TERRITORY OF CHRISTMAS ISLAND

Christmas Island Space Centre (APSC Proposal) Ordinance 2001

No. 4 of 2001

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance under the Christmas Island Act 1958.

Dated 8 October 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

IAN MACDONALD
Minister for Regional Services, Territories and Local Government
An Ordinance to facilitate a proposal by Asia-Pacific Space Centre Pty Limited for the establishment on Christmas Island of a commercial facility for launching space objects, and for related purposes

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Part 1 Preliminary

1 Name of Ordinance

This Ordinance is the Christmas Island Space Centre (APSC Proposal) Ordinance 2001.

2 Commencement

This Ordinance commences on 18 October 2001.

3 Interpretation

(1) In this Ordinance:

approved proposal means a proposal approved under section 13, and includes such a proposal as varied.

APSC means Asia-Pacific Space Centre Pty Limited (ACN 077 332 542).

associated transport infrastructure means transport infrastructure that is necessary or desirable for the construction or operation of the Facility, and includes 1 or more of the following:

(a) a RoRo facility;
(b) other port and marine facilities;
(c) access roads;
(d) additional airport facilities.

building activities means any of the following activities:

(a) constructing buildings or other structures;
(b) altering the structure of buildings or other structures;
(c) undertaking, constructing or altering earthworks (whether or not in relation to buildings or other structures);
(d) undertaking, constructing or altering engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures);
(e) demolishing, destroying, dismantling or removing:
   (i) buildings or other structures; or
   (ii) earthworks or engineering works; or
   (iii) electrical works; or
   (iv) hydraulic works.

**Building Code** means the Building Code of Australia, as in force, or existing, from time to time, in the Territory.

**building controller** means a person appointed as a building controller under section 30 and, in relation to a building activity in an Exclusion Zone, means a person so appointed for the Exclusion Zone.

**component**, for the Facility, means a component of the Facility mentioned in subsection 5 (2).

**Corporations Act** means the *Corporations Act 2001*.

**development conditions** means conditions relating to the protection of the environment contained in recommendations about the construction and operation of the Facility made by the Minister for the Environment and Heritage in accordance with Administrative Procedures under the *Environment Protection (Impact of Proposals) Act 1974*.

**earthworks or engineering works** means any of the following:
(a) launch facilities;
(b) runways, taxiways and aprons;
(c) surface carparks;
(d) retaining walls;
(e) dams;
(f) roads;
(g) railways;
(h) pipelines;
(i) tunnels.

**Environment Management Plan** means an environment management plan, approved by the Minister for the Environment and Heritage, relating to the construction and operation of the Facility and associated transport infrastructure.

**Exclusion Zone** means an Exclusion Zone declared under section 22.
Section 3

Facility has the meaning given in section 5.
land includes any building or structure on land.
Launch Complex means the Launch Complex mentioned in section 5.
Mission Control means the Mission Control mentioned in section 5.
proposal means a proposal submitted under section 5 or 17.
related body corporate has the same meaning as in the Corporations Act.
Residential and Administration Complex means the Residential and Administration Complex mentioned in section 5.
RoRo facility means a roll-on roll-off facility for the loading and unloading of freight by sea.
Secretary means the Secretary to the Department.
space object has the meaning given in section 8 of the Space Activities Act 1998.
structures means any of the following:
(a) bridges;
(b) fences;
(c) towers and pylons;
(d) tents and other temporary structures.
Technical Centre means the Technical Centre mentioned in section 5.
the regulations means regulations made under section 24.

(2) A reference in this Ordinance to associated transport infrastructure, in relation to a proposal or an approved proposal, is a reference to associated transport infrastructure that is included in the proposal or approved proposal.

(3) A reference in this Ordinance to Australian building standards is a reference:
(a) for a building activity other than demolition — to:
    (i) the Building Code; or
(ii) if the Building Code does not apply to the building activity, or a part of the building activity — standards determined by a building controller (or if there is no building controller, by an authorised person), in writing, to be applicable to the building activity, or part, having regard to customary standards for the kind of activity being carried out; or

(b) for a demolition — to Australian Standard AS 2601-1991, *The Demolition of Structures*, as in force, or existing, from time to time.

(4) In subsection (3):

*authorised person* means:

(a) the Secretary; or

(b) a person authorised, in writing, by the Secretary for the purposes of that subsection.

4 **Change of control of APSC**

For the avoidance of doubt, and without limiting any other circumstances that may constitute a passing of the control of APSC, a change in the beneficial ownership of 49 per cent or more of the voting shares in APSC or in any related body corporate is taken to result in a passing of the control of APSC.
Part 2 Proposal for Facility

5 APSC to submit proposal for launch facility

(1) APSC may submit to the Minister a proposal for the construction and operation, on Christmas Island, of a permanent, fixed facility (the Facility) for the launch into outer space of space objects.

(2) The Facility may comprise the following components:
   (a) a Technical Centre;
   (b) a Launch Complex;
   (c) a Mission Control;
   (d) a Residential and Administration Complex.

(3) The Technical Centre may include:
   (a) buildings, plant and equipment necessary for launch vehicle assembly, payload preparation and storage of components awaiting assembly; and
   (b) a liquid oxygen store and a fuel store; and
   (c) necessary support facilities.

(4) The Launch Complex may include launch pads and a launch fuelling system.

(5) The Mission Control may include the communications systems necessary for the launch of space objects.

(6) The Residential and Administration Complex may include housing or other appropriate accommodation, and appropriate facilities, for permanent employees of APSC on Christmas Island.

(7) The proposal may provide for the construction and operation of associated transport infrastructure.

(8) Provision in the proposal for any associated transport infrastructure may include provision for the modification of existing transport facilities.
6 Details of proposal

(1) The proposal must include details of the following matters:
   (a) the development and construction, or provision, of each component of the Facility included in the proposal, and of any associated transport infrastructure;
   (b) the workforce necessary for the construction of the Facility and any associated transport infrastructure;
   (c) the proposed site location, layout, design specifications and program for the commencement and construction, or provision, of each of the following:
      (i) the components of the Facility, and any associated transport infrastructure;
      (ii) temporary accommodation and ancillary facilities for the construction workforce on or near the Facility;
      (iii) water supply, sewerage and waste disposal;
      (iv) energy supply;
      (v) storage and facilities for ship and aircraft loading and unloading;
      (vi) any other works, services or facilities required by APSC for the Facility;
   (d) proposals for the establishment by APSC of arrangements:
      (i) to provide opportunities for the use of local and other Australian labour, professional services, manufacturers, suppliers, contractors and materials; and
      (ii) for the engagement and training of employees by APSC, its contractors and agents.

(2) The proposal must include details of any leases, easements and other interests in land required for the construction and operation of the Facility and any associated transport infrastructure.

(3) The proposal must include details of consultations undertaken by APSC with the Shire of Christmas Island about town planning and construction issues relating to the Facility and any associated transport infrastructure, and the outcomes of those consultations.
(4) The proposal must be as complete and detailed as is reasonably practicable.

7 Order of submission etc of proposal

(1) The Minister may, in writing, require APSC to submit the proposal in separate parts as to particular components or matters and in the order specified by the Minister, and APSC must comply with the requirement.

(2) Subject to subsection (1), APSC, with the approval of the Minister, may submit the proposal as a whole or in separate parts as to particular components or matters, and in any order approved by the Minister.

8 Evidence of commitment

APSC must submit to the Minister, together with the proposal, evidence sufficient to satisfy the Minister that:
(a) APSC is ready to carry out the proposal; and
(b) sufficient funding is available to APSC to carry out the proposal; and
(c) APSC is able to provide security against any risk of repair to, or rehabilitation of, land on Christmas Island that is necessary as a result of:
   (i) a failure by APSC to meet its environmental management responsibilities under the Environment Management Plan or any environmental legislation that applies to the construction or operation of the Facility; or
   (ii) a decision by APSC to abandon, or not to complete, the Facility.

9 Design and construction standards

Plans, drawings and specifications, submitted with the proposal, for the construction of the Facility and any associated transport infrastructure must comply with Australian building standards.
Section 12

10 Use of existing facilities

(1) The proposal may provide for the use of an existing facility in place of the construction of a new facility.

(2) Subsection (1) does not apply to an existing facility unless the use of the facility is approved in writing by:

(a) the Minister; and

(b) any other person having a legal or beneficial interest in the facility.

11 Goods and services sourced outside Australia

(1) This section applies to any goods or services for the Facility or any associated transport infrastructure that APSC intends to obtain or carry out, whether through contractors, agents or otherwise, outside Australia.

(2) APSC must give to the Minister in writing, at the time of submitting the proposal, or a part of the proposal, a statement of the proportion of the total value of goods and services required to carry out the proposal, or part of the proposal, that are to be obtained or carried out outside Australia.

(3) APSC must consult with the Minister about any goods or services to which this section applies if required by the Minister in writing to do so.

(4) In this section:

- **goods** includes any plant, equipment, materials or supplies.
- **services** includes any part of the project investigations, design or management.

12 APSC to undertake studies etc

(1) APSC must undertake the engineering, environmental, market and finance studies and other activities necessary to complete and submit the proposal.

(2) APSC must give the Minister a written report on the progress and results of the studies and other activities mentioned in subsection (1) if required by the Minister in writing to do so.
Section 13

(3) APSC must cooperate and consult with the Commonwealth, its employees and agents:
   (a) in carrying out the studies and other activities mentioned in subsection (1); and
   (b) for the purpose of any other studies or activities undertaken by the Commonwealth that are relevant to the proposal.

13 Consideration of proposal

(1) The Minister must consider a proposal submitted under section 5 and must approve or reject the proposal.

(2) The Minister must not approve a proposal unless the Minister is satisfied that:
   (a) APSC is ready to carry out the proposal; and
   (b) there is sufficient funding available to APSC to carry out the proposal; and
   (c) buildings, structures, works and other facilities to be constructed, used or carried out under the proposal will comply with Australian building standards; and
   (d) if the proposal involves issues relating to town planning or construction, APSC has consulted with the Shire of Christmas Island about those issues; and
   (e) an Environment Management Plan will be established, and necessary environmental approvals under Australian law will be given, for the construction and operation of the Facility and any associated transport infrastructure; and
   (f) the proposal is consistent with the development conditions; and
   (g) the necessary approvals have been obtained under Australian law for investment in the construction and operation of the Facility and any associated transport infrastructure; and
   (h) APSC will establish arrangements of a kind mentioned in paragraph 6 (1) (d).

(3) The Minister may approve a proposal subject to conditions.
Section 14

(4) Without limiting subsection (3), the Minister may approve a proposal subject to land required for the proposal being made available by the Commonwealth or any person.

(5) The Minister may approve a proposal that relates to the Technical Centre, Launch Complex or Mission Control whether or not APSC has been granted a space licence for the Facility under section 18 of the Space Activities Act 1998.

14 Proposal may be deferred or amended

(1) Despite section 13, the Minister may defer consideration of a proposal or part of a proposal, or making a decision on the proposal, until APSC submits another part of the proposal.

(2) The Minister may also defer consideration of a proposal, or making a decision on the proposal, until:
   (a) if subsection (3) applies to the proposal — the required information is submitted; or
   (b) if subsection (4) applies to the proposal or part of the proposal — the proposal or part is resubmitted with amendments in accordance with the Minister’s requirement; or
   (c) if subsection (6) applies to the proposal — a condition precedent imposed under that subsection is complied with.

(3) The Minister may, in writing, require APSC to submit further oral or written information about a proposal or part of a proposal.

(4) The Minister may, in writing, require APSC to make reasonable amendments to a proposal or part of a proposal and to resubmit the proposal, or part, as amended.

(5) The Minister must include in any requirement under subsection (4):
   (a) details of the amendments required; and
   (b) reasons for requiring the amendments.

(6) The Minister may, in writing, impose on APSC any reasonable condition precedent to the giving of approval to a proposal and may require APSC to comply with the condition.
15  **Opportunity to consult**

The Minister must not reject a proposal, or approve a proposal subject to conditions, unless the Minister has given APSC a fair and reasonable opportunity to:

(a) consult with the Minister about the proposal; and

(b) submit a new or revised proposal on the matter.

16  **Notice of decision**

(1) As soon as practicable after making a decision on a proposal, the Minister must give notice of the decision to APSC.

(2) If the approval is subject to conditions, the notice must set out the conditions.

(3) If the Minister rejects the proposal, the Minister must give reasons for the rejection.

(4) However, a failure to give reasons for the rejection does not invalidate the Minister’s decision.

17  **Variation etc of activities**

(1) This section applies if:

(a) APSC wishes not to carry out, or to change significantly, any activity to be carried out in relation to the Facility or any associated transport infrastructure under an approved proposal; or

(b) APSC wishes to carry out any activity in relation to the Facility or infrastructure that is not provided for in the approved proposal.

(2) APSC must submit to the Minister in writing:

(a) the approved proposal as varied, giving details of the change; or

(b) a new proposal giving details of the new activity.

(3) Sections 13, 14, 15 and 16 apply to a proposal as varied, or to a new proposal, submitted under this section.
Section 20

18 **APSC to notify Minister of proposed change of control**

APSC must notify the Minister in writing of any proposed change in the shareholding of APSC that will result in control of APSC passing from the person or persons who controlled APSC:

(a) at the time a proposal was submitted; or

(b) if the proposal is approved, at the time the proposal was approved.

19 **Revocation of approval**

The Minister may, by notice in writing to APSC, revoke the approval of a proposal if there are reasonable grounds for believing that:

(a) any information given in, or in connection with, the proposal is false or misleading; or

(b) any licence, permit, approval or other authority relating to the construction or operation of the Facility or any associated transport infrastructure and required under Australian law will not be obtained within a reasonable time, or is, or will be, revoked; or

(c) land (including submerged land) required for the proposal cannot be made available; or

(d) for any reason (including insufficiency of funding), APSC will be unable to carry out the proposal; or

(e) APSC has failed, or will fail, to comply with an obligation imposed on it under this Ordinance or the proposal; or

(f) if the approval is subject to conditions — APSC has failed, or will fail, to comply with a condition of the approval.

20 **Rights etc not transferable**

A right or entitlement of APSC arising out of the Minister’s approval of a proposal is not transferable except with the consent, in writing, of the Minister.
Part 3 Exclusion Zones and building controls

21 Definitions for Part 3

In this Part:

building approval has the meaning given by subsection 24 (2).

certificate of compliance has the meaning given by subsection 24 (2).

eligible alteration means:

(a) an alteration of the structure of a building or other structure; or

(b) an alteration of earthworks, engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures).

22 Exclusion Zone

The Minister may declare, by notice in the Gazette, an area of land on Christmas Island that is used, or required to be used, for the Facility to be an Exclusion Zone for the purposes of this Part.

23 Certain applied laws not to apply

The following applied laws do not apply to land within an Exclusion Zone:

(a) the Town Planning and Development Act 1928 (WA) (CI);
(b) the Local Government (Miscellaneous Provisions) Act 1960 (WA) (CI);
(c) the Local Government Act 1995 (WA) (CI).
24 Regulations for the control of building activities within an Exclusion Zone

(1) The Minister may make regulations, not inconsistent with this Ordinance, to provide for the control of building activities within an Exclusion Zone.

(2) Without limiting subsection (1), the regulations may make provision for or in relation to the following:
   (a) the grant of approvals (to be known as building approvals) for building activities to be carried out within an Exclusion Zone;
   (b) conditions of building approvals;
   (c) revocation, variation or surrender of building approvals;
   (d) fees in respect of building approvals;
   (e) the issue of certificates (to be known as certificates of compliance) stating that a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration is to be treated as complying with the regulations;
   (f) conditions of certificates of compliance;
   (g) revocation, variation or surrender of certificates of compliance;
   (h) fees in respect of certificates of compliance;
   (j) monitoring the compliance of building activities with the Environment Management Plan, the development conditions and any environmental legislation that is applicable to the activities.

(3) The regulations may declare:
   (a) a kind of building activity for subsection 25 (3); or
   (b) a building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration, as the case requires, for subsection 28 (3).

(4) The regulations may make provision enabling a person who is alleged to have committed an offence against this Part to pay a penalty to the Commonwealth as an alternative to prosecution.
Section 25

(5) The penalty must equal one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

(6) The regulations may provide for or in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in the Building Code, or another standard, as in force at a particular time or from time to time.

25 Building activities within an exclusion zone

(1) A person must not carry out a building activity in an Exclusion Zone.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to a building activity that is:
(a) provided for in an approved proposal; and
(b) carried out in accordance with a building approval in force under the regulations.

(3) Also, subsection (1) does not apply to a building activity of a kind declared by the regulations for the purposes of this subsection.

Note A defendant bears an evidential burden in relation to a matter in subsection (2) or (3) (see subsection 13.3 (3) of the Criminal Code).

26 Contravening conditions — building approval

(1) A person commits an offence if:
(a) the person has been granted a building approval under the regulations; and
(b) the person engages in conduct; and
(c) the person’s conduct contravenes a condition of the building approval.

Penalty: 50 penalty units.

(2) Strict liability applies to paragraph (1) (a).

Note For strict liability, see section 6.1 of the Criminal Code.
27 Remedial directions

(1) This section applies to a building activity (except a building activity that is exempt under subsection 25 (3)) carried out in an Exclusion Zone if either:
   (a) the activity was not authorised by a building approval; or
   (b) if a building approval was granted:
      (i) a condition of the approval was contravened; or
      (ii) the activity did not comply with the approved proposal, the development conditions or the Environment Management Plan; or
      (iii) a duty imposed by the regulations on a person carrying out the building activity was not complied with.

(2) An authorised person may give another person a written direction in relation to a building activity to which this section applies, requiring the other person to:
   (a) stop work on; or
   (b) carry out remedial work on; or
   (c) demolish, dismantle or remove
   the building, structure, earthworks, engineering works, electrical works or hydraulic works concerned.

(3) An authorised person must not give another person a direction under this section unless the other person is:
   (a) a person who carried out the building activity concerned; or
   (b) a person who arranged for the carrying out of the building activity concerned.

(4) A person commits an offence if:
   (a) the person is subject to a direction under subsection (2); and
   (b) the person engages in conduct; and
   (c) the person’s conduct contravenes the direction.

Penalty: 50 penalty units.
Section 28

(5) In this section:

authorised person means:
(a) the Secretary; or
(b) a person authorised by the Secretary for the purposes of this section.

28 Occupation or use of buildings etc

(1) A person must not occupy or use, or cause or permit the occupation or use of, a building, structure, earthworks, engineering works, electrical works or eligible alteration in an Exclusion Zone.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to the occupation or use of a building, structure, earthworks, engineering works, electrical works or eligible alteration in respect of which a certificate of compliance is in force under the regulations.

(3) Also, subsection (1) does not apply to a building, structure, earthworks, engineering works, electrical works or eligible alteration, as the case requires, of a kind declared by the regulations for the purposes of this subsection.

Note A defendant bears an evidential burden in relation to a matter in subsection (2) or (3) (see subsection 13.3 (3) of the Criminal Code).

29 Contravention of conditions — certificate of compliance

(1) A person commits an offence if:
(a) the person has been issued with a certificate of compliance under the regulations; and
(b) the person engages in conduct, whether before or after the building, structure, earthworks, engineering works, electrical works, hydraulic works or eligible alteration concerned is first occupied or used; and
(c) the person’s conduct contravenes the certificate.

Penalty: 50 penalty units.
(2) Strict liability applies to paragraph (1) (a).

Note For strict liability, see section 6.1 of the Criminal Code.

30 Building controller

(1) For the purposes of this Ordinance and the regulations, the Minister may, in writing, appoint a person to be the building controller for an Exclusion Zone.

(2) A building controller has no liability for anything done, or omitted to be done, in good faith, in reasonable reliance on a certificate given by a person who is, under the regulations, a building or works expert.

(3) A building controller has no liability for anything necessarily or reasonably done, or omitted to be done, in good faith:

(a) in exercising a power or function under the regulations; or

(b) in the reasonable belief that the act or omission was done in the exercise of a power or function under the regulations.

(4) A building controller must not disclose information given to, or obtained by, the building controller in the performance of a power or function under the regulations, to a person who does not have a lawful, and proper, need to have the information.
Part 4 Miscellaneous

31 Environmental monitoring

(1) The Minister may, in writing, appoint a person to be the environmental officer in respect of the Facility.

(2) The environmental officer must:
   (a) monitor compliance by APSC and by any other person concerned in the operation of the Facility with:
      (i) the development conditions; and
      (ii) the Environment Management Plan; and
      (iii) the Environmental Protection Act 1986 (WA) (CI); and
      (iv) any other environmental legislation that applies in relation to the operation of the Facility; and
   (b) report to the Secretary, in writing, on such compliance on a regular basis.

32 APSC not exempted from other laws

Except as provided by section 23, nothing in this Ordinance exempts APSC from any requirement under Australian law:
   (a) to obtain any licence, permit, approval, consent or other authority necessary to establish and operate the Facility and any associated transport infrastructure; or
   (b) to pay any duty, excise or other tax, or any charge or fee imposed by law, arising out of, or in connection with, the construction or operation of the Facility and any associated transport infrastructure; or
   (c) for the safe transport, handling and storage of dangerous goods, or for occupational health and safety.
33 Review of decisions

An application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister:

(a) to reject a proposal, or to approve a proposal subject to conditions, under section 13; or
(b) to defer consideration of, or the making of a decision on, a proposal, under section 14; or
(c) to impose a condition precedent to the giving of approval to a proposal, under subsection 14 (6); or
(d) to revoke the approval of a proposal, under section 19; or
(e) to refuse to consent to the transfer of a right or entitlement arising out of the approval of a proposal, under section 20.

34 No liability on Commonwealth

The Commonwealth is not liable for any loss or damage suffered by APSC or any other person as a consequence of a decision by the Minister:

(a) to reject a proposal; or
(b) to revoke the approval of a proposal before an agreement relating to implementation of the proposal is entered into.

35 Notices

(1) As soon as practicable after the commencement of this Ordinance, APSC must notify the Minister of an address for service within Australia for the purposes of this Ordinance.

(2) For this Ordinance, unless the contrary intention appears, a notice or other document required or permitted to be given to APSC is taken to be given:

(a) in the case of service otherwise than by post — on the day on which the notice or other document is delivered to the registered office, or the address for service, of APSC; or
(b) in the case of service by post — on the day on which the notice or other document would ordinarily be delivered in the due course of post or, if APSC establishes that it was delivered on a later day, on that later day.
Section 36

36 Application of the Criminal Code

On and after 18 October 2001, Chapter 2 of the Criminal Code applies to offences against this Ordinance.

Note