

Serial
Planning Amendment Bill 2019
Ms Lawler

A Bill for an Act to amend the *Planning Act 1999* and related legislation

CONSULTATION DRAFT ONLY

**PREPARED FOR THE DEPARTMENT OF INFRASTRUCTURE, PLANNING
AND LOGISTICS**

NORTHERN TERRITORY OF AUSTRALIA

PLANNING AMENDMENT ACT 2019

Act No. [] of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2019

An Act to amend the *Planning Act 1999* and related legislation

[Assented to [] 2019]
[Introduced [] 2019]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Planning Amendment Act 2019*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Planning Act 1999

3 Act amended

This Part amends the *Planning Act 1999*.

4 Section 2A replaced

Section 2A

repeal, insert

2A Purpose and objectives

The purpose of this Act is to establish a system for planning the development of land to achieve the following objectives:

- (a) to ensure that planning is conducted within a strategic framework that facilitates the development of land;
- (b) to ensure that strategic planning reflects the wishes and needs of the community;
- (c) to ensure that strategic planning is applied to planning schemes and implemented in individual planning decisions;
- (d) to ensure that appropriate public consultation and input are included in the formulation of planning schemes and the making of decisions under planning schemes;
- (e) to promote the sustainable development of land;
- (f) to promote the responsible use of land and water resources to limit the adverse effects of development on ecological processes;
- (g) to maintain the health of the natural environment and protect ecological processes;
- (h) to protect the quality of life of future generations;
- (i) to assist the provision of public utilities, infrastructure and facilities for the benefit of the community;
- (j) to assist the conservation and enhancement of places, areas and buildings that are of cultural value or of aesthetic, architectural or historical interest;
- (k) to respect and encourage fair and open decision making and public access to processes for review of planning related decisions.

5 Section 3 amended (Interpretation)

- (1) Section 3(1), definitions ***base period of the permit, Chairman, Deputy Chairman*** and ***former Act***

omit

- (2) Section 3(1)

insert

authorised officer means a person appointed under section 76.

base period of the permit, in relation to a development permit or an exceptional development permit, means the period commencing on the date of consent and ending on:

- (a) the date specified in the permit as the date on which the permit will lapse; or
- (b) if no date is specified in the permit as the date on which the permit will lapse – the date 2 years after the relevant date of consent.

Chair means the person appointed as the Chair of the Development Consent Authority under section 88(1) and includes a Deputy Chair acting under section 88(3) or (4).

Deputy Chair means a person appointed as a Deputy Chair of the Development Consent Authority under section 88(2).

enforcement notice means a notice issued under section 77.

local authority member means a member of the Development Consent Authority who is appointed under section 89(1)(b) or 91 for a local authority.

- (3) Section 3(1), definition ***member***, paragraph (b)(i)

omit

Chairman

insert

Chair

- (4) Section 3(1), definition **service authority**

omit

a local authority,

- (5) Section 3(2)

omit

section 79

insert

section 80B

6 Section 5A inserted

After section 5

insert

5A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

7 Section 6A inserted

After section 6, in Part 1

insert

6A Persons and bodies performing functions under this Act

- (1) The Minister's functions under this Act are primarily to:
- (a) make and amend specific planning schemes under Part 2; and
 - (b) make interim development control orders under Part 3; and
 - (c) perform the functions of a consent authority in the circumstances specified in section 4; and
 - (d) appoint members of the various bodies that perform functions under this Act; and

- (e) appoint persons who perform administrative or enforcement functions under this Act; and
 - (f) prescribe fees, approve forms and perform administrative functions under this Act.
- (2) The Planning Commission's functions under this Act are specified in section 81B and relate primarily to:
- (a) developing strategic planning for the Territory and maintaining the NT Planning Scheme; and
 - (b) assisting the Minister in carrying out the purpose and objectives of this Act.
- (3) The Development Consent Authority's function under this Act is to perform the functions of a consent authority in those places where it is established.
- (4) A consent authority's function under this Act is to make decisions relating to applications to develop land.

8 Section 9 replaced

Section 9

repeal, insert

9 Planning scheme

- (1) A planning scheme must establish the planning provisions that apply to an area of land, which may include the following:
- (a) policies to be applied to the development of land;
 - (b) provisions that permit, prohibit, restrict, impose conditions on or otherwise control the development of land;
 - (c) provisions necessary or convenient to give effect to the planning scheme;
 - (d) maps, plans, designs and diagrams.
- (2) A planning scheme may be comprised of the following:
- (a) a strategic framework for the land to which the planning scheme applies;
 - (b) overlay provisions;
 - (c) zone provisions;

- (d) development requirements;
 - (e) interpretive provisions and administrative guidelines.
- (3) A provision of a planning scheme may apply in relation to all or part of the land to which the planning scheme applies.
- (4) A planning scheme may refer to, adopt or incorporate, with or without modification, a specified document, as in force at a particular time or as in force from time to time.
- (5) A planning scheme is to be interpreted and applied in accordance with its provisions.

9A Contents of strategic framework

A strategic framework is composed of the planning policies and plans that apply to an area of land, which may include the following:

- (a) the strategic policies and principles that promote the purpose and objectives of this Act and guide the development of land to which the planning scheme applies;
- (b) a regional land use plan that establishes the general policies and principles that guide all development of land, land use and resource use in a region and identifies any issues related to long term planning;
- (c) a subregional land use plan that establishes the specific policies and principles that guide all development of land, land use and resource use in a subregion;
- (d) an area plan that establishes the specific rules and principles for all development of land, land use and resource use in an area.

9B Overlay provisions, zone provisions and development requirements and guidelines

- (1) The overlay provisions of a planning scheme consist of:
- (a) the specific development requirements that prevail over or are in addition to the zone provisions; and
 - (b) a map or other geographic means of determining where the overlay provisions apply.

- (2) The zone provisions of a planning scheme consist of:
- (a) a statement of the purpose of each zone and the outcomes expected for each zone; and
 - (b) a table that states the categories of development that are permitted, prohibited or otherwise controlled and the applicable development requirements in a zone; and
 - (c) one or more maps or other geographic means to identify the applicable zones.
- (3) The development requirements in a planning scheme consist of:
- (a) the requirements that apply to development in a zone; and
 - (b) the subdivision and consolidation requirements for the scheme area.

9C Interpretative provisions and administrative guidelines

The interpretative provisions and administrative guidelines in a planning scheme consist of:

- (a) any definitions, rules or principles for interpreting or applying the planning scheme; and
- (b) any guidance a consent authority is expected to follow when administering the planning scheme, including what it is allowed to consider in relation to specific matters.

9 Section 13 replaced

Section 13

repeal, insert

13 Request to amend planning scheme

- (1) A person or body may, in writing, request the Minister to amend a planning scheme.
- (2) The request must include the following:
- (a) an explanation of the proposed amendment;
 - (b) a statement of the purpose of the proposed amendment and its desired effect;

- (c) an assessment of the merits of the proposed amendment, including how it:
 - (i) promotes the purpose and objectives of this Act; and
 - (ii) benefits the planning scheme; and
 - (iii) benefits the public interest;
 - (d) the details of any community consultation conducted, or to be conducted, in addition to the consultation required under this Act.
- (3) The Minister may require the person or body requesting an amendment to provide further information within a specified time if, in the Minister's opinion, additional information is necessary to enable a proper consideration of the request.
- (4) The Minister may reject the request without considering it further if:
- (a) the additional information is not provided within the time required; or
 - (b) additional information is provided but the Minister considers it to be insufficient to enable a proper consideration of the request.
- (5) If the Minister rejects a request under subsection (4), the Minister must give the person or body written notice of the rejection and the reasons for it.

13AA Planning Commission views on request and decision

- (1) The Minister may request the Planning Commission for its views on the strategic planning implications of a proposed amendment to a planning scheme.
- (2) The Minister must give written notice to the person or body requesting the amendment if the Minister asks the Planning Commission for its views.
- (3) The Planning Commission must give the Minister a report on its views if requested under subsection (1).
- (4) The Minister must:
 - (a) give a copy of the report from the Planning Commission to the person or body requesting the amendment; and

- (b) give that person a reasonable opportunity to respond to that report.

13AB Minister's consideration of request and decision

- (1) When considering a request to amend a planning scheme, the Minister must also consider the following:
 - (a) whether the proposed amendment promotes the purpose and objectives of this Act;
 - (b) whether the proposed amendment is consistent with any strategic framework in the planning scheme;
 - (c) whether the proposed amendment is within a declared class of amendments;
 - (d) whether the proposed amendment is not significant enough to require exhibition;
 - (e) any views expressed by the Planning Commission in response to a request under section 13AA;
 - (f) any other matters the Minister considers appropriate.
- (2) Despite Divisions 3 and 4, the Minister need not take any action under those Divisions in respect of a proposed amendment if satisfied that:
 - (a) the proposed amendment is within a declared class of amendments; or
 - (b) the proposed amendment is not significant enough to require exhibition.
- (3) After considering the request, the Minister must decide to:
 - (a) continue consideration of the proposed amendment by placing it on exhibition; or
 - (b) amend the planning scheme as proposed; or
 - (c) refuse to amend the planning scheme.
- (4) If the Minister amends the planning scheme as proposed, the Minister must:
 - (a) give notice of the amendment in accordance with section 28; and

- (b) provide reasons for the amendment in accordance with section 29.
- (5) As soon as practicable after making the decision, the Minister must give written notice of the decision to the person or body requesting the amendment.
- (6) If the Minister refuses to amend the planning scheme as proposed, the notice of the decision must include the reasons for the refusal.

10 Section 16 amended (Notice relating to rezoning or grant of permit)

- (1) Section 16(2)(b)
 - omit*
 - notices
 - insert*
 - signs
- (2) Section 16(4)
 - omit*
 - notice
 - insert*
 - sign
- (3) Section 16(5) and (6)
 - omit, insert*
- (5) A sign referred to in subsection (2)(b) must:
 - (a) be placed on, or within a reasonable distance from, the public road frontage of the land; and
 - (b) be clearly legible to a person from a location on the public road nearest to the land.
- (6) A person commits an offence if:
 - (a) the person intentionally removes a sign; and
 - (b) the sign was placed on land in accordance with this section; and

- (c) the removal occurred before the end of the period of exhibition for the proposal.

Maximum penalty: 100 penalty units.

- (7) Strict liability applies to subsection (6)(b) and (c).

11 Section 19 amended (Notice to local authority if proposal relates to land in council area)

After subsection 19(2)

insert

- (3) In response to the notice, the local authority may:
- (a) make a submission about the proposal under section 22(1); or
 - (b) give the Commission a comment or view on the proposal under section 22(4).

12 Section 22 replaced

Section 22

repeal, insert

22 Submissions and hearing

- (1) A person may make a submission about a proposal to the Commission.
- (2) The submission must be in writing and lodged with the Commission within the exhibition period.
- (3) To be received by the Commission, a submission must:
- (a) state the name and contact details of each person making the submission; and
 - (b) be signed by each person making the submission; and
 - (c) if more than one person is making the submission:
 - (i) designate one of them to be their representative; and
 - (ii) state that person's address, telephone number and other contact details.

- (4) A local authority may give the Commission a comment or view on a proposal, which is taken not to be a submission under this section if the comment or view does not oppose or contradict the proposal.
- (5) The Commission must conduct a hearing if:
 - (a) it receives a submission; and
 - (b) it is satisfied that a hearing would provide further useful information.
- (6) If the Commission conducts a hearing, it must invite the local authority and each person who made a submission to appear at the hearing and be heard in relation to the proposal.
- (7) The hearing is to be conducted by the Chairperson, or as otherwise determined by the Chairperson, with a minimum of formality and in a manner that ensures procedural fairness.

13 Section 24 amended (Reports)

Section 24(2)

omit, insert

- (2) If no submission is received or no hearing is held by the Commission, it must provide the Minister with a written report about the following, as applicable:
 - (a) any submissions received;
 - (b) the reasons why no hearing was held;
 - (c) any issues raised during any consultation;
 - (d) any other matter it considers the Minister should take into account when considering the proposal.

14 Section 25 replaced

Section 25

repeal, insert

25 Minister's action on amendment of planning scheme

- (1) This section applies if the Minister receives a report from the Commission under section 24(1) or (2) about a proposal to amend a planning scheme.

- (2) When considering the report, the Minister must also consider the following:
- (a) whether the proposed amendment promotes the purpose and objectives of this Act;
 - (b) whether the proposed amendment is consistent with any strategic framework in the planning scheme;
 - (c) any report under section 24(3);
 - (d) any other matter the Minister considers appropriate.
- (3) Within 90 days after receiving the Commission's report, the Minister must decide to:
- (a) amend the planning scheme as proposed; or
 - (b) alter the proposal and amend the planning scheme in some other way; or
 - (c) refuse to amend the planning scheme as proposed.
- Note for subsection (3)(b)*
Section 27 applies to the exhibition of an altered proposal.
- (4) Before making a decision under subsection (3), the Minister may require the proponent to provide further information in relation to the proposal within a specified time.
- (5) The Minister must give written notice of a decision under subsection (3) or (4) to the local authority and any person or body who made a submission under section 22.
- (6) If the Minister requires further information under subsection (4), the 90 day period to make a decision under subsection (3) is suspended until the earlier of the following:
- (a) the date the information is provided;
 - (b) the time specified in the requirement to provide the further information.
- (7) The Minister may refuse to amend the planning scheme as proposed if the proponent does not provide the further information required under subsection (4) within the specified time.

15 Section 30H amended (Notice to local authority)

After section 30H(2)

insert

- (3) In response to the notice, the local authority may:
- (a) make a submission about the proposal under section 30M(1);
or
 - (b) give the Commission a comment or view on the proposal under section 30M(4).

16 Section 30J amended (Notices on land to which concurrent application relates)

- (1) Section 30J, heading

omit

Notices

insert

Signs

- (2) Section 30J(1)

omit

notices

insert

signs

- (3) Section 30J(2)

omit, insert

- (2) The signs must:
- (a) briefly describe the amendment proposal and development proposal in the concurrent application; and
 - (b) specify the following details, as applicable:
 - (i) the current zone of the land;
 - (ii) that no zone is currently specified for the land;

- (iii) the zone proposed for the land; and
 - (c) state that written submissions about the application may be made to the consent authority within the exhibition period; and
 - (d) be placed on, or within a reasonable distance from, the road frontage of the land; and
 - (e) be clearly legible to a person from the public road nearest to the land.
- (4) Section 30J(3), penalty provision
- omit*
- (5) After section 30J(3)
- insert*
- (3A) A person commits an offence if:
- (a) the person intentionally removes a sign; and
 - (b) the sign was placed on land in accordance with this section; and
 - (c) the removal occurred before the end of the period of exhibition for the concurrent application.
- Maximum penalty: 100 penalty units.
- (3B) Strict liability applies to subsections (3A)(b) and (c).

17 Section 30M amended (Submissions)

- After section 30M(2)
- insert*
- (3) The submission must be in writing and lodged with the consent authority within the exhibition period.
 - (4) To be received by the consent authority, a submission must:
 - (a) state the name and contact details of each person making the submission; and
 - (b) be signed by each person making the submission; and

- (c) if more than one person is making the submission:
 - (i) designate one of them to be their representative; and
 - (ii) state that person's address, telephone number and other contact details.
- (5) A local authority may give the consent authority a comment or view on an application, which is taken not to be a submission under this section or section 30N, if the comment or view does not oppose or contradict the application.

18 Section 30S amended (Matters to be taken into account for amendment decision)

- (1) After section 30S(a)
 - insert*
 - (ab) whether the amendment proposal promotes the purpose and objectives of this Act;
 - (ac) any strategic framework in the planning scheme that applies to the land;
- (2) Section 30S(f)
 - omit*
 - the reports
 - insert*
 - any report

19 Section 30W amended (Determination of development proposal)

- (1) Section 30W(3)
 - omit, insert*
- (3) The consent authority must not consent to a development proposal under subsection (1)(a) or (b) if in its opinion the proposed development is contrary to:
 - (a) the provisions of the planning scheme applicable to the land;
or
 - (b) an interim development control order.

(2) Section 30W(5)

omit, insert

- (5) The consent authority may, by written notice, request approval from the Minister to consent to a proposed development that, in its opinion, is contrary to the strategic framework of a planning scheme if:
- (a) the development was not foreseen by the strategic framework; or
 - (b) there are unusual or exigent circumstances that make the development appropriate.
- (6) After making the request, the consent authority may consent to the development proposal if:
- (a) the Minister gives written approval to do so; or
 - (b) the Minister does not respond to the request within 14 days after receiving the notice.

20 Sections 37A and 37B inserted

After section 37, in Part 4, Division 1

insert

37A Application for certificate

- (1) An owner of land may apply to the consent authority for a certificate certifying the extent to which:
- (a) a current use of the land is an existing use; and
 - (b) a building or work is an existing building or existing work.
- (2) The application must be in the approved form and accompanied by the prescribed fee.

37B Decision to issue certificate

- (1) After considering an application under section 37A, the consent authority must:
- (a) issue the certificate; or
 - (b) refuse to issue the certificate.

- (2) The consent authority may:
 - (a) define in the certificate, the nature and extent of the existing use, existing building or existing work; and
 - (b) make the certificate subject to terms and conditions; and
 - (c) provide for exceptions or limitations on the certificate.
- (3) If the consent authority refuses to issue the certificate, it must give the applicant notice of the decision with reasons for the refusal.
- (4) A certificate issued under this section is evidence of the facts certified as at the date specified in the certificate.

21 Sections 42A and 42 B inserted

After section 42, in Part 4, Division 2

insert

42A Duration of permit

- (1) Subject to this Part, an exceptional development permit remains in force during the base period of the permit and any extension of the base period under this section or section 42B.
- (2) An exceptional development permit does not lapse at the end of the base period but is automatically extended for another 2 years from the date on which it would otherwise lapse if:
 - (a) works are substantially commenced in accordance with the permit within the base period; and
 - (b) a consent is conditional on the carrying out of the works.
- (3) An exceptional development permit that relates to a plan of subdivision or consolidation does not lapse if, within the base period of the permit or any extension of that period under this section or section 42B, the plan of survey is approved under section 49(3) of the *Licensed Surveyors Act 1983*.
- (4) Subject to this Part, an exceptional development permit does not lapse if:
 - (a) a development under the permit includes or consists of the establishment of, or a change in, a use; and
 - (b) the use has commenced in accordance with the permit within the base period of the permit or any extension of that period under this section or section 42B.

42B Extension of period of permit

- (1) The owner of land to which an exceptional development permit applies, or a person authorised in writing by the owner, may apply to the Minister for an extension of the period of the permit.
- (2) An application under subsection (1) must:
 - (a) be lodged before the permit lapses; and
 - (b) be in the approved form; and
 - (c) be accompanied by the prescribed fee.
- (3) On receipt of an application under subsection (1), the Minister may:
 - (a) extend the period of the permit as the Minister thinks fit; or
 - (b) refuse to extend the period of the permit.
- (4) The Minister must give the applicant a statement of the reasons if the Minister:
 - (a) extends the period for a period different from the one requested; or
 - (b) refuses to extend the period of the permit.

22 Part 4, Division 4 inserted

After section 43C

insert

Division 4 Certification**43D Certification of compliance with exceptional development permit**

- (1) A person may apply to the Minister for a certificate certifying the extent of compliance with the conditions of an exceptional development permit.
- (2) An application under subsection (1) must be in the approved form and accompanied by the prescribed fee.
- (3) After considering an application under this section, the Minister must issue a certificate that certifies the extent of compliance.
- (4) A certificate issued under this section is evidence of the facts certified as at the date specified in the certificate.

23 Section 46 amended (Development applications)

- (1) After section 46(3)
- insert*
- (3A) Despite subsection (3), the regulations may prescribe a class or classes of development applications that may contain only some of the reports or information specified in that subsection.
- (2) Section 46(4)(a), after subsection (3)
- insert*
- or (3A), as applicable
- (3) After section 46(4)
- insert*
- (5) The consent authority must notify the applicant in writing of a decision under subsection (4).
- (6) An applicant must provide the information required by the consent authority under subsection (4)(b) within 30 days of receiving the request.
- (7) Before the expiry of the 30-day period referred to in subsection (6), the applicant may request the consent authority to extend the time to provide the required information.
- (8) If the consent authority refuses a request under subsection (7) to extend the time to provide the required information, it must give the applicant notice of the decision with reasons for the refusal.
- (9) The consent authority may reject an application if the applicant does not provide the information within 30 days of receiving the request or any longer period extended by the consent authority.

24 Section 47 amended (Public notice of development application)

- (1) Section 47(2)(c)
- omit*
- all words from ", which" to "given"

- (2) Section 47(3)
omit, insert
- (3) The consent authority may charge the applicant the reasonable costs of giving notice of an application under this section and sections 47A, 47B, 48 and 48A.
- (4) The minimum period within which submissions under this section and sections 47A, 47B, 48 and 48A may be made is:
- (a) for a development or class of developments prescribed by regulation – 28 days; and
 - (b) for any other development – 14 days.
- (5) The minimum period is calculated from the later of:
- (a) the day written notice is given; and
 - (b) the day any sign is posted.
- (6) The consent authority must make copies of the development application available to the public.

25 Section 47A replaced

Section 47A

repeal, insert

47A Development application requiring no public notice

Despite section 47, no public notice is required for a development application solely for consent to:

- (a) carry out the consolidation of land; or
- (b) develop land to accommodate people requiring privacy, as prescribed by regulation; or
- (c) subdivide land under the *Unit Titles Act 1975* or for the purposes of the *Unit Title Schemes Act 2009*, other than to subdivide vacant land; or
- (d) carry out a development, specified by the regulations, that will not have a significant effect on the existing and future amenity of the area in which it will be carried out.

47B Development application requiring only local notice

- (1) This section applies to giving notice in relation to a development application or class of development applications prescribed by regulation.
- (2) The consent authority must give written notice to any person who owns or occupies land adjoining the land to which the development application relates.
- (3) The applicant must post a sign on the land to which the development application relates that is legible from the boundary of the public road nearest to the land.
- (4) A notice under this section must include the information specified in section 47(2).
- (5) Despite section 47, no other public notice is required to be given of a development application under this section.

26 Section 48 amended (Notice to local authority of development application)

- (1) Section 48(1)(c)
omit
all words from ", which" to "given"
- (2) Section 48(2)
omit, insert
 - (2) In response to the notice, the local authority may:
 - (a) make a submission about the proposal under section 49(1); or
 - (b) give the consent authority a comment or view on the proposal under section 49(5).

27 Section 48A inserted

After section 48

insert

48A Notice to service authority of development application

- (1) The consent authority may give written notice of a development application to any service authority the consent authority considers appropriate.

- (2) Any notice to a service authority must include an invitation to the service authority to provide written advice about the application within the period specified in the notice.
- (3) The consent authority may, on request from a service authority, extend the period to provide the advice specified in the notice.
- (4) The consent authority must give the applicant written notice of any extension under subsection (3).

28 Section 49 amended (Submissions)

After section 49(3)

insert

- (4) The submission must be in writing and lodged with the consent authority within the exhibition period.
- (5) To be received by the consent authority, a submission must:
 - (a) state the name and contact details of each person making the submission; and
 - (b) be signed by each person making the submission; and
 - (c) if more than one person is making the submission:
 - (i) designate one of them to be their representative; and
 - (ii) state that person's address, telephone number and other contact details.
- (6) A local authority may give the consent authority a comment or view on an application, which is taken not to be a submission under this section or section 50, if the comment or view does not oppose or contradict the application.

29 Section 50 amended (Evidence and information)

After section 50(4)

insert

- (5) The consent authority may adopt or reject the advice it receives from a service authority under section 48A(2).

30 Section 50B amended (Significant development report)

Section 50B(3)

omit, insert

- (3) In considering a significant development proposal, the Commission must take into account the following:
- (a) the purpose and objectives of this Act;
 - (b) any strategic framework in the planning scheme applicable to the land.
- (3A) In its report, the Commission must identify and give advice about the possible effects of the proposal on future land use and development in the Territory.

31 Section 51 amended (Matters to be taken into account)

Section 51

omit

the following:

insert

any of the following relevant to the application:

32 Section 52 replaced

Section 52

repeal, insert

52 No consent if development contrary to planning scheme or order

- (1) Subject to this section, the Development Consent Authority must not consent to a proposed development under section 53 if the proposed development is contrary to:
- (a) the provisions of the planning scheme applicable to the land;
or
 - (b) an interim development control order.
- (2) The Development Consent Authority may consent to a proposed development under section 53 that is contrary to only the development requirements in a planning scheme if the proposed

development is consistent with the strategic framework of the planning scheme.

- (3) The Development Consent Authority may, by written notice, request approval from the Minister to consent to a proposed development under section 53 that, in its opinion, is contrary to the strategic framework of the planning scheme if:
 - (a) the development was not foreseen by the strategic framework; or
 - (b) there are unusual or exigent circumstances that make the development appropriate.
- (4) After making the request, the Development Consent Authority may consent to the development proposal if:
 - (a) the Minister gives written approval to do so; or
 - (b) the Minister does not respond to the request within 14 days after receiving the notice.

33 Section 61 replaced

Section 61

repeal, insert

61 Subdivisions etc. to be approved under *Licensed Surveyors Act 1983*

- (1) The subdivision or consolidation of land must be done in accordance with a plan of survey approved under section 49(3) of the *Licensed Surveyors Act 1983*.
- (2) A person commits an offence if:
 - (a) the person intentionally subdivides or consolidates land; and
 - (b) the subdivision or consolidation is not in accordance with a plan of survey approved under section 49(3) of the *Licensed Surveyors Act 1983* and the person is reckless in relation to that result.

Maximum penalty: 500 penalty units.

34 Section 63 amended (Purported subdivision or consolidation prohibited)

Section 63(1)

omit, insert

- (1) A transaction purporting to subdivide or consolidate land must not contravene this Part.
- (1A) A person commits an offence if:
- (a) the person intentionally enters into a transaction; and
 - (b) the transaction purports to subdivide or consolidate land and the person is reckless in relation to that circumstance; and
 - (c) the purported subdivision or consolidation would contravene this Part and the person is reckless in relation that circumstance.

Maximum penalty: 500 penalty units.

35 Section 65 amended (Certification of compliance with permit or Part)

(1) Section 65(1)

omit, insert

- (1) A person may apply to the consent authority for a certificate, in the approved form, certifying the extent of compliance with the following:
- (a) the conditions of a development permit;
 - (b) the conditions of an alteration permit;
 - (c) the requirements of this Part in relation to land.

(2) Section 65(3)

omit, insert

- (3) After considering an application under this section, the consent authority must issue a certificate that certifies the extent of compliance.

36 Section 66 amended (Minister may revoke or modify permit)

- (1) Section 66(2)(b) and (3)

omit

Chairman

insert

Chair

- (2) Section 66(5), (6) and (7)

omit, insert

- (5) The Minister must notify, in writing, the persons served with a notice under subsection (2)(a) of the decision made under subsection (4).

- (6) A person commits an offence if:

- (a) the person is served with a notice under subsection (2)(a); and
- (b) the person intentionally continues to use or develop the land; and
- (c) the use or development is only permitted under the permit referred to in the notice.

Maximum penalty: 500 penalty units.

Default penalty: 2 penalty units.

- (6A) Strict liability applies to subsection (6)(a) and (c).

- (6B) It is a defence to a prosecution for an offence against subsection (6) if:

- (a) the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence; or
- (b) the conduct occurred after the person received a notice under subsection (5) that the Minister decided not to revoke or modify the permit.

- (7) A person commits an offence if:

- (a) a permit is modified under subsection (4); and
- (b) the person is served with a notice under subsection (5) that the permit was modified; and

-
- (c) the person intentionally continues to use or develop the land;
and
 - (d) the use or development is not permitted under the permit as modified.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

(7A) Strict liability applies to subsection (7)(a), (b) and (d).

(7B) It is a defence to a prosecution for an offence against subsection (7) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

37 Section 68 replaced

Section 68

repeal, insert

68 Making contribution plans

- (1) A local authority or service authority may make a contribution plan in accordance with this section.
- (2) If a local authority or service authority proposes to make a contribution plan, it must notify the public:
 - (a) that the proposed contribution plan will be exhibited; and
 - (b) the place where the proposed plan may be viewed; and
 - (c) that submissions may be made in relation to the plan.
- (3) Despite section 139A, the notice under subsection (2) must be published in a newspaper that:
 - (a) in the case of a local authority – circulates in the council area in respect of the local authority; and
 - (b) in the case of a service authority – circulates in the Territory.
- (4) The proposed contribution plan must be exhibited at the place specified in the notice for not less than 28 days.
- (5) After considering any submissions made in relation to the proposed contribution plan, the local authority or service authority may make the contribution plan, as originally proposed or varied as it considers appropriate.

- (6) A contribution plan takes effect on:
- (a) if no date is specified in the *Gazette* notice – the date it is notified in the *Gazette*: and
 - (b) if a later date is specified in the *Gazette* notice – the date specified in the *Gazette* notice.
- (7) A local authority and service authority must ensure that all contribution plans proposed or made by it are available for inspection and purchase by members of the public.
- (8) After 90 days from the date of the *Gazette* notice, a contribution plan cannot in any legal proceedings be declared to be of no effect by virtue only of a defect or irregularity in the procedure for making the plan.

38 Section 69 amended (Content of contribution plan)

Section 69(2)

omit

a service authority that is

39 Section 70 amended (Contribution towards car parking)

(1) Section 70(5)

omit

service

insert

local

(2) Section 70(6)

omit, insert

- (6) The contribution payable to the local authority must be calculated in accordance with section 71.

40 Section 71 amended (Contribution payable)

(1) After section 71(1)

insert

(1A) The owner's contribution for infrastructure or car parking in the plan:

(a) is calculated as part or all of the total cost of the infrastructure or car parking; and

(b) is proportional to the anticipated future use of the infrastructure or car parking attributable to the development of the land.

Note for subsection (1A)(a)

The total cost would include all costs, whether incurred before or after the contribution plan is made.

(1B) For subsection (1A)(a), the total cost of infrastructure or car parking in the plan must be calculated by reference to the most appropriate and cost-effective form of construction.

(2) Section 71(2)(b) and (c) and (3)

omit

service

insert

local

(3) Section 71(8) and (9)

omit, insert

(8) The amount of any money spent by an owner of land in constructing infrastructure required under this Part is to be set off against the contribution payable by the owner under this Part, but is not to exceed the amount of the contribution payable.

41 Section 72 replaced

Section 72

repeal, insert

72 Duties of local authority and service authority

- (1) A local authority and service authority to which money is paid in accordance with this Part must:
- (a) maintain for each contribution plan an account to provide the infrastructure or public car parking spaces; and
 - (b) pay money received by it in accordance with this Part into the account; and
 - (c) within a reasonable time, use the money to provide for, or reimburse its costs in previously providing, the infrastructure or car parking for which the contribution was provided.
- (2) In the case of a local authority, the account referred to in subsection (1)(a) must be an authorised deposit account as defined in the *Local Government Act 2008*.

42 Section 73 amended (Discount, interest rate etc.)

- (1) Section 73(1)

omit

all words from "A" to "any")

insert

A local authority or service authority may

- (2) After section 73(1)

insert

- (1A) The declaration under subsection (1) must be:
- (a) for a body corporate – in the form of a resolution; and
 - (b) in any other case – in the manner and form prescribed by regulation.

(3) Section 73(3), before "service"

insert

local authority or

43 Section 74 amended (Enforcement of contribution plan)

Section 74

omit

service authority under this Part, the service authority

insert

local authority or service authority under this Part, it

44 Part 7 replaced

Part 7

repeal, insert

Part 7 Enforcement

Division 1 Offences

75 Use or development contravenes planning scheme

- (1) Land must not be used or developed in contravention of the planning scheme that applies to the land, except in accordance with a permit.
- (2) A person commits an offence if:
 - (a) the person intentionally uses or develops land; and
 - (b) the use or development contravenes the planning scheme that applies to the land and the person is reckless in relation to that result.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the use or development is in accordance with a permit.

75A Use or development contravenes interim development control order

- (1) Land must not be used or developed in contravention of an interim development control order, except in accordance with a permit in force immediately before the order was made.
- (2) A person commits an offence if:
 - (a) the person intentionally uses or develops land; and
 - (b) the use or development contravenes an interim development control order and the person is reckless in relation to that result.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the use or development is in accordance with a permit that was in force immediately before the order was made.

75B Use or development contravenes permit

- (1) A person must not use or develop land in a manner that is only permitted in accordance with a permit:
 - (a) except in accordance with the permit; and
 - (b) subject to section 56(c), until all the conditions of the permit that must be complied with before the use is permitted have been complied with.
- (2) A person commits an offence if:
 - (a) the person intentionally uses or develops land; and
 - (b) the use and development is only permitted in accordance with a permit; and
 - (c) the use or development is not in accordance with the permit and the person is reckless in relation to that result.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

75C Clearing native vegetation

- (1) Land must not be developed by clearing it of native vegetation except in accordance with any of the following that applies in relation to the land:
- (a) a planning scheme;
 - (b) an interim development control order;
 - (c) a permit.
- (2) A person commits an offence if:
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in the clearing of native vegetation on land and the person is reckless in relation to that result; and
 - (c) the clearing of native vegetation was not in accordance with:
 - (i) a permit or an interim development control order that applies to the land; or
 - (ii) if no permit or interim development control order applies to the land – a planning scheme that applies to the land.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

- (3) Strict liability applies to subsection (2)(c).

75D Contravention of enforcement notice

- (1) A person commits an offence if:
- (a) the person is issued an enforcement notice; and
 - (b) the person intentionally contravenes a requirement of that notice.

Maximum penalty: 500 penalty units.

Default penalty: 4 penalty units.

- (2) Strict liability applies to subsection (1)(a).

75E Failure to identify

- (1) A person commits an offence if:
- (a) the person is requested by an authorised officer or a police officer under section 76H to state the person's name and address; and
 - (b) the person:
 - (i) fails to state the person's name and address; or
 - (ii) states a name that is false in a material particular; or
 - (iii) states an address other than the full and correct address of the person's usual place of residence or work.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.
- (8) Despite subsection (1), it is not an offence for the person to fail to comply with a request made under section 76H if the authorised officer or police officer who made the request did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request.

Division 2 Entry and inspections of premises**76 Authorised officers**

- (1) The Minister may, in writing, appoint authorised officers.
- (2) The Minister must not appoint a person to be an authorised officer unless satisfied that the person has the skills, qualifications, training and experience to properly perform the functions of an authorised officer.
- (3) For subsection (2), the Minister may require that a person successfully complete a course of training specified by the Minister before the person may be appointed as an authorised officer.

76A Authorised officer's functions and powers

- (1) An authorised officer has the following functions:
 - (a) to monitor compliance with this Act, conduct investigations and deal with complaints and other matters;
 - (b) to issue infringement notices and enforce this Act;
 - (c) to participate in proceedings before the consent authority;
 - (d) any other functions conferred on the authorised officer under this or any other Act.
- (2) An authorised officer has the powers necessary to perform the officer's functions.
- (3) An authorised officer is subject to direction from the Chair and the Minister.

76B Identity card

- (1) The Chief Executive Officer must give an authorised officer an identity card stating the person's name and that the person is an authorised officer.
- (2) The identity card must:
 - (a) show a recent photograph of the authorised officer; and
 - (b) show the card's date of issue and expiry; and
 - (c) be signed by the officer.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

76C Return of identity card

- (1) A person who ceases to be an authorised officer must return the person's identity card to the Chief Executive Officer within 21 days after the cessation.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.

76D Obstruction of authorised officer

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
 - (b) the other person is an authorised officer; and
 - (c) the authorised officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).
- (3) In this section:

acting in an official capacity, in relation to an authorised officer, means the officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

obstruct includes hinder and resist.

76E Authorised officer's identity card

- (1) An authorised officer must carry the authorised officer's identity card when exercising a power under this Act.
- (2) Before exercising a power under section 76F, an authorised officer must produce the authorised officer's identity card on the request of the occupier or a person apparently in charge of the premises.

76F Entry and inspections by authorised officer or police officer

- (1) An authorised officer or a police officer may enter and inspect any land or premises for the purpose of investigating a contravention of Part 7 or the regulations if the officer believes on reasonable grounds that the contravention has occurred, is occurring or is likely to occur on or in that land or premises.
- (2) An authorised officer or a police officer may, during an inspection, exercise any of the following powers:
- (a) inspect any book, document or other record relating to a proposed or actual development;
 - (b) remove for copying any book, document or record relating to a proposed or actual development;

- (c) seize and remove any thing that the officer believes on reasonable grounds to be evidence of a contravention of Part 7;
 - (d) take photographs, record images or make other records of land or premises or things found on land or premises;
 - (e) take photographs or record images of any person on or in land or premises;
 - (f) make recordings in any medium, including audio, visual and audio-visual recordings, of land or premises or things found on land or premises;
 - (g) measure anything, or take samples of anything on land or premises;
 - (h) request an owner or occupier of the land or premises to produce a book, document or other record under the person's control relating to a proposed or actual development;
 - (i) request an owner or occupier of the land or premises to answer questions or give any other reasonable assistance the authorised officer or officer requires to carry out the inspection.
- (3) An authorised officer or a police officer may retain a book, document or record removed or produced under subsection (2) for as long as reasonably necessary to make copies of the book, document or record.
- (4) An authorised officer or a police officer may exercise the powers under this section with the reasonable assistance and force that the officer considers necessary.

76G Entering residential premises

- (1) An authorised officer or a police officer must not enter residential premises under this Act unless:
- (a) an occupier of the premises consents; or
 - (b) a warrant authorises the entry.

- (2) A justice of the peace may, by warrant, authorise an authorised officer or a police officer to enter premises to search for evidence in relation to a contravention of this Act or the regulations in or on the premises if:
- (a) an authorised officer or a police officer makes a complaint on oath to the justice of the peace; and
 - (b) the complaint states that the officer believes on reasonable grounds that this Act or a Regulation was or is being contravened; and
 - (c) the justice is satisfied that the belief is well founded.
- (3) Section 120B(4), (5), (6), (7) and (8) of the *Police Administration Act 1978* apply in relation to a search warrant issued under subsection (2).

76H Identification of person

An authorised officer or a police officer may request a person the officer believes on reasonable grounds to be committing an offence to state the person's name and the address.

Division 3 Enforcement notice

77 Issuing enforcement notice

The consent authority may issue an enforcement notice to any person under this Division it believes on reasonable grounds has contravened, is contravening or is likely to contravene section 75, 75A, 75B or 75C.

77A Show cause process

- (1) Before issuing an enforcement notice, the consent authority must give a written show cause notice to the proposed recipient of the enforcement notice:
- (a) stating the consent authority's intention to issue an enforcement notice; and
 - (b) asking the recipient to show cause why the enforcement notice should not be issued.
- (2) The show cause notice must specify the date by which the recipient must show cause.
- (3) The date specified in the show cause notice must be not less than 20 business days after the date of the notice.

- (4) The consent authority must consider any response given by the proponent to the show cause notice before making a decision under section 77.

77B Exception to show cause process

- (1) Despite section 77A, a consent authority may issue an enforcement notice without first giving a show cause notice under that section if the consent authority believes on reasonable grounds that it is not appropriate in the circumstances.
- (2) Without limiting the generality of subsection (1), the grounds for not first giving a show cause notice include preventing the following:
- (a) the clearing of native vegetation;
 - (b) the demolition of a building;
 - (c) an irreversible change to the landscape;
 - (d) the risk of material environmental harm;
 - (e) the risk of significant adverse effect on amenity or public health.

77C Contents of enforcement notice

- (1) An enforcement notice must be in writing and specify the following:
- (a) the person to whom it is issued;
 - (b) the provision that the consent authority believes was, is being or is likely to be contravened by the person and the grounds for that belief;
 - (c) the action or activity that the person is required to take or refrain from taking to remedy the contravention and to comply with the provision;
 - (d) the dates or times associated with any requirement in the notice;
 - (e) the person's right to apply to the Tribunal for review of the notice.
- (2) An enforcement notice may impose any requirement reasonably required to remedy or prevent the contravention, including one or more of the following:
- (a) a requirement that the person cease, or not commence, a specified activity;

- (b) a requirement that the person not undertake or continue a specified activity except at specified times or subject to specified conditions;
 - (c) a requirement that the person undertake a specified activity within a specified period or at specified times or in specified circumstances;
 - (d) a requirement prescribed by regulation.
- (4) An enforcement notice is binding on each person to whom it is issued.
 - (5) An application to the Tribunal for review of an enforcement notice does not stay the operation of the notice.

77D Variation or revocation of enforcement notice

The consent authority may vary or revoke an enforcement notice by written notice served on each person bound by the enforcement notice.

Division 4 Complaints and investigations

78 Making a complaint

- (1) A person may lodge a complaint with a consent authority that a person has contravened this Act or the regulations.
- (2) The complaint must:
 - (a) be made in the approved form; and
 - (b) state the name and contact details of the person making the complaint; and
 - (c) specify the ground for the complaint; and
 - (d) be signed by the complainant.

79 Investigation of complaint

- (1) The consent authority may investigate a complaint under section 78.
- (2) The consent authority may refuse to investigate a complaint if satisfied that:
 - (a) the complaint is trivial, frivolous or vexatious; or

- (b) no grounds exist for the complaint.
- (3) Within 14 days after making a decision to investigate a complaint, the consent authority must give the person who is the subject of the complaint written notice of:
 - (a) the substance of the complaint; and
 - (b) the consent authority's intention to investigate the complaint; and
 - (c) the person's right to respond to the complaint under subsection (4).
- (4) The person may respond in writing to a complaint, which must be lodged with the consent authority within 14 days after being given the notice referred to in subsection (3).

79A Action after investigation

- (1) On completing an investigation, the consent authority may do either of the following:
 - (a) take no further action if satisfied that:
 - (i) there are no grounds or evidence to justify taking further action; or
 - (ii) the matter does not warrant taking further action;
 - (b) issue an enforcement notice in relation to the complaint.
- (2) Within 14 days after making a decision under subsection (1)(a), the consent authority must give a decision notice to the following:
 - (a) the complainant;
 - (b) the person who was the subject of the complaint.

Division 5 Other enforcement matters

80 Order for investigation expenses

- (1) A consent authority may apply to the Local Court for an order under subsection (2) if it has reasonably incurred expenses in taking a sample or conducting an inspection, test, measurement or analysis to investigate an offence being heard by the Local Court.

- (2) The Local Court may order a defendant to pay to the Central Holding Authority a reasonable amount for the consent authority's expenses if the Local Court is satisfied that:
- (a) the defendant is guilty of an offence against Part 7; and
 - (b) the consent authority has reasonably incurred expenses in taking a sample or conducting an inspection, test, measurement or analysis to investigate the offence; and
 - (c) it would be just to do so in the circumstances.

80A Order for compensation

- (1) The Local Court may make an order for compensation under subsection (2) if the Court:
- (a) finds a defendant guilty of an offence against Part 7; and
 - (b) finds that, because of the offence, another person has:
 - (i) suffered loss of income; or
 - (ii) suffered a reduction in the value of, or damage to, property; or
 - (iii) incurred expenses to replace or repair property or prevent or minimise, or attempt to prevent or minimise, the loss, reduction or damage.
- (2) The Local Court may order the defendant to pay the other person compensation for the loss, reduction or damage suffered or the expenses incurred.
- (3) An order under subsection (2) may be made in addition to the imposition of a penalty and any other order under this Act.

80B Default penalty may be imposed for continuing offences

The Court may, in addition to any penalty specified for an offence against this Act, impose a default penalty in respect of each day during which the offence continued to be committed after the first day on which it was committed if:

- (a) the offence provides for a default penalty; and
- (b) the Court is satisfied that the person continued to commit the offence after the date the person is notified of the alleged offence.

80C Order to remedy contravention or failure

In addition to any other order, a court of competent jurisdiction may order a person who has contravened, or failed to comply with, a provision of this Act or the regulations to remedy the contravention or failure in the manner specified in the order.

80D Certificate evidence

- (1) In a proceeding for an offence against this Act, a statement of fact may be made in a complaint or information as evidence in respect of the following physical elements of the offence:
 - (a) that land is Crown land, reserved land, dedicated land, land held under lease or land occupied under licence or agreement;
 - (b) that a person is authorised to take proceedings, to do an act or perform a duty, or to sue for the recovery of a penalty or other money under this Act;
 - (c) that there was native vegetation on land at a specified date.
- (2) In a proceeding under this Act, a copy of any licence, certificate, map or plan certified under the signature of the Surveyor-General is acceptable as evidence without:
 - (a) the production of the original document; or
 - (b) the personal attendance of the Surveyor-General; or
 - (c) proof of the signature the Surveyor-General.

80E Infringement notices

The regulations may provide for infringement notices and the payment of an amount prescribed by regulation instead of a penalty that may otherwise be imposed for a prescribed offence against this Act.

80F Criminal liability of executive officer of body corporate – legal burden of proof on prosecution

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence by contravening a declared provision and the officer was reckless about whether the contravention would happen; and

- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer recklessly failed to take reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) Strict liability applies to subsection (1)(b).
- (3) In deciding whether the executive officer failed to take reasonable steps to prevent the contravention, a court must consider the following:
 - (a) any action the officer took directed towards ensuring the following, to the extent the action is relevant to the contravention:
 - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the declared provision;
 - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
 - (iii) the body corporate's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the declared provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.
- (4) Subsection (3) does not limit the matters the court may consider.
- (5) This section does not affect the liability of the body corporate.
- (6) This section applies whether or not the body corporate is prosecuted for, or found guilty of, an offence against the declared provision.
- (7) In this section:

declared provision means any of the following:

- (a) section 16(6);
- (b) section 30J(3)
- (c) section 61(2);

- (d) section 63(1A);
- (e) section 66(6) and (7);
- (f) section 75(2);
- (g) section 75A(2);
- (h) section 75B(2);
- (i) section 75C(2);
- (j) section 75D(1);
- (k) section 119(2);
- (l) a provision of the regulations prescribed by regulation.

executive officer, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

80G Who may prosecute offences against Act

- (1) A prosecution under this Act may only be brought in the name of the Development Consent Authority or the Minister.
- (2) The Chair and the Minister may authorise a person to bring a prosecution in the name of the Development Consent Authority or the Minister respectively.

81 Time for commencing prosecution

A prosecution under this Act must be commenced within 2 years after the day on which any authorised officer or police officer becomes aware of the commission of the alleged offence.

45 Section 81B amended (Functions)

- (1) Section 81B(e)

omit

matters within the objects of

insert

strategic planning under

(2) Section 81B(f)

omit, insert

- (f) to provide reports to the Minister as requested or required under this Act;

(3) Section 81B(h)

omit

objects

insert

purpose and objectives

46 Section 81D replaced

Section 81D

repeal, insert

81D Independence

- (1) The Commission must perform its functions and exercise its powers independently, impartially and in the public interest, taking into account the purpose and objectives of this Act.
- (2) The Chairperson and other members of the Commission must, in the performance of their functions and the exercise of their powers:
- (a) exercise professional care and act with integrity and diligence; and
 - (b) comply with any code of conduct established under section 99A; and
 - (c) consider the diverse interests and needs of the community; and
 - (d) comply with any policies made by the Commission under section 81L(2).

47 Section 81F amended (Constitution and appointment of members)

- (1) Section 81F(1)(b)
- omit*
- Chairman
- insert*
- Chair
- (2) After section 81F(3)
- insert*
- (4) At least one person appointed under subsection (1)(f) must be:
- (a) eligible for membership in a planning association or institute recognised by the Minister; or
 - (b) have planning qualifications recognised by the Minister.

48 Section 81L amended (Community consultation)

- (1) Section 81L, before "Before"
- insert*
- (1)
- (2) Section 81L, at the end
- insert*
- (2) The Commission must develop for approval by the Minister one or more policies in relation to:
- (a) its consultations with the public and with specific participants in the planning process; and
 - (b) public education regarding the roles of the public and the Commission under this Act.
- (3) The Commission must publish on its website any policy approved by the Minister under subsection (2).

49 Section 81M amended (Preparation of significant development report)

Section 81M(1)

omit

Chairman

insert

Chair

50 Section 81X amended (Committees)

Section 81X(3)

omit

Chairman

insert

Chair

51 Section 81Y amended (Annual report)

After section 81Y(1)

insert

(1A) The annual report must include the following:

- (a) the particulars of its activities,
- (b) a review of its activities in relation to any policies made by the Commission under section 81L(2);
- (b) the results of its activities.

52 Section 81ZA replaced

Section 81ZA

repeal, insert

81ZA Unauthorised disclosure of confidential information

- (1) A person commits an offence if:
- (a) the person is:
 - (i) a member of the Commission; or
 - (ii) a person engaged by the Commission under section 81C; or
 - (iii) a staff member provided to the Commission under section 81E(1); and
 - (b) the person obtains information in the course of performing a function or exercising a power in the person's capacity referred to in subsection (1); and
 - (c) the information is confidential and the person is reckless in relation to that circumstance; and
 - (d) the person intentionally engages in conduct; and
 - (e) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (f) the person is reckless in relation to the result and circumstance referred to in paragraph (e).

Maximum penalty: 50 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a) and (b).

-
- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person consented to the disclosure of the information.

Example for subsection (3)

A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.

Note for section 81ZA

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

53 Section 84 amended (Functions and powers of Development Consent Authority)

After section 84(2)

insert

- (3) To assist it in performing its functions, the Development Consent Authority may seek advice or assistance from any person registered under section 89(7).

54 Section 87 amended (Constitution of Development Consent Authority)

Section 87(1)(a)

omit

Chairman

insert

Chair

55 Section 88 amended (Chairman and Deputy Chairman)

- (1) Section 88, heading

omit, insert

88 Chair and Deputy Chair

- (2) Section 88(1), (2)(a) and (b), (3) and (4)
omit (all references)
Chairman
insert
Chair
- (3) After section 88(1)
- (1A) Before appointing a person as the Chair of the Development Consent Authority, the Minister must be satisfied that the person has the skills, qualifications or experience to exercise the powers and perform the functions of that office.

56 Section 89 replaced

Section 89

repeal, insert

89 Appointment of members within council area

- (1) If all or part of a Division area is within a council area, the Minister must, in writing, appoint the following persons to be Division members of the Division area:
- (a) 2 local authority members;
 - (b) 2 specialist members.
- (2) The local authority may nominate 2 persons it thinks fit to be appointed as local authority members under subsection (1)(a).
- (3) The Minister must consider appointing a person nominated by the local authority but may appoint any person the Minister thinks fit to be a local authority member.
- (4) A person is eligible to be appointed to be a specialist member under subsection (1)(b) if the Minister is satisfied the person has the skills, qualifications or experience prescribed by regulation.
- (5) An employee of the Agency administering this Act is not eligible to be appointed under subsection (1).
- (6) An employee of a local authority is not eligible to be appointed as the local authority member for that local authority.

-
- (7) The Minister must maintain a register of persons eligible and willing to be appointed as specialist members.

89A Training of members

- (1) The Minister must approve a course of training for members of the Development Consent Authority.
- (2) Each member of the Development Consent Authority must successfully complete the course of training approved by the Minister before exercising the member's powers or performing the member's functions.

57 Section 91 amended (Alternate members for local authority representatives)

Section 91(6)

omit (all references)

Chairman

insert

Chair

58 Section 92 amended (Term of office of member)

- (1) Section 92(2)

omit

he or she

insert

the member

- (2) After section 92(3)

insert

- (4) If a local authority is placed under official management under section 224 of the *Local Government Act 2008*, a local authority member nominated by that local authority continues to be a member, unless the appointment is terminated by the Minister.

Note for subsection (4)

The Minister also has the power to terminate an appointment under section 100.

59 Section 93 amended (Chairman may appoint member to act in another Division)

- (1) Section 93, heading

omit

Chairman

insert

Chair

- (2) Section 93(1), (2) and (5)

omit (all references)

Chairman

insert

Chair

60 Section 97 amended (Disclosure of interest)

Section 97(3)

omit, insert

- (3) A member who has an interest or relationship specified in subsection (1) must not be present during, contribute to or take part in any deliberation or decision of the Division in relation to:
- (a) the matter or relationship; and
 - (b) discussions as to whether the Chair ought to make a determination under subsection (5).
- (4) A member who makes a disclosure under subsection (1) must be disregarded for the purpose of constituting a quorum of the Development Consent Authority in relation to the matter or relationship.
- (5) Despite subsection (3) and (4), the Chair may determine that a member with an interest or relationship specified in subsection (1) may:
- (a) be present during, contribute to or take part in the deliberation or decision of the Division; or
 - (b) be counted for the purposes of constituting a quorum.

61 Section 98 replaced

Section 98

repeal, insert

98 Offences related to non-disclosure of interest

- (1) A person commits an offence if:
- (a) the person is a member of the Development Consent Authority; and
 - (b) the person intentionally attends, contributes to or takes part in a deliberation or decision of the Division of which the person is a member; and
 - (c) the deliberation or decision is in relation to an interest or relationship referred to in section 97(1); and
 - (d) the person recklessly fails to disclose that interest or relationship.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if:
- (a) the person is a member of the Development Consent Authority; and
 - (b) the person intentionally attends, contributes to or takes part in a deliberation or decision of the Division of which the person is a member; and
 - (c) the person has an interest or relationship referred to in section 97(1) and is reckless in relation to that circumstance.

Maximum penalty: 50 penalty units.

- (3) Strict liability applies to subsections (1)(a) and (c) and (2)(a).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the Chair determined under section 97(5) that the defendant could be present during, contribute to or take part in the deliberation or decision of the Division.

98A Independence of local authority members

- (1) A local authority member must make the decision on a development application independently of any direction or decision from the local authority.

- (2) When making the decision under subsection (1), the local authority member may take into account the opinion of a local authority in relation to a development application made by an applicant other than the local authority.
- (3) For section 97, if a local authority member takes into account the opinion of the local authority under subsection (2):
 - (a) the Development Consent Authority is taken not to have contravened the rules of natural justice by that reason only; and
 - (b) the local authority member is taken not to have an interest or relationship for the purposes of section 97 by that reason only; and
 - (c) the local authority member is taken not to have contravened the rules of natural justice by that reason only.

62 Section 100 replaced

Section 100

repeal, insert

100 Code of Conduct

- (1) The Minister may establish a code of conduct for members of the Development Consent Authority.
- (2) The Minister must publish on the Agency's website any code of conduct established by the Minister under subsection (1).
- (3) A member of the Development Consent Authority must abide by any code of conduct established by the Minister subsection (1).

100A Removal from office

- (1) The Minister may terminate the appointment of a member of the Development Consent Authority for any of the following reasons:
 - (a) inability or inefficiency;
 - (b) misbehaviour or a failure to abide by a code of conduct established under section 99A;
 - (c) physical or mental incapacity.

- (2) The Minister must terminate the appointment of a member of the Development Consent Authority if:
- (a) the member is absent from 3 consecutive meetings of the Development Consent Authority, except by leave of:
 - (i) in the case of the Chair – the Minister; and
 - (ii) in the case of a member other than the Chair – the Chair; or
 - (b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (c) the member was:
 - (i) appointed as a local authority member; and
 - (ii) no longer holds office as a member of the local authority; and
 - (iii) the local authority requests that the person's appointment under that section be terminated.

63 Section 101 amended (Meetings of Authority)

- (1) Section 101(1), (2), (3)(a) and (4)(a) and (b)

omit

Chairman

insert

Chair

- (2) Section 101(3)(c)

omit

Chairman or, in the Chairman's

insert

Chair, or in the Chair's

(3) Section 101(3)(d)

omit

his or her

insert

a

64 Section 102 amended (Attendance of public at meetings)

Section 102(2) and (3)

omit

Chairman

insert

Chair

65 Section 103 amended (Minutes)

After section 103(1)

insert

(1A) The minutes must record:

- (a) the name of each member who attends a meeting; and
- (b) how each member votes in respect of any decision taken during a meeting in relation to a development application.

66 Section 104A inserted

After section 104

insert

104A Annual report

- (1) The Chair of the Development Consent Authority must prepare and give to the Minister a report on the performance by the Development Consent Authority of its functions during each financial year.
- (2) The report must be given to the Minister by 31 October following the end of the financial year.

-
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

67 Sections 106 and 107 replaced

Sections 106 and 107

repeal, insert

106 Disrupting meeting

- (1) The Chair may direct a person to leave a meeting of the Development Consent Authority if, in the opinion of the Chair, the person during the meeting:
- (a) insults a member of the Authority; or
 - (b) interrupts proceedings of the Authority.
- (2) A person directed to leave a meeting under subsection (1) must:
- (a) leave and not return to that meeting; and
 - (b) not create a disturbance or take part in creating or continuing a disturbance, in or near a place where the Authority is meeting.
- (3) A person commits an offence if the person:
- (a) is directed to leave a meeting under subsection (1); and
 - (b) intentionally contravenes subsection (2).
- Maximum penalty: 50 penalty units or imprisonment for 6 months.
- (4) Strict liability applies to subsection (3)(a).

107 Offence to disclose certain information

- (1) A person commits an offence if:
- (a) the person is a member of the Development Consent Authority; and
 - (b) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
 - (c) the information is confidential and the person is reckless in relation to that circumstance; and

-
- (d) the person intentionally engages in conduct; and
 - (e) the conduct results in the disclosure of the information and the disclosure is not:
 - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
 - (ii) to a person who is otherwise entitled to the information; and
 - (f) the person is reckless in relation to the result and circumstance specified in paragraph (e).

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) Strict liability applies to subsection (1)(a) and (b).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a charge for an offence against that subsection if the person has consented to the disclosure of the information.

Example for subsection (3)

A person to whom the information relates includes a person who has a direct interest in the information remaining confidential because the information is financial, commercial, personal or cultural information.

Note for subsection (3)

In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

68 Sections 111 and 112 replaced

Sections 111 and 112

repeal, insert

111 Review of decisions of consent authority

- (1) The following decisions of a consent authority are reviewable by the Tribunal:
 - (a) a decision refusing to issue a certificate under section 43D;
 - (b) a decision imposing conditions on the certificate under section 43D;

- (c) a decision refusing to consent to a development proposal under section 30W(1)(c);
 - (d) a decision requesting additional information under section 46(4);
 - (e) a decision refusing to grant an extension of time under section 46(8);
 - (f) a decision refusing to consent to a proposed development under section 53(c);
 - (g) a decision issuing an enforcement notice under section 77;
 - (h) a decision specifying the requirements of an enforcement notice under section 77C;
 - (i) a decision to not issue an enforcement notice under section 79A in response to a complaint in circumstances prescribed by regulation.
- (2) An application for review of a decision specified in subsection (1) may be made by the following:
- (a) the applicant in relation to a decision referred to in subsections (1)(a) to (f);
 - (b) the person subject to an enforcement notice in relation to a decision referred to in subsections (1)(g) and (h);
 - (c) subject to the regulations, the complainant in relation to a decision referred to in subsection (1)(i).
- (3) An application for review must be made within 28 days after the person is served with the decision notice.

Note for section 111

The Northern Territory Civil and Administrative Tribunal Act 2014 sets out the procedure for applying to NTCAT for review and other relevant matters in relation to reviews.

112 Review if consent authority does not determine application

- (1) A person who made an application under section 30C may apply to the Tribunal for a review of a decision of the Minister under that section in relation to the development application component of a concurrent application if, within 7 weeks after service of the notice under section 30U(1) no notice was served on the applicant under section 30X, 30Y or 30Z.

- (2) A lack of decision by a consent authority to determine a development application under section 46 is reviewable by the applicant if:
 - (a) the consent authority deferred its decision and all other relevant decisions or procedures in relation to the deferral are completed; or
 - (b) the applicant is not served with a notice under section 53A, 53B or 53C within 12 weeks of making the application.
- (3) A lack of decision by a consent authority to determine an application under section 57 or 59 is reviewable by the applicant if the consent authority does not notify the applicant of a determination within 12 weeks of the application being made.
- (4) For the purposes of a review under this section, the application is taken to be refused under section 30C, 30W, 53, 57 or 59.
- (5) Despite subsection (4), the application may be determined under section 30C, 30W, 53, 57 or 59 any time before the Tribunal determines the review.
- (6) If the application is determined in accordance with subsection (5), the applicant may:
 - (a) abandon the application for review to the Tribunal under this section; or
 - (b) continue the application for review in relation to the actual determination of the consent authority.
- (7) The Tribunal must refund to the applicant all fees paid in respect of any abandoned application for review.

69 Section 115 replaced

Section 115

repeal, insert

115 Review of refusal to refund or remit contribution

- (1) A person who made an application under section 73(3) may apply to the Tribunal for a review of a refusal under that section to refund or remit all or part of a contribution otherwise payable by the person under Part 6.
- (2) An application under subsection (1) must be made within 28 days after the applicant is notified in writing of the refusal.

- (3) If the person's application under section 73(3) is not determined within 12 weeks of being received:
 - (a) the local authority or service authority is taken to have refused to refund or remit any of the contribution otherwise payable by the person; and
 - (b) the person may apply to the Tribunal for a review at any time after the expiry of those 12 weeks and before the matter is determined by the local authority or service authority.
- (4) Despite subsection (3)(a), the application may be determined under section 73 any time before the Tribunal determines the review.
- (5) If the application is determined in accordance with subsection (4), the applicant may:
 - (a) abandon the application for review to the Tribunal under this section; or
 - (b) continue the application for review in relation to the actual determination of the local authority or service authority.
- (6) The Tribunal must refund to the applicant all fees paid in respect of any abandoned application for review.

70 Section 118A amended (Parties to application for review)

Section 118A(c), before "service"

insert

local authority or

71 Section 119 replaced

Section 119

repeal, insert

119 No development permitted under permit if application for review

- (1) Subject to this Act, if an application for a review is made in relation to the issue of a development permit, the holder of the permit must not develop the land under the permit until the application is determined by the Tribunal.
- (2) A person commits an offence if:
 - (a) the person holds a development permit; and

- (b) an application for a review is made in relation to the issue of a development permit; and
- (c) the person intentionally engages in conduct; and
- (d) the conduct results in the development of land in accordance with the permit and the person is reckless in relation to that circumstance.

Maximum penalty: 500 penalty units.

Default penalty: 2 penalty units.

- (3) Strict liability applies to subsection (2)(a) and (b).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant took reasonable steps and exercised due diligence to prevent the commission of the offence.

72 Section 120 amended (Authorities to provide information)

Section 120(2), before "service"

insert

local authority or

73 Section 130 amended (Determination of application for review)

- (1) Section 130(5)(a) and (b), before "service"

insert

local authority or

- (2) Section 130(6), before "or"

insert

, local authority

74 Section 135B inserted

After section 135A, in Part 10, Division 1

insert

135B Administrative directions

- (1) The Minister may issue directions on how to interpret and administer the provisions of this Act, the regulations and planning schemes.
- (2) The directions issued under subsection (1) must be consistent with this Act, the regulations and planning schemes.
- (3) The Minister may publish its guidelines in the way the Minister considers appropriate.
- (4) The members of the Planning Commission and the Development Consent Authority must have regard to the directions issued under subsection (1) when performing their functions and exercising their powers.

75 Section 136 amended (Planning schemes to be available to public)

- (1) Section 136(1)(c) and (2)

omit

former Act

insert

Planning Act 1979 and the Planning Act 1993

76 Section 138 amended (Registers and plans for public inspection)

Section 138(c)

omit

former Act

insert

Planning Act 1979 and the Planning Act 1993

77 Section 139A inserted

After section 139, in Part 10, Division 2

insert

139A Electronic publication

- (1) Despite any provision to the contrary, a requirement under this Act to publish a document in a newspaper may be satisfied by publishing the document on a website or other electronic platform.
- (2) Subsection (1) does not apply to a *Gazette* notice or document required to be published in the *Gazette*.

78 Section 144 amended (Inquiries)

Section 144(1), (2) and (3)

omit (all references)

Chairman

insert

Chair

79 Section 148 amended (Regulations)

Section 148(1)(j)

omit, insert

- (j) prescribe a fine not exceeding 200 penalty units for an offence against a regulation other than an offence of strict liability or absolute liability;
- (k) prescribe a fine not exceeding 100 penalty units for an offence against a regulation that is an offence of strict liability or absolute liability.

80 Section 150 amended (Definitions)

Section 150

insert

former Act means the *Planning Act 1993*.

81 Section 180 amended (Saving of restriction on powers under easements)

(1) Section 180, before "If"

insert

(1)

(2) Section 180, at the end

insert

(2) To avoid doubt, subsection (1) includes a local authority that:

(a) was a specified local authority in the easement; and

(b) was described by a description in Schedule 1 of the former Act.

82 Part 12, Division 6 inserted

After section 208

insert

Division 6 Planning Amendment Act 2019**209 Definition**

In this Division:

commencement means the commencement of section 3 of the *Planning Amendment Act 2019*.

210 Transitional matters

(1) Unless otherwise provided, the provisions of this Act in force after the commencement apply to all permits issued before the commencement.

(2) The members of the Planning Commission and the Development Consent Authority holding office immediately before the commencement continue to hold office after the commencement on the same terms and conditions that applied to their appointment before the commencement.

(3) A person authorised in writing to enter land by the Minister or the Chairman under section 77 immediately before the commencement is taken to be an authorised officer appointed under section 76.

Please note that the *Planning Regulations 2000* will be amended separately in conjunction with this Bill.

Part 3 Amendment of Crown Lands Act 1992

83 Act amended

This Part amends the *Crown Lands Act 1992*.

84 Section 44 amended (Subdivision applications where *Planning Act 1999* applies)

Section 44(1)

omit

Part 7

insert

Part 5

Part 4 Amendment of Cullen Bay Marina Act 1992

85 Act amended

This Part amends the *Cullen Bay Marina Act 1992*.

86 Section 3 amended (Subdivision of development area)

Section 3(2)(e)

omit

139

insert

140

Part 5 Amendment of Local Government (Darwin Parking Local Rates) Regulations 1982

87 Regulations amended

This Part amends the *Local Government (Darwin Parking Local Rates) Regulations 1982*.

88 Regulation 4 amended (Parking usage schedule)

Regulation 4(e)(i)

omit

139 of the *Planning Act 1999* or saved under section 177

insert

140 of the *Planning Act 1999* or saved under section 179

Part 6 Amendment of Unit Titles Act 1975

89 Act amended

This Part amends the *Unit Titles Act 1975*.

90 Section 26J amended (Variation of disclosure statement)

Section 26J(2)(b)

omit

54

insert

57

91 Section 26W amended (Variation of disclosure statement)

Section 26W(2)(b)

omit

54

insert

57

Part 7 Amendment of Fisheries Regulations 1992

92 Regulations amended

This Part amends the *Fisheries Regulations 1992*.

93 Regulation 162 amended (Place of processing to be specified in licence)

Regulation 162(2)(b)

omit

control plans

insert

the applicable planning scheme

94 Regulation 200 amended (Place of trade to be set out in licence)

Regulation 200(2)

omit

control plans

insert

the applicable planning scheme

Part 8 Repeal of Act**95 Repeal of Act**

This Act is repealed on the day after it commences.

