or replacement of plant, the carrying out of operations immediately necessary in consequence of war damage or damage by fire, flood, lightning, storm or accident for avoiding danger to health or preventing the deterioration of any building or otherwise required for temporarily meeting the circumstances created by the damage, and the carrying out of any operations for the rebuilding, restoration or replacement of buildings

which have sustained any such damage the cost of which does not exceed such amount as may be specified, in relation to operations of that description, in the direction,

- (b) in the case of development of Class IV, the carrying out of alterations to, or operations required for the maintenance of, any existing building the cost of which does not exceed such amount as may be specified in the direction,
- (c) in the case of development of Class V, the carrying out in case of emergency of any development of that class, or the carrying out of development of any description specified in the first column of Schedule 2 to this Ordinance to the extent specified in relation thereto in the second column of that Schedule.

(3)

- (a) Where a direction is given under this clause the Minister shall publish a notice of that fact in the Gazette and in a newspaper circulating in the locality to which the direction relates and shall cause a copy of the notice published in the Gazette to be served by post upon the interim development authority concerned.
- (b) Such notice shall contain a concise statement of the effect of the direction together with information as to the place at which a copy thereof and of a map defining the locality to which it relates may be seen at all reasonable hours.
- (c) Such direction shall come into force on the date upon which notice thereof is published in the Gazette, but without prejudice to anything done before that date.

(4) Where a direction given under paragraphs (b) and (c) of subclause (1) of this clause has come into force, the interim development authority shall serve notice thereof:

- (a) in the case of a direction given pursuant to paragraph (b) of subclause (1) of this clause, on the person for the time being carrying on the public utility undertaking,
- (b) in the case of a direction given pursuant to paragraph (c) of subclause (1) of this clause, on the owner and occupier of the land affected and in any case where the direction relates to war damage the War Damage Commission constituted under the (Commonwealth) *National Security (War Damage to Property) Regulations* made under the (Commonwealth) *National Security Act 1939-1943*.

(5)

- (a) Before any development of Class VI is commenced particulars of the proposed development illustrated by maps and drawings shall be furnished by the Housing Commission of New South Wales to the interim development authority,
- (b) Where the interim development authority objects to any such development it may serve notice of such objection upon the Housing Commission of New South Wales and the Minister for Local Government. Every such notice shall state the grounds

upon which the objection to the proposed development is based and shall be served within fourteen days after receipt of the particulars referred to in paragraph (a) of this subclause and not otherwise,

- (c) Where notice of objection to any proposed development of Class VI is given in pursuance of paragraph (b) of this subclause, the development shall not be carried out until the objection has been determined by the Minister,
- (d) The Minister may allow the objection or may dismiss the objection unconditionally or subject to the proposed development being carried out under such conditions as the Minister may think proper to impose but the Minister, before determining the objection shall, if either the interim development authority or the Housing Commission of New South Wales so desires, afford them the opportunity of appearing before and being heard by a person appointed by the Minister for that purpose,
- (e) Where an objection has been allowed by the Minister the development to which that objection relates shall not be carried out.

Part 3 Development which may be permitted by the interim development authority

6 Applications for development

- (1) Development which is not permitted by this Ordinance shall not be carried out except with the permission of the interim development authority.
- (2) Application for such permission shall be made in writing to the interim development authority and shall be accompanied by a plan in triplicate sufficient to identify the land to which the application relates (hereinafter called a **site-plan**) and particulars, illustrated by maps and drawings in triplicate, sufficient to show the proposed development:

Provided that it shall not be necessary to furnish maps and drawings, other than a site-plan, in any case where the proposed development is sufficiently described by the particulars together with the site-plan, or where the application is expressed to be an application for general permission conditioned on the subsequent approval by the interim development authority, or by the Minister on appeal, of the particulars of the proposed development.

Special types of applications

7 Special types of applications

In any case where:

- (a) in pursuance of the Act (except Part 12A thereof) or of an Ordinance made under the

Act (except the said Part), or

- (b) in pursuance of the *Sydney Corporation Act 1932*, as amended by subsequent Acts, or of a By-law made thereunder,

an application is made for approval to erect a building or for approval of building plans or for approval to open a public road or a public way or to subdivide land and such application has not been determined prior to the date upon which the provisions of Division 7 of Part 12A of the Act became applicable to the land to which the application relates, such application, if accompanied by such plans, particulars, maps and drawings as are required in the case of an interim development application under this Part of this Ordinance and if the proposed development is not development which is permitted by this Ordinance, shall be deemed to be an interim development application under this Part of this Ordinance and shall be dealt with accordingly.

Applications relating to works for making good war damage

8 Applications relating to works for making good war damage

Where application is made in accordance with the provisions of this Ordinance for permission for the rebuilding, restoration or replacement of any building which has sustained war damage, the interim development authority shall not be entitled to refuse permission and shall not be entitled to impose conditions upon the grant thereof, unless it is satisfied that it is expedient so to do on the ground:

- (a) that the design or external appearance of the building would seriously injure the amenity of the neighbourhood, and is reasonably capable of modification, or
- (b) that the building would not conform with a provision intended to be included in the scheme for fixing, in relation to a road or proposed road, a building line, or
- (c) that the building or the proposed use thereof would conflict with provisions intended to be included in the scheme for the reservation of the land or for regulating the use of the buildings permitted thereon, and that it would be necessary in the interests of the scheme to secure the removal or alteration of the building or prohibit the use thereof,

or unless the building is comprised in a locality in respect of which a direction, under clause 5 of this Ordinance, is in force with respect to development of Class III.

Applications relating to mine buildings

9 Applications relating to mine buildings

Where application is made in accordance with the provisions of this Ordinance by the owner or lessee of a mine for permission for the erection upon the mine of any building required in connection with the mining, working, treatment or disposal of minerals, or for

the alteration or extension of any such building, the interim development authority shall not be entitled to refuse permission, and shall not be entitled to impose conditions upon the grant thereof, unless it is satisfied that it is expedient so to do on the ground:

- (a) that the design or external appearance of the building as proposed to be erected, altered or extended, would seriously injure the amenities of the neighbourhood, and is reasonably capable of modification, or
- (b) that the proposed building or extension ought to be, and can reasonably be, situated elsewhere upon such mine,

or unless the mine is comprised in a locality in respect of which a direction under clause 5 of this Ordinance is in force with respect to development of any description specified in clause 7 of Schedule 1 to this Ordinance.

Consultation

10 Consultation

An interim development authority shall, in connection with the determination of any application made to it in accordance with the provisions of this Ordinance, consult with the following:

- (a) where the interim development authority is a county council to which the power to prepare a scheme within the county district has been delegated, the council of the area included in the county district in which the land to which the application relates is situated,
- (b) where the interim development authority is a council which is not a county council and the development to which the application relates would affect any matter or thing with respect to which a power or duty has been delegated to a county council, the county council,
- (c) where it appears to the interim development authority that the development to which the application relates would be likely to affect land in the area of any other interim development authority, or land to which a prescribed scheme applies, that other interim development authority or, as the case may be, the responsible authority under the prescribed scheme,
- (d) where the interim development authority is a constituent member of a joint committee constituted for the purpose of the preparation of a scheme, that joint committee,
- (e) where it appears to the interim development authority or where the interim development authority is informed that the development to which the application relates would be likely to affect any Government department including a Government department which is the applicant, the Government department concerned,

(f) any authority, body or person specified in any direction given by the Minister:

Provided that it shall not be necessary for the interim development authority to consult with any body specified in paragraphs (a) to (e) both inclusive of this clause in any case where that body has given notice to the interim development authority stating that during the continuance in force of the notice it does not require to be consulted.

Part 4

Supplementary provisions

11 Supplementary provisions

Any power conferred by this Ordinance to give a direction or notice shall be construed as including power to cancel or vary the direction and notice by a subsequent direction or notice as the case may require.

Schedule 1 Development of Class V permitted under clause 4 of this Ordinance

- 1** The carrying out by persons carrying on public utility undertakings, being railway undertakings, on land comprised in their undertaking, of any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant, except:
 - (a) the construction of railways, railway stations and bridges over roads,
 - (b) the erection of any buildings outside the limits of a railway or railway station,
 - (c) the erection within the limits of a railway station, but not wholly within the interior of a station, of residential buildings, offices, or buildings (hereinafter referred to as **factory buildings**) to be used for manufacturing or repairing work,
 - (d) the reconstruction or alteration of buildings outside the limits of a railway or railway station, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of railway stations or bridges, or of residential buildings, offices or factory buildings within the limits of a railway or railway station, but not wholly within the interior of a station,
 - (e) the formation or alteration of any means of access to a road.
- 2** The carrying out by persons carrying on public utility undertakings, being road transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by road, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant, except:
 - (a) the erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings,

- (b) the formation or alteration of any means of access to a road.
- 3** The carrying out by persons carrying on public utility undertakings, being water transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by water, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:
- (a) the erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings,
- (b) the formation or alteration of any means of access to a road.
- 4** The carrying out by persons carrying on public utility undertakings, being wharf, harbour or river undertakings, on land comprised in their undertakings, of any development required for the purpose of shipping or in connection with the embarking, loading, discharging or transport of passengers, livestock or goods at a wharf or harbour or the movement of traffic by a railway forming part of the undertaking, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant, except:
- (a) the construction of bridges, the erection of any other buildings, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of bridges or of buildings,
- (b) the formation or alteration of any means of access to a road.
- 5** The carrying out by persons who are carrying on public utility undertakings, being air transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by air, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:
- (a) the erection of buildings and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings,
- (b) the formation or alteration of any means of access to a road.
- 6** The carrying out by persons who are carrying on public utility undertakings, being water, hydraulic power, electricity and gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say:
- (1) development of any description at or below the surface of the ground,
- (2) the installation of any plant inside a building or the installation or erection within the premises of a generating station or sub-station established before the provisions of Division 7 of Part 12A of the Act became applicable to the land on which the building is erected or premises are situated of any plant or other structures or erections required in connection with the station or sub-station,
- (3) the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant, structures or erections already installed or erected, including the installation in an electrical transmission line of sub-stations, feeder-pillars or

transformer housings, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of sub-stations, feeder-pillars or transformer housings of stone, concrete or brickwork,

- (4) the provision of overhead service lines in pursuance of any statutory obligation to provide a supply of electricity,
- (5) the erection, by the Metropolitan Water, Sewerage and Drainage Board or the Hunter District Water Board, as the case may be, of service reservoirs on land acquired or in process of being acquired for the purposes thereof before the provisions of Division 7 of Part 12A of the Act became applicable to such land, provided reasonable notice of the proposed erection was given to the interim development authority,
- (6) any other development except:
 - (a) the erection of buildings, the installation or erection of plant or other structures or erections, and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings,
 - (b) the formation or alteration of any means of access to a road.
- 7** The carrying out by the owner or lessee of a mine, on the mine, of any development required for the purposes of the mine, except:
 - (a) the erection of buildings (not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals), and the reconstruction, alteration or extension so as materially to affect the design or external appearance thereof, of buildings,
 - (b) the formation or alteration of any means of access to a road.
- 8** The carrying out of any development required in connection with the improvement, maintenance or repair of watercourses or drainage works and the construction by the Metropolitan Water, Sewerage and Drainage Board or the Hunter District Water Board, as the case may be, of any stormwater channel commenced before the provisions of Division 7 of Part 12A of the Act became applicable to the land, provided the Board has given the interim development authority reasonable notice of its intention to construct such stormwater channel.
- 9** The carrying out by the Metropolitan Water, Sewerage and Drainage Board or the Hunter District Water Board, as the case may be, of any development required in connection with the provision, improvement, maintenance and repair of sewers (other than sewage treatment works) upon, below or above the surface of the ground, provided the Board has given the interim development authority reasonable notice of its intention to carry out such development.
- 10** The carrying out of any development required in connection with the reconstruction, maintenance or repair of roads within the existing limits of such roads: Provided that such reconstruction shall not be carried out with a view to altering the classification of any road.

Schedule 2 Development excepted from restrictions under paragraph (c) of the proviso to subclause (2) of clause 5 of this Ordinance

Description of development

Extent of exception from restriction

- | | |
|--|--|
| <p>1</p> <p>Development permitted by virtue of clause 1 of Schedule 1 of this Ordinance.</p> | <ul style="list-style-type: none">(a) Maintenance of railway stations, bridges and buildings.(b) Alteration and maintenance of railway track, and provision and maintenance of track equipment, including signal-boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail. |
| <p>2</p> <p>Development permitted by virtue of clause 2 of Schedule 1 of this Ordinance.</p> | <ul style="list-style-type: none">(a) Maintenance of buildings and other structures and erections.(b) Provision, alteration and maintenance of equipment, including signalling apparatus and other appliances and works required in connection with the movement of traffic by road. |
| <p>3</p> <p>Development permitted by virtue of clauses 3 and 4 of Schedule 1 of this Ordinance.</p> | <ul style="list-style-type: none">(a) Maintenance of buildings, quays, wharves, jetties and the like.(b) Provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required for the purposes of shipping or in connection with the embarking, loading, discharging or transport of passengers, livestock or goods at a dock, quay, harbour, wharf, jetty or the like.(c) In the case of an undertaking which includes a railway:<ul style="list-style-type: none">(i) maintenance of railway stations, bridges and buildings,(ii) alteration and maintenance of railway track and provision and maintenance of track equipment, including signal-boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail. |
| <p>4</p> <p>Development permitted by virtue of clause 5 of Schedule 1 of this Ordinance.</p> | <ul style="list-style-type: none">(a) Maintenance of aerodromes, buildings, wharves, jetties and the like.(b) Provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required in connection with the movement of traffic by air. |
| <p>5</p> <p>Development permitted by virtue of clause 6 of Schedule 1 to this Ordinance.</p> | <ul style="list-style-type: none">(a) Extension, alteration and maintenance of plant or other structures or erections.(b) Maintenance of any other building. |

6

Development permitted by virtue of clause 7 of Schedule 1 to this Ordinance.

- (a) Extension, alteration and maintenance of plant or other structures or erections required for the winning, working, treatment or disposal of minerals.
- (b) Maintenance of any other buildings used for those purposes.
- (c) Winning and working of minerals by underground working.
- (d) Deposit of waste materials or refuse in connection with the winning or working of minerals in any part of a mine which was used for that purpose at the commencement of this Ordinance, whether or not the superficial area of the deposit is thereby extended.

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Development permitted by virtue of clauses 8, 9 and 10 of Schedule 1 to this Ordinance. All development so permitted.