

NORTHERN TERRITORY OF AUSTRALIA

PLANNING ACT

As in force at 28 August 2013

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 28 August 2013

PLANNING ACT

An Act to provide for appropriate and orderly planning and control of the use and development of land, and for related purposes

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

2A Objects

- (1) The objects of this Act are to plan for, and provide a framework of controls for, the orderly use and development of land.
- (2) The objects are to be achieved by:
 - (a) strategic planning of land use and development and for the sustainable use of resources;
 - (b) strategic planning of transport corridors and other public infrastructure;
 - (c) effective controls and guidelines for the appropriate use of land, having regard to its capabilities and limitations;
 - (d) control of development to provide protection of the natural environment, including by sustainable use of land and water resources;
 - (e) minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development;

- (f) ensuring, as far as possible, that planning reflects the wishes and needs of the community through appropriate public consultation and input in both the formulation and implementation of planning schemes; and
- (g) fair and open decision making and appeals processes.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

alteration permit means a permit issued and (if applicable) varied under Part 4, Division 3.

amenity, in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

Appeals Tribunal has the meaning in section 108.

appellant has the meaning in section 118A(a).

appointed member, in relation to the Commission, means a member appointed under section 81F(2) or (3).

approved form means a form approved under section 135A.

base period of the permit, in relation to a development permit, means:

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

building includes a structure of any kind (including a temporary structure) and part of a building or structure.

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

Chairperson means the person appointed to be the Chairperson of the Commission under section 81F(2).

Commission means the Planning Commission established by section 81A.

committee means a committee of the Development Consent Authority established under section 104.

consent authority has the meaning in section 4.

consolidation means the amalgamation of 2 or more parcels of land to form a single parcel but does not include:

- (a) a consolidation of pastoral land under section 64, 65 or 66 of the *Pastoral Land Act*, if, after consolidation, the land remains pastoral land within the meaning of that Act;
- (c) a consolidation of land the subject of a grant of an estate or interest with land already held by the grantee for the purpose of section 16 or 24 of the *Control of Roads Act*;
- (d) the consolidation of land vested in a local authority under section 187(3) of the *Local Government Act* with land adjoining that land if the consolidation takes place not later than 12 months after the vesting of the land in the local authority; or
- (e) a consolidation or class of consolidation prescribed for the purposes of this definition.

construct, in relation to a building, includes:

- (a) to build, re-build, erect or re-erect the building;
- (b) to make alterations to the building;
- (c) to enlarge or extend the building; and
- (d) to place or relocate the building on land.

contribution means the amount, calculated under and in accordance with a contribution plan, payable in accordance with Part 6.

contribution plan means a contribution plan made under section 68.

council area means an area for which a council is constituted under the *Local Government Act*.

covenant has the same meaning as in Part 9, Division 4 of the *Law of Property Act*.

covenant in gross has the same meaning as in Part 9, Division 4 of the *Law of Property Act*.

date of consent, in relation to a development permit, means:

- (a) the date on which the consent authority issued the development permit under section 54; or
- (b) the date on which the consent authority, in accordance with an order under section 125(4) or 130(4), issued or amended the development permit,

whichever is the later.

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

development, in relation to land, means an activity that involves:

- (a) the establishment of, or a change in, the use of the land;
- (b) the subdivision or consolidation of the land; or
- (c) the carrying out of works on or in relation to the land, including:
 - (i) excavation or land-filling;
 - (ii) the clearing of native vegetation;
 - (iii) the construction of a building;
 - (iv) the construction or upgrading of roads and drains, other than:
 - (A) by a statutory corporation, by a statutory authority or corporation incorporated under an Act of the Commonwealth or by a local authority; or
 - (B) if the works are carried out in pursuance of a statutory responsibility;
 - (v) the construction or upgrading of hardstand car parking or landscaping; and
 - (vi) any other operation that affects the physical character of the land.

development application means an application under section 46.

Development Consent Authority means the Authority established by section 82 and includes a Division of the Authority.

development permit means a development permit issued under section 54 or taken to be issued under section 45, as varied under section 57, as varied pursuant to an order under section 130 or as modified under section 66.

Division, in relation to the Development Consent Authority, means a Division established under section 83.

Division area means the area of a Division as specified in, or as amended by, a notice under section 83.

Division member, in relation to a Division of the Development Consent Authority, means a person appointed under section 89 or 90 to be a member in respect of the Division and includes a person appointed under section 91, 93 or 94 to act in the office of a member of the Division while acting as that member.

easement has the same meaning as in Part 9, Division 2 of the *Law of Property Act*.

easement in gross has the same meaning as in Part 9, Division 2 of the *Law of Property Act*.

exceptional development permit means a permit granted under section 40 as varied, if at all, under that section.

exhibition, of a proposal within the meaning of section 14, means the notification, publication and exhibition of the proposal under Part 2, Division 3.

existing building has the meaning in section 33(3).

existing use has the meaning in section 33(1) or (2).

existing works has the meaning in section 33(4).

former Act means the *Planning Act* as in force immediately before the commencement of this Act.

formula for calculation means a formula for the calculation of contributions that is referred to in section 69(4).

interim development control order means an interim development control order made under Part 3 that is in force from time to time.

land includes land covered by water and buildings constructed on land.

local authority means a council constituted under the *Local Government Act*.

Local Government Association means the Local Government Association of the Northern Territory mentioned in section 242 of the *Local Government Act*.

member means:

- (a) in relation to the Commission – a member mentioned in section 81F(1); and
- (b) in relation to the Development Consent Authority – any of the following:
 - (i) the Chairman;
 - (ii) a person appointed under section 89 or 90 as a member;
 - (iii) an alternate member appointed under section 91 while acting as a member;
 - (iv) a temporary member appointed under section 93 or 94 while acting as a member.

notice of appeal means a notice referred to in section 118.

notice of determination means a notice of determination served under section 53A.

notice of refusal means a notice of refusal served under section 53C.

NT Planning Scheme means the Northern Territory Planning Scheme referred to in section 7.

owner, in relation to land held under a lease from the Territory, means the lessee of the land.

party, to an appeal under Part 9, has the meaning in section 118A.

permit, in relation to land, means any permit issued under this Act that applies to the land.

planning scheme includes the NT Planning Scheme and any specific planning scheme referred to in section 8.

policy area means a policy area within the meaning of section 69(3).

Registrar means the Registrar within the meaning of the *Lands, Planning and Mining Tribunal Act*.

scheme, see section 5 of the *Unit Title Schemes Act*.

scheme land, see section 32(1) of the *Unit Title Schemes Act*.

service authority means the Territory, a minister, a local authority, the Power and Water Corporation established by the *Power and Water Corporation Act* or a prescribed statutory corporation.

significant development proposal, in relation to land, see section 50A(1).

significant development report, see section 50B(1).

statutory corporation means a corporation, commission or authority incorporated by name for a public purpose by a law of the Territory, but does not include a local authority.

subdivision has the meaning in section 5.

Surveyor-General has the same meaning as in the *Licensed Surveyors Act*.

works means:

- (a) any activity on land, other than mining or agriculture, resulting in a physical change to the land or a part of the land; or
- (b) the results of such an activity, other than a building.

zone, in relation to land, means the zone of the land as specified in a planning scheme or in a map to which a planning scheme refers.

- (2) If in this Act the expression **default penalty** appears in or at the foot of a section or subsection, section 79 applies in relation to the section or subsection.

4 Meaning of consent authority

- (1) Subject to subsection (4), if a Division of the Development Consent Authority is not established in relation to an area of land, the Minister is the consent authority in relation to the land.
- (2) Subject to subsections (3) and (5), if a Division of the Development Consent Authority is established in relation to an area of land, the Division is the consent authority in relation to the land.

- (3) If the Minister is nominated under section 31(3) as the consent authority in relation to an interim development control order, the Minister is the consent authority in relation to:
- (a) if the order only relates to a type of development specified in the order – development of that type on the land to which the order relates; or
 - (b) if the order does not specify that it only relates to a type of development – the land to which the order relates.
- (4) If a Division of the Development Consent Authority is nominated under section 31(3) as the consent authority in relation to an interim development control order, the Division is the consent authority in relation to:
- (a) if the order only relates to a type of development specified in the order – development of that type on the land to which the order relates; or
 - (b) if the order does not specify that it only relates to a type of development – the land to which the order relates.
- (5) If the Minister directs the Development Consent Authority under section 85(3), the Minister is the consent authority in relation to the particular development application to which the direction relates.

5 Meaning of *subdivision*

- (1) Subject to subsections (2), (3) and (4), in this Act, ***subdivision*** means the division of land into parts available for separate occupation or use, by means of:
- (a) sale, transfer or partition; or
 - (b) lease, agreement, dealing or instrument purporting to render different parts of the land available for separate disposition or separate occupation.
- (2) Despite subsection (1), ***subdivision*** does not include:
- (a) a subdivision created by:
 - (i) an acquisition or resumption of land or of an interest in land resulting from an action under the *Lands Acquisition Act* or the *Crown Lands Act*;

- (ii) an action under the *Control of Roads Act* or the *Local Government Act* to open a road, or to create a parcel of land to be included in a future road, if all the parts of the parcel that are not or will not be acquired for the purposes of the road will remain one parcel;
 - (iii) the vesting of land in a local authority under section 187(3) of the *Local Government Act*; or
 - (iv) a grant of an estate or interest in land for the purpose of section 16 or 24 of the *Control of Roads Act* if it is to be consolidated with the land already held by the grantee;
 - (c) a subdivision that creates not more than 2 lots if one of the lots is or is intended to be a park or reserve within the meaning of the *Territory Parks and Wildlife Conservation Act*;
 - (d) the subdivision of pastoral land under section 61 or 66 of the *Pastoral Land Act* if, after the subdivision, the land will remain pastoral land within the meaning of that Act;
 - (e) a subdivision required under the *Encroachment of Buildings Act*;
 - (f) a sublease under the *Pastoral Lands Act*;
 - (g) a subdivision required under any other Act; or
 - (h) a subdivision, or a subdivision of a class of subdivision, prescribed for the purposes of this section.
- (3) Land is not to be taken to be subdivided for the purposes of this Act:
- (a) by the grant of a lease, licence or other right to use or occupy a part of the land unless the lease, licence or other right is for a term of more than 12 years; or
 - (b) by reason only of the lease of part of a building.
- (4) For the purposes of subsection (3), a lease, licence or other right to use or occupy a part of land that contains:
- (a) an option to renew the lease, licence or right for an additional term from the date of expiration of the lease, licence or right; or
 - (b) a provision for the granting of a further lease, licence or right for an additional term from the date of expiration of the lease, licence or right,

so that the aggregate of all the terms is more than 12 years is to be taken to be a lease, licence or right for a term of more than 12 years.

6 Act to bind Crown

This Act binds the Crown not only in the right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Planning schemes and proposals

Division 1 Planning schemes

7 Northern Territory Planning Scheme

- (1) There is a Northern Territory Planning Scheme that applies in relation to the whole of the Territory except any area of land:
 - (a) in relation to which another planning scheme applies; or
 - (b) specified in the NT Planning Scheme as being excluded from the application of that Scheme.
- (2) The NT Planning Scheme may refer to an area of land by describing the land or referring to a map or plan of the land.

8 Other specific planning schemes

- (1) The Minister may, on the Minister's own initiative or following a request by a person or body, make a specific planning scheme that applies in relation to the area or areas of land described in the planning scheme or in a map to which the planning scheme refers.
- (2) The Minister may, on the Minister's own initiative or following a request by a person or body, repeal a specific planning scheme.
- (3) Divisions 2, 3, 4 and 5 apply in relation to the making or repeal of a specific planning scheme as if a reference in those Divisions to an amendment of a planning scheme were a reference to the making or repeal of a specific planning scheme.
- (4) If the Minister makes or repeals a specific planning scheme on his or her own initiative, Divisions 3, 4 and 5 apply (with the necessary changes) in relation to that action as if the Minister had received a request for the specific planning scheme to be made or repealed.

9 Contents of planning scheme

- (1) A planning scheme may include any of the following:
 - (a) provisions that include statements of policy in respect of the use or development of land;
 - (b) provisions that permit, prohibit, restrict or impose conditions on a use or development of land;
 - (c) provisions that provide instructions, guidelines, or assessment criteria to assist the consent authority in assessing development applications;
 - (d) other provisions in connection with planning for or control of the use or development of land;
 - (e) other provisions that are necessary or convenient for giving effect to the planning scheme;
 - (f) maps, plans, designs and diagrams.
- (2) A provision of a planning scheme may apply in relation to all the land to which the planning scheme applies or may apply to a specified part of that land.
- (3) 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.

Division 2 Amendments and requests for amendments of planning schemes

10 Meaning of declared class of amendments

In this Division, a reference to a declared class of amendments is a reference to a class of amendments to which a declaration in force under section 11(3) relates.

11 Amendment of planning scheme generally

- (1) The Minister may amend a planning scheme in accordance with this Part.
- (2) To avoid doubt, the repeal and substitution of a planning scheme in its entirety is an amendment of the planning scheme.
- (3) The Minister may declare in writing that, in the Minister's opinion, a class of amendments of a planning scheme is not so significant as to require exhibition.

12 Amendment of planning scheme on Minister's initiative

- (1) The Minister may decide to amend a planning scheme on his or her own initiative as the Minister sees fit.
- (2) If the Minister is satisfied the proposed amendment is within a declared class of amendments or is not so significant as to require exhibition, the Minister may:
 - (a) amend the planning scheme without taking any further action under Division 3, 4 or 5;
 - (b) give notice of the amendment in accordance with section 28; and
 - (c) provide reasons for the amendment in accordance with section 29.
- (3) In any other circumstances, Divisions 3, 4 and 5 apply in relation to the proposed amendment.

13 Request for amendment of planning scheme

- (1) A person or body may, in writing, request the Minister to amend a planning scheme as proposed in the request.
- (2) After considering the request, the Minister may:
 - (a) if the Minister is satisfied the proposed amendment is within a declared class of amendments or is not so significant as to require exhibition:
 - (i) decide to amend the planning scheme without taking any further action under Division 3, 4 or 5;
 - (ii) amend the planning scheme as proposed;
 - (iii) give notice of the amendment in accordance with section 28; and
 - (iv) provide reasons for the amendment in accordance with section 29;
 - (b) decide to continue consideration of the proposed amendment by placing it on exhibition; or
 - (c) decide to refuse to amend the planning scheme as proposed.
- (3) As soon as practicable after making the decision, the Minister must give written notice of the decision to the person or body who requested the proposed amendment.

- (4) If the Minister decides to refuse to amend the planning scheme as proposed, the notice of the decision must include the reasons for the refusal.

Division 2A Plans, guidelines and assessment criteria prepared by Commission

13A Application of Division

This Division applies in relation to integrated strategic plans, guidelines and assessment criteria prepared by the Commission for inclusion in the NT Planning Scheme as mentioned in section 81B(b) and (c).

13B Procedures to be followed

On receipt of the integrated strategic plans, guidelines or assessment criteria, the Minister must follow the procedures under this Part as if the Commission had requested the amendment of the NT Planning Scheme under Division 2.

Division 3 Exhibition of proposals

14 Definitions

In this Division:

period of exhibition, for a proposal, means the period referred to in section 15.

proposal means one of the following:

- (a) a proposed amendment of a planning scheme that the Minister has, under Division 2, decided to place on exhibition;
- (b) a proposal to grant or vary an exceptional development permit that the Minister has, under Part 4, Division 2, decided to place on exhibition;
- (c) an altered proposal within the meaning of section 27.

15 Period of exhibition of proposal

- (1) Subject to subsection (2), the period of exhibition for a proposal is 28 days starting on the day the notice of the proposal is first published in a newspaper under section 17.
- (2) The Minister may determine a longer period of exhibition for a particular proposal or class of proposals.

16 Notice relating to rezoning or grant of permit

- (1) This section applies in relation to land that will be affected by one of the following proposals if carried out:
 - (a) a proposal to amend a planning scheme by establishing or changing a zone;
 - (b) a proposal to grant or vary an exceptional development permit.
- (2) Subject to this section, on or before the first day of the period of exhibition for the proposal, the Minister must:
 - (a) cause a notice to be served on the owner of the land; and
 - (b) cause to be placed on or in the vicinity of the land as many notices, in accordance with subsections (4) and (5), as the Minister considers appropriate.
- (3) Subsection (2) does not apply if the Minister considers:
 - (a) it is impracticable to comply with the subsection because of the location of the land or the number of parcels of land; and
 - (b) it is reasonable to expect that all persons likely to be affected by the proposal will receive sufficient notice of it by means of the notice published in a newspaper under section 17.
- (4) A notice referred to in subsection (2)(b) must include the following information:
 - (a) the current zone of the land;
 - (b) the zone proposed for the land or the activity that will, despite the zone of the land, be permitted under an exceptional development permit.
- (5) A notice referred to in subsection (2)(b) must be large enough and placed in such a position to enable a person with normal unimpaired eyesight to read it, without optical assistance, from the boundary of the public road nearest to the land.

- (6) A person must not remove a notice placed on land in accordance with this section until after the end of the period of exhibition for the proposal.

Maximum penalty: If the offender is a natural person –
100 penalty units.

If the offender is a body corporate –
500 penalty units.

17 Publication of notice of proposal

- (1) The Minister must cause a notice containing the following information to be published in a newspaper circulating in the Territory or in the area to which the proposal relates:
- (a) that a proposal to amend a planning scheme, or to grant or vary an exceptional development permit, is to be placed on exhibition;
 - (b) each place where the proposal is to be placed on exhibition;
 - (c) the period of exhibition;
 - (d) the person or body to whom written submissions about the proposal may be made;
 - (e) a brief summary of the nature of the proposal.
- (2) If the proposal relates to establishing or changing a zone or to a grant or variation of an exceptional development permit, and the Minister considers it to be practicable, the brief summary must include the following information:
- (a) the lot number, Section number or Portion number and, if applicable, the street address of the land;
 - (b) the current zone of the land.
- (3) During the period of exhibition, the Minister must cause the notice to be published:
- (a) a second time in a newspaper circulating in the Territory or in the area to which the proposal relates; and
 - (b) once in the *Gazette*.

18 Exhibition of details of proposal

- (1) The Minister must cause a notice of the proposal to be placed on exhibition during the entire period of exhibition in a prominent position at each place notified under section 17(1)(b).
- (2) The notice placed on exhibition must include details of the proposal.

19 Notice to local authority if proposal relates to land in council area

- (1) If a proposal relates to land partly or entirely within a council area, the Minister must give the local authority for the council area written notice of the proposal.
- (2) The notice must contain the information specified in the notice published under section 17 and an invitation to the local authority to make a submission about the proposal under section 22.

Division 4 Submissions, consultation, hearings and reports about proposals

20 Definitions

In this Division:

prescribed functions, in relation to a proposal, means the following functions:

- (a) hearing any submissions made under section 22;
- (b) carrying out any consultation as directed under section 23;
- (c) providing a report under section 24.

proposal means a proposal within the meaning of section 14 that has been placed on exhibition in compliance with Division 3.

reporting body has the meaning in section 21.

21 Reporting body

- (1) The reporting body, in respect of a proposal, is the person or body who must perform the prescribed functions.
- (2) If a proposal relates to land partly or entirely within one Division area, the Division for that area is the reporting body.

- (3) If a proposal relates to land that is not within a Division area or is within more than one Division area, the Minister must appoint a person or body (which may be a Division of the Development Consent Authority) to be the reporting body.

22 Submissions and hearing

- (1) A person may, within the period during which a proposal is on exhibition, make a written submission about the proposal to the reporting body.
- (2) If the reporting body receives any submissions, it must conduct a hearing in respect of those submissions and invite all persons who have made submissions to appear at the hearing and be heard in relation to the proposal.
- (3) The hearing must be conducted with the minimum of formality and in a manner that ensures procedural fairness.

23 Directions by Minister relating to consultation

- (1) If the Minister requires a reporting body to carry out consultation in addition to the other processes required by this Division, the Minister must in writing direct the reporting body to do so.
- (2) The direction may include requirements about the persons with whom, and the manner in which, the consultation is to be carried out.

24 Reports

- (1) After the reporting body has conducted a hearing in respect of submissions about a proposal, and carried out any consultation as directed by the Minister, the reporting body must provide the Minister with the submissions and a written report about:
 - (a) issues raised in the submissions;
 - (b) issues raised at the hearing and during any consultation; and
 - (c) any other matters the reporting body considers the Minister should take into account when considering the proposal.
- (2) If no submissions are received by the reporting body, it must provide the Minister with a written report about issues raised during any consultation and any other matters it considers the Minister should take into account when considering the proposal.

- (3) The Minister may also request any other person or body to give the Minister a written report about matters relevant to the proposal or to anything referred to in the reporting body's report.

Division 5 Decisions about proposals

25 Proposal to amend planning scheme

- (1) This section applies in relation to a proposal to amend a planning scheme in respect of which the Minister has received a report or reports under Division 4.
- (2) After considering each report and, if applicable, any other matters the Minister is required by this Act to consider in relation to the proposal, the Minister must:
 - (a) amend the planning scheme in accordance with the proposal;
 - (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the subsequent actions required by virtue of section 27(3);
 - (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, amend the planning scheme in accordance with the altered proposal; or
 - (d) refuse to amend the planning scheme.

26 Proposal relating to exceptional development permit

- (1) This section applies in relation to a proposal relating to a grant or variation of an exceptional development permit in respect of which the Minister has received a report or reports under Division 4.
- (2) After considering each report and, if applicable, any other matters the Minister is required by this Act to consider in relation to the proposal, the Minister must take an action under section 40.

27 Exhibition of altered proposal

- (1) This section applies in relation to an altered proposal only if the alteration is to the substance of the proposal and not merely to the format or style in which the proposal was placed on exhibition.
- (2) If the Minister is satisfied an alteration is sufficiently extensive or significant to justify the exhibition of the altered proposal, the Minister must place it on exhibition.

- (3) Subject to subsection (4), Divisions 3 and 4 and this Division apply in relation to the altered proposal as if the previous proposal had not been on exhibition.
- (4) Section 16 applies in relation to an altered proposal only if the zone proposed for the land to which the altered proposal relates is different from the zone proposed in the previous proposal, as specified in the previous notice placed on or in the vicinity of the land under section 16(2)(b).
- (5) In this section:

altered proposal means a proposal altered under section 25 or 40.

28 Notice of amendment

- (1) After the Minister amends a planning scheme, the Minister must cause to be published in the *Gazette* a notice containing the following information:
 - (a) a statement that the Minister has amended the planning scheme named in the notice;
 - (b) any identifying number or title given to the amendment;
 - (c) the place where copies of the amendment are available for purchase or inspection.
- (2) An amendment of a planning scheme takes effect on the date the notice of the amendment is published in the *Gazette*.
- (3) This section does not apply in relation to any action taken by the Minister under section 40.

29 Reasons for decision to be available to public

After the Minister amends or refuses to amend a planning scheme, the Minister must make available for purchase or inspection by the public a copy of the written reasons for the decision.

Part 3 Interim development control orders

31 Interim development control orders

- (1) If the Minister decides that an amendment to a planning scheme is to be made, the Minister may, subject to this section, by notice in the *Gazette*, make an interim development control order in respect of the land or part of the land to which it is proposed the amendment is to apply.

- (2) An interim development control order may declare that:
- (a) a specified provision of a planning scheme does not apply to all or part of the land to which the order relates;
 - (b) development specified in the order in all or part of the land to which the order relates may proceed only with a permit granted under Part 5 by the consent authority specified in the order; or
 - (c) specified types of development are prohibited,
- and while the order remains in force the provision does not apply, or development may only proceed or is prohibited, accordingly.
- (3) The Minister may, in an interim development control order, nominate himself or herself or a Division of the Development Consent Authority as the consent authority for the purposes of this section in respect of the order or development specified in the order.
- (4) An interim development control order takes effect on:
- (a) the date it is notified in the *Gazette*; or
 - (b) if a later date is provided for in the order – that later date.
- (5) An interim development control order remains in force for 2 years or a lesser period specified in the order.
- (6) An interim development control order must not be made in respect of land within 3 months after the day on which a previous interim development control order affecting that land expires, except if it relates to a different matter to the order that has expired.

32 Inconsistencies with planning scheme

- (1) The Minister must not make an interim development control order that allows a development of land that, if the order had not been made, would not be lawful under the planning scheme relating to the land.
- (2) Subject to subsection (1), if there is an inconsistency between an interim development control order and a planning scheme, the interim development control order prevails and the planning scheme, to the extent of the inconsistency, has no effect for the duration of the order.

Part 4 Existing uses, existing buildings, existing works and permits

Division 1 Existing uses, existing buildings and existing works

33 Existing use, building and works

- (1) For this Part, a use of land is an existing use if the following circumstances apply:
 - (a) the use was being made immediately before the commencement of a planning scheme, or of an amendment of a planning scheme, relating to the land;
 - (b) the use was lawful under this Act immediately before the commencement:
 - (i) as a use permitted without the consent of a consent authority; or
 - (ii) as a use permitted under a planning scheme only with the consent of the consent authority and to which the consent authority had consented;
 - (c) the use would cease to be lawful after the commencement if not for this Part.
- (2) Also, a use of land is an existing use for this Part if it is permitted only in accordance with an exceptional development permit.
- (3) For this Part, a building is an existing building if the following circumstances apply:
 - (a) the building was in existence immediately before the commencement of a planning scheme, or of an amendment of a planning scheme, relating to the land on which the building is situated;
 - (b) the building was lawful under this Act immediately before the commencement;
 - (c) the building would cease to be lawful after the commencement if not for this Part.

- (4) For this Part, works are existing works if the following circumstances apply:
- (a) the works had been carried out before, or were being carried out immediately before, the commencement of a planning scheme, or of an amendment of a planning scheme, relating to the land on which the works were, or were being, carried out;
 - (b) the works were lawful under this Act immediately before the commencement;
 - (c) the works would cease to be lawful after the commencement if not for this Part.

34 Existing use protected

- (1) Subject to subsection (2), a person does not contravene a planning scheme only by continuing an existing use after the commencement of a conflicting provision.
- (2) A person may continue an existing use only if:
- (a) the use is restricted to the part of the land on which the use was being made immediately before the commencement of the conflicting provision; and
 - (b) the intensity of the use is not greater than the intensity of use immediately before the commencement of the conflicting provision.
- (3) In this section:

conflicting provision means a provision of a planning scheme, or an amendment of a provision of a planning scheme, with which an existing use conflicts.

35 Existing works protected

- (1) A person does not contravene a planning scheme only by continuing existing works (whether or not to completion) after the commencement of a conflicting provision.
- (2) Existing works and any building constructed as part of those works may be used for the purpose for which they were constructed.
- (3) Sections 57 and 59 do not apply to a development permit that relates to existing works.

(4) In this section:

conflicting provision means a provision of a planning scheme, or an amendment of a provision of a planning scheme, with which existing works conflict.

36 Repairs and maintenance of existing building or works permitted

A person does not contravene the development provisions by carrying out work to repair or maintain an existing building or existing works.

37 Abandonment of existing use

- (1) If a person discontinues an existing use of land for a continuous period of not less than 12 months, or a longer period as determined by the Minister, the person is conclusively presumed to have abandoned that use.
- (2) Within 12 months after an existing use of land is discontinued, an owner of the land or a person authorised in writing by the owner may apply to the Minister in writing for an extension of the period referred to in subsection (1).
- (3) The Minister may determine the application by extending or refusing to extend the period during which the existing use may be discontinued without a person being conclusively presumed to have abandoned the use.

Division 2 Exceptional development permits

38 Application for permit or variation of permit

- (1) A person may apply to the Minister for the grant of an exceptional development permit.
- (2) An exceptional development permit may permit any of the following in relation to land:
 - (a) a development or use of the land, although the development or use would otherwise not be lawful under the relevant planning scheme;
 - (b) a development or use of the land in substitution for an existing use, although the development or use would otherwise not be lawful under the relevant planning scheme;

- (c) a modification or alteration of an existing building or existing works that would have a result other than as referred to in section 43B(1) or (2);
 - (d) the demolition and reconstruction of an existing building that is used for an existing use of the land.
- (3) The owner of the land to which an exceptional development permit relates may apply for a variation of the permit.
- (4) An application under this section must be in the approved form containing the applicant's proposal and accompanied by the prescribed fee.

39 Decision on receipt of application

- (1) After receiving an application under section 38, the Minister may decide:
- (a) to place the proposal in the application on exhibition;
 - (b) if the proposal in the application is for a variation of a permit – that the proposal is not so significant as to require exhibition; or
 - (c) to refuse to grant or vary the exceptional development permit without placing the proposal in the application on exhibition.
- (2) As soon as reasonably practicable after deciding to place a proposal on exhibition or to refuse to grant or vary the permit, the Minister must give the applicant written notice of the decision.
- (3) If the Minister decides to place a proposal on exhibition, Part 2, Divisions 3, 4 and 5 apply in relation to the proposal.

40 Grant or variation of permit or refusal to grant or vary

- (1) The Minister must not grant an exceptional development permit for a proposal relating to a development or use referred to in section 38(2)(a) unless the Minister is satisfied it is preferable to issue the permit than to amend the relevant planning scheme.
- (2) Subject to subsection (1), if a proposal for the grant of an exceptional development permit has been on exhibition and the Minister has considered the matters referred to in section 26(2), the Minister must:
- (a) grant a permit in accordance with the proposal;

- (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the further actions required by virtue of section 27(3);
 - (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, grant a permit in accordance with the altered proposal; or
 - (d) refuse to grant a permit.
- (3) If a proposal for a variation of an exceptional development permit has been on exhibition and the Minister has considered the matters referred to in section 26(2), the Minister must:
- (a) vary the permit in accordance with the proposal;
 - (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the actions required by virtue of section 27(3);
 - (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, vary the permit in accordance with the altered proposal; or
 - (d) refuse to vary the permit.
- (4) If the Minister has decided under section 39 that a proposal to vary an exceptional development permit is not so significant as to require exhibition, the Minister must:
- (a) vary or refuse to vary the permit; or
 - (b) alter the proposal and vary the permit in accordance with the altered proposal.
- (5) An exceptional development permit may be granted or varied subject to the conditions the Minister thinks fit and specifies in the permit or variation.
- (6) The Minister must give notice in the *Gazette* of a decision under this section.
- (7) The notice must include the prescribed details.

41 Reasons for decision to be available to public

The Minister must make available for purchase or inspection by the public a copy of the written reasons for a decision made under section 40.

42 Matters to be taken into account when making decision

In deciding whether to grant or vary an exceptional development permit under section 40, the Minister must take into account the matters specified in section 51(d), (g), (h), (j), (k), (m), (n), (p), (r), (s) and (t).

Division 3 Alteration permits for existing buildings or existing works

43A Application for alteration permit

- (1) A person may apply to the consent authority for an alteration permit in relation to an existing building or existing works.
- (2) The application must be in the approved form and accompanied by the prescribed fee.

43B Issue or refusal to issue alteration permit

- (1) The consent authority may issue an alteration permit only if:
 - (a) the proposed alteration will not alter a measurable aspect of the existing building or existing works by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or
 - (b) in the opinion of the consent authority, the proposed alteration is not conveniently measurable and will not materially affect the amenity of adjoining or nearby land or premises.
- (2) Despite subsection (1)(a), an alteration permit must not be issued if it will allow an increase in the number of dwellings capable of separate occupancy.
- (3) If the consent authority refuses to issue an alteration permit, the consent authority must give the applicant a statement of the reasons for the refusal.

43C Conditions may be placed on alteration permit and may be varied

- (1) The consent authority may impose on an alteration permit the conditions it thinks fit and specifies in the alteration permit.
- (2) The holder of the alteration permit may apply to the consent authority for a variation of the conditions of the permit.

- (3) The application must be in the approved form and accompanied by the prescribed fee.
- (4) The consent authority may vary the conditions of an alteration permit only if it is satisfied about the matters referred to in section 43B(1) and (2) in relation to the proposed variation.

Part 5 Development permits

Division 1 Development permits generally

44 When development permit is required

This Part applies in any of the following circumstances:

- (a) if a provision of a planning scheme allows development only with the consent of the consent authority;
- (b) if the proposed development is the subdivision or consolidation of land;
- (c) if an interim development control order allows development only with the consent of a consent authority.

45 When development permit taken to be issued

If, after a planning scheme is made or amended under Part 2, a particular use of land is permitted only with the consent of the consent authority, a development permit consenting to that use is taken to have been issued if, immediately before the amendment:

- (a) the particular use was permitted on the land without the consent of the consent authority; and
- (b) that particular use was being made of the land.

46 Development applications

- (1) The owner of land, or a person authorised in writing by the owner, may apply to the consent authority for consent to carry out a development on the land.
- (2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.
- (2A) An application under subsection (1) may be made by electronic transmission in the prescribed manner but must not be considered by the consent authority until the prescribed fee is paid.

- (3) A development application is to contain the following:
- (a) an assessment demonstrating how the proposed development will comply with any planning scheme that applies to the land;
 - (b) an assessment demonstrating how the proposed development will comply with an interim development control order, if any, applying to the land;
 - (c) if a public environmental report or an environmental impact statement has been prepared or is required under the *Environmental Assessment Act* in relation to the proposed development – a copy of the report or statement and the results of any assessment of the report or statement under that Act;
 - (d) an assessment demonstrating the merits of the proposed development;
 - (e) a description of the physical characteristics of the land and a detailed assessment demonstrating the land's suitability for the purposes of the proposed development and the effect of development on that land and other land;
 - (f) a statement specifying the public facilities or public open space available in the area in which the land is situated, whether land for public facilities or public open space is to be provided by the developer and whether it is proposed that facilities or open space be developed by the developer;
 - (g) a statement specifying the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and whether public utilities or infrastructure are to be provided by the developer or land is to be provided by the developer for the provision of public utilities or infrastructure;
 - (h) an assessment of the potential impact on the existing and future amenity of the area in which the land is situated;
 - (j) an assessment of the benefit or detriment to the public interest of the development;
 - (k) in the case of a proposed subdivision of land on which a building is situated – a report from a building certifier within the meaning of the *Building Act* as to whether the building will cease to comply with the *Building Act* if the proposed development were to proceed;

- (l) for the development of land proposed to be the scheme land of a proposed or existing scheme, or the development of existing scheme land – a plan in the approved form specifying:
 - (i) any information about any building that is, or will be, situated on the scheme land (including, for example, information about the structural integrity and fire safety of the building); and
 - (ii) if any part of the development is subject to changes that are allowed by regulation – details about that part as required by regulation; and
 - (iii) any other information prescribed by regulation about the development.
- (4) The consent authority may decide to do any of the following in relation to a development application:
 - (a) if the application does not contain the information required by subsection (3) – reject the application;
 - (b) if the consent authority considers additional information is necessary to enable it to consider the application properly – require the applicant to provide the information;
 - (c) if a proposal to amend a planning scheme has been placed on exhibition under Part 2, Division 3, and the consent authority is of the opinion that it should not determine the application until the Minister makes a decision about the proposal under section 25(2) – defer consideration and determination of the application under this Part until the decision is made;
 - (d) if section 50C applies in relation to the development proposed in the application – defer consideration and determination of the application under this Part until the relevant procedures under that section have been completed.
- (5) The consent authority must notify the applicant in writing of a decision under subsection (4).

Division 2 Development applications – notification and consultation

47 Public notice of development application

- (1) Before the consent authority determines a development application, other than an application to which section 47A applies, it must give public notice of the application or, in writing, require the applicant to do so.
- (2) The notice must be given in the prescribed manner and form and must include:
 - (a) a statement that a development application has been made to the consent authority; and
 - (b) the details of the application; and
 - (c) an invitation to members of the public to make written submissions about the application within the period specified in the notice, which must end no earlier than 14 days after the date on which notice is given; and
 - (d) any other information required by the Regulations.
- (3) If the consent authority gives public notice of the application, it may charge the applicant the reasonable costs of notification.

47A Development application not requiring public notice

- (1) No public notice is required to be given of a development application that is solely for consent to carry out the following development:
 - (a) the consolidation of land;
 - (b) the establishment of, or a change in, the use of land for the accommodation of people requiring privacy, as specified by the Regulations;
 - (c) development, specified by the Regulations, that will not have a significant impact on the existing and future amenity of the area in which the development will be carried out.
- (2) Before the consent authority determines a development application relating to development mentioned in subsection (1), it must give notice of the application to the persons the Regulations require to be notified or, in writing, require the applicant to do so.

- (3) The notice must be given in the prescribed manner and form and must include:
 - (a) a statement that a development application has been made to the consent authority; and
 - (b) the details of the application; and
 - (c) an invitation to the recipient to make a written submission about the application within the period specified in the notice, which must end no earlier than 14 days after the date on which the notice is given; and
 - (d) any other information required by the Regulations.
- (4) If the consent authority gives notice of the application, it may charge the applicant the reasonable costs of notification.

48 Notice to local authority of development application

- (1) If a development application relates to land within the council area of a local authority, the consent authority must give the local authority a written notice that includes:
 - (a) a statement that a development application has been made to the consent authority; and
 - (b) the details of the application; and
 - (c) an invitation to the local authority to make a submission about the application within the period specified in the notice, which must end no earlier than 14 days after the date on which the notice is given.
- (2) The consent authority may charge the applicant the reasonable costs of notification.

49 Submissions

- (1) Any person may make a written submission to the consent authority about a development application to which section 47 applies within the period specified in the public notice about the application.
- (2) A person given notice under section 47A about a development application may make a written submission to the consent authority about the application within the period specified in the notice.
- (3) A local authority given notice under section 48 about a development application may make a written submission to the consent authority about the application within the period specified in the notice.

50 Evidence and information

- (1) If a natural person or body corporate makes a submission in accordance with section 49(1) or (2), the consent authority may invite the person or a representative of the body to appear before it and give evidence in relation to the development application.
- (2) If a local authority makes a submission in accordance with section 49(3), the consent authority must invite a representative of the authority to appear before it and give evidence in relation to the development application.
- (3) If the Minister is the consent authority in relation to the land or development to which a submission relates, the Minister may appoint a person or body to receive information from the relevant person or representative mentioned in subsection (1) or (2).
- (4) If appropriate, a person or body appointed under subsection (3) may receive information by telephone or other electronic means.

Division 2A Development application relating to significant development proposal

50A Significant development proposal

- (1) A proposed development of land is a ***significant development proposal*** in relation to the land if the development, as proposed:
 - (a) requires a development permit; and
 - (b) may be significant to future land use and development in the Territory.
- (2) A proposed development of land is taken to be significant to future land use and development in the Territory if any of the following circumstances apply:
 - (a) the carrying out of the development, or subsequent use of the land, may have a significant impact on any of the strategic planning mentioned in section 2A(2)(a) or (b);
 - (b) the carrying out of the development, or subsequent use of the land, may have a significant impact on the natural environment or existing amenity of:
 - (i) that land or adjoining land; or
 - (ii) other areas of land;
 - (c) another circumstance prescribed by regulation.

- (3) Without limiting subsection (2)(c), a regulation may prescribe a circumstance by reference to:
 - (a) the type of development proposed; or
 - (b) the extent of the possible impacts of the development, as proposed, on the natural environment or existing amenity of land.

50B Significant development report

- (1) A **significant development report** is a written report by the Commission in relation to a significant development proposal.
- (2) The Commission must give the report to the Minister as soon as practicable after it is requested by the Minister under subsection (5) or section 50C.
- (3) The Commission must:
 - (a) in considering the significant development proposal – take the objects of this Act into account; and
 - (b) in the report – identify, and give advice about, the possible impacts of the proposal on future land use and development in the Territory.
- (4) Without limiting subsection (3)(b), the report may include advice about the following matters:
 - (a) the strategic planning implications of the significant development proposal;
 - (b) if appropriate – Crown land that may be suitable for the proposal.
- (5) The Minister may request the Commission to give a significant development report in relation to a significant development proposal even if a development application has not yet been made in relation to the proposal.

50C When significant development report may be requested

- (1) This section applies if:
 - (a) a consent authority considers that the proposed development described in a development application is a significant development proposal; and

- (b) the Commission has not given the Minister a significant development report in relation to the proposal.
- (2) If the consent authority is the Minister, he or she may request the Commission to give the Minister a significant development report in relation to the proposed development.
 - (3) If the consent authority is the Development Consent Authority, it must give the development application to the Minister who must take action under subsection (4) or subsections (5) to (7).
 - (4) If the Minister considers that the proposed development is not a significant development, the Minister must return the development application to the Development Consent Authority and direct the Authority to determine the application.
 - (5) If the Minister considers that the proposed development is a significant development proposal, the Minister may:
 - (a) direct the Development Consent Authority under section 85(3) that the Minister is the consent authority in relation to the development application; or
 - (b) request the Commission to give the Minister a significant development report relating to the significant development proposal.
 - (6) If the Minister takes action under subsection (5)(a), the Minister may, before determining the development application, request the Commission to give the Minister a significant development report in relation to the significant development proposal.
 - (7) If the Minister takes action under subsection (5)(b), the Minister may, after considering the significant development report:
 - (a) direct the Development Consent Authority under section 85(3) that the Minister is the consent authority in relation to the development application; or
 - (b) give the report to the Development Consent Authority, together with the development application, and direct the Authority to determine the application.

50D Consideration of significant development report

If a significant development report requested under section 50C is given to a consent authority in relation to a development application, the consent authority must take the report into account before determining the application.

Division 3 Determination of application

51 Matters to be taken into account

A consent authority must, in considering a development application, take into account the following:

- (a) any planning scheme that applies to the land to which the application relates;
- (b) any proposed amendments to such a planning scheme:
 - (i) that have been or are on exhibition under Part 2, Division 3;
 - (ii) in respect of which a decision has not been made under Part 2, Division 5; and
 - (iii) that are relevant to the development proposed in the development application;
- (c) an interim development control order, if any, in respect of the land to which the application relates;
- (d) an environment protection objective within the meaning of the *Waste Management and Pollution Control Act* that is relevant to the land to which the application relates;
- (e) any submissions made under section 49, and any evidence or information received under section 50, in relation to the development application;
- (f) a matter that the Minister has, under section 85, directed it to consider in relation to development applications generally;
- (g) if a public environmental report, or an environmental impact statement, has been prepared or is required under the *Environmental Assessment Act* in relation to the proposed development – the report or statement and the results of any assessment of the report or statement under that Act;
- (h) the merits of the proposed development as demonstrated in the application;
- (j) the capability of the land to which the proposed development relates to support the proposed development and the effect of the development on the land and on other land, the physical characteristics of which may be affected by the development;

- (k) the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for the facilities, or land suitable for public recreation, to be provided by the developer;
- (m) the public utilities or infrastructure provided in the area in which the land is situated, the requirement for public facilities and services to be connected to the land and the requirement, if any, for those facilities, infrastructure or land to be provided by the developer for that purpose;
- (n) the potential impact on the existing and future amenity of the area in which the land is situated;
- (p) the public interest, including (if relevant) how the following matters are provided for in the application:
 - (i) community safety through crime prevention principles in design;
 - (ii) water safety;
 - (iii) access for persons with disabilities;
- (q) for a proposed subdivision of land on which a building is, or will be, situated – whether the building complies, or will comply, with any requirements prescribed by regulation in relation to the building (including, for example, requirements about the structural integrity and fire safety of the building);
- (r) any potential impact on natural, social, cultural or heritage values, including, for example, the heritage significance of a heritage place or object under the *Heritage Act*;
- (s) any beneficial uses, quality standards, criteria, or objectives, that are declared under section 73 of the *Water Act*;
- (t) other matters it thinks fit.

52 Consent only if development complies with planning scheme

- (1) The Development Consent Authority must not consent to a proposed development under section 53 if:
 - (a) in its opinion, the proposed development is contrary to a planning scheme provision referred to in section 9(1)(a); or
 - (b) the proposed development is contrary to a planning scheme provision referred to in section 9(1)(b) or an interim development control order.

- (2) The Minister must not consent to a proposed development under section 53 if the proposed development is contrary to a planning scheme provision referred to in section 9(1)(b) or an interim development control order.
- (3) Despite subsection (1), the Development Consent Authority may consent to a proposed development under section 53 although the proposed development is contrary to a planning scheme provision referred to in section 9(1)(a), if:
 - (a) the Authority notifies the Minister in writing; and
 - (b) either:
 - (i) the Minister gives written approval to the giving of consent to the proposed development; or
 - (ii) the Minister has not, within 14 days after receipt of the notice under paragraph (a), given written approval to the giving of consent to the proposed development although the amendment is contrary to a planning scheme provision referred to in section 9(1)(a) or refused to give such written approval.

53 Determination of development application

As soon as practicable after considering a development application and the matters referred to in sections 51 and 52, the consent authority must determine to:

- (a) consent, either conditionally or unconditionally, to the proposed development;
- (b) alter the proposed development in the manner it thinks fit and consent, either conditionally or unconditionally, to the proposed development as altered; or
- (c) refuse to consent to the proposed development.

53A Notice of determination

- (1) This section applies in relation to a development application:
 - (a) determined by the consent authority in accordance with section 53(a) or (b); and
 - (b) in respect of which submissions were made in accordance with section 49 and there is a right of appeal under section 117.

- (2) As soon as practicable after determining the development application, the consent authority must serve a notice of determination:
 - (a) on the applicant; and
 - (b) on each person (including a local authority) who made a submission in relation to the development application in accordance with section 49.
- (3) The notice of determination must be in the approved form, containing the following information:
 - (a) the determination of the consent authority;
 - (b) the reasons for the determination;
 - (c) particulars about the rights of appeal under Part 9.
- (4) If there is a local authority for the land to which the determination relates and the local authority did not make a submission in accordance with section 49, the consent authority must:
 - (a) advise the local authority of the determination; and
 - (b) provide the local authority with a copy of the reasons for the determination.
- (5) The consent authority must make available for inspection and purchase by the public a copy of the notice of determination.

53B Notice of consent

- (1) This section applies in relation to a development application:
 - (a) determined by the consent authority in accordance with section 53(a) or (b); and
 - (b) in respect of which no submissions were made in accordance with section 49 or, if submissions were made, there is no right of appeal under section 117.
- (2) As soon as practicable after determining the development application and issuing a development permit under section 54(1), the consent authority must serve a notice of consent:
 - (a) on the applicant; and
 - (b) on any person (including a local authority) who made a submission in relation to the development application in accordance with section 49.

- (3) The notice of consent must be in the approved form, containing the following information:
 - (a) the determination of the consent authority;
 - (b) the reasons for the determination;
 - (c) particulars about the right of appeal under Part 9 and, if applicable, the reasons why there is no right of appeal under section 117.
- (4) If there is a local authority for the land to which the determination relates, the consent authority must:
 - (a) advise the local authority of the determination; and
 - (b) provide the local authority with a copy of the reasons for the determination.
- (5) The consent authority must make available for inspection and purchase by the public a copy of the notice of consent.

53C Notice of refusal

- (1) As soon as practicable after a consent authority determines a development application in accordance with section 53(c), the consent authority must serve a notice of refusal:
 - (a) on the applicant; and
 - (b) on any person (including a local authority) who made a submission in relation to the development application in accordance with section 49.
- (2) The notice of refusal must be in the approved form, containing the following information:
 - (a) the determination of the consent authority;
 - (b) the reasons for the determination;
 - (c) particulars about the right of appeal under Part 9.
- (3) If there is a local authority for the land to which the development application relates, the consent authority must:
 - (a) advise the local authority of the determination; and
 - (b) provide the local authority with a copy of the reasons for the determination.

- (4) The consent authority must make available for inspection and purchase by the public a copy of the notice of refusal.

54 Development permit

- (1) Immediately after a consent authority determines a development application to which section 53B applies, it must issue a development permit to the applicant.
- (2) A consent authority that has served a notice of determination on each person referred to in section 53A(2) must issue a development permit to the applicant:
- (a) if a person appeals under section 117 and, under section 130, the Appeals Tribunal orders the consent authority to issue a development permit – in accordance with the order; or
 - (b) if no person appeals under section 117 – after the expiry of the period within which such an appeal must be made.
- (3) A development permit must be in the approved form.

55 Conditions may be placed on permits

A consent authority may impose on a development the conditions it thinks fit and specifies in the development permit, including a provision for the permit to lapse on a specified date.

56 Conditions may relate to stage of development

A condition under section 55 may:

- (a) provide that the development is permitted in stages specified in the permit;
- (b) specify the conditions to be satisfied at the conclusion of a stage; and
- (c) specify that if a stage is completed in accordance with the conditions specified to relate to that stage, use may be made of the part of the development completed at that stage:
 - (i) whether the stage completed relates to all or part of the area of land to which the permit relates; and
 - (ii) although conditions relating to stages yet to be completed have not been complied with.

57 Variation of conditions of permit

- (1) The owner of land to which a development permit relates, or a person authorised by the owner, may at any time before the permit lapses apply to the consent authority for a variation of a condition of the permit.
- (2) The application must be in the approved form and accompanied by the prescribed fee.
- (3) The consent authority may, in writing, vary a condition of a development permit if:
 - (a) the proposed variation will not alter a measurable aspect of the development by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or
 - (b) in the opinion of the consent authority, the alteration resulting from the proposed variation is not conveniently measurable and the proposed variation will not materially affect the amenity of adjoining or nearby land or premises.
- (4) Despite subsection (3)(a), a permit must not be varied if it will allow an increase in the number of dwellings capable of separate occupancy.
- (5) If the consent authority refuses to vary a condition of a permit in accordance with an application, the consent authority must give to the applicant a statement of the consent authority's reasons for the refusal.

Division 3A Determination by Minister of application relating to significant development proposal

57A Application of Division

This Division applies in relation to a development application for consent to carry out a development on land if:

- (a) the development is the subject of a significant development report; and
- (b) the Minister is the consent authority in relation to the application; and
- (c) the Minister makes a determination under Division 3 contrary to any of the advice included in the significant development report.

57B Reasons for determination and tabling in Legislative Assembly

- (1) The Minister must include in the reasons for the determination under section 53A(3), 53B(3) or 53C(2):
 - (a) the details of the significant development report; and
 - (b) the reasons why the advice in the report has not been followed.
- (2) The Minister must, within 6 sitting days of making the determination, table it in the Legislative Assembly.

Division 4 Duration of development permits

58 Duration of permit

- (1) Subject to this Part, a development permit remains in force during the base period of the permit and, if the duration of a permit is extended under this section or section 59, the period of that extension.
- (2) If:
 - (a) a consent is conditional on the carrying out of works; and
 - (b) those works are substantially commenced in accordance with the permit within the base period of the development permit,the permit does not lapse at the end of the base period of the permit but instead is automatically extended for another 2 years from the date on which it would otherwise lapse.
- (3) A 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 59, the plan of survey is approved under section 49(3) of the *Licensed Surveyors Act*.
- (4) Subject to this Part, if a development under a development permit includes or consists of the establishment of or a change in a use, the development permit does not lapse if 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 59.

59 Extension of period of permit

- (1) The owner of land to which a development permit applies, or a person authorised in writing by the owner, may, at any time before the permit lapses, apply to the consent authority for an extension of the period of the permit.
- (2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.
- (3) On receipt of an application under subsection (1), the consent authority may:
 - (a) extend the period of the permit as it thinks fit; or
 - (b) refuse to extend the period of the permit.
- (4) If the consent authority makes a determination under subsection (3) other than in accordance with an application, it must give to the applicant a statement of its reasons.

59A Lapse of permit on abandonment of permitted use

- (1) This section applies in relation to the following development permits:
 - (a) a development permit taken to be in force by virtue of section 45;
 - (b) a development permit that remains in force by virtue of section 58(4).
- (2) If a person discontinues a permitted use for a continuous period of not less than 12 months, the person is conclusively presumed to have abandoned the permitted use and the development permit is taken to have lapsed.
- (3) Within 12 months after a permitted use is discontinued, an owner of the land or a person authorised in writing by the owner may apply to the consent authority in writing for an extension of the period referred to in subsection (2).
- (4) The consent authority may determine the application by extending or refusing to extend the period during which the permitted use may be discontinued without a person being conclusively presumed to have abandoned the use.

(5) In this section:

permitted use means a use of land that is taken to be permitted by a development permit referred to in subsection (1)(a) or is permitted by a development permit referred to in subsection (1)(b).

Division 5 Development works

60 Planning scheme may require consultation or agreement

(1) In this section, ***referral authority*** means:

- (a) a statutory corporation;
- (b) a body corporate;
- (c) the holder of a statutory office under a law of the Territory or the Commonwealth;
- (d) an Agency; or
- (e) a local authority or a minister,

that or who is specified in a planning scheme for the purposes of this section.

- (2) A planning scheme may specify that a consent authority must not consent to a development taking place unless it has consulted with, or obtained the agreement of, a referral authority.
- (3) If a planning scheme specifies that the agreement of a referral authority must be obtained before the consent authority consents to a development taking place, the planning scheme must specify the matters that the referral authority must take into account in considering whether to agree.
- (4) A referral authority may, by notice in writing to the consent authority, specify circumstances in which the consultation or agreement required by a planning scheme may be assumed to have taken place or been given.
- (5) A consent authority must not consent to a development unless:
 - (a) if a planning scheme requires the consent authority to consult with a referral authority before consenting:
 - (i) the consent authority has consulted with the referral authority; or

- (3) A road, street, passage, court, alley, thoroughfare or cul-de-sac vested under subsection (1) is a road within the meaning and for the purposes of the *Control of Roads Act* and the *Local Government Act*.
- (4) A plan of survey referred to in subsection (1) may indicate that land delineated in it is subject to or intended to be subject to an easement or covenant in favour of a specified service authority.
- (5) If a plan of survey referred to in subsection (1) indicates an intended easement or covenant in favour of a specified service authority and describes it by a description specified in the Schedule or in a regulation made for the purposes of this section then, on the registration of the plan of subdivision under the *Land Title Act*:
- (a) the intended easement or covenant is to be an easement or covenant although it may be an easement in gross or a covenant in gross; and
 - (b) without limiting the power that it may have under any other law in force in the Territory, the service authority:
 - (i) is to have the use and benefit of the easement or covenant for the purposes; and
 - (ii) has for itself and its agents, servants and workmen all the powers,

specified in Schedule 3 to the *Law of Property Act* or that regulation, as the case may be, in relation to that easement or covenant.

- (6) If, by virtue of this section, land is the subject of an easement or covenant, the Registrar-General must make the entries in relation to the land in the Register kept under the *Land Title Act* that he or she thinks necessary to evidence the easement or covenant.
- (7) If:
- (a) a pipe, duct, wire, pole or other thing that is attached to or constructed on, under or above the surface of, land is, by virtue of this section, subject to an easement; and
 - (b) it was attached to the land or constructed for or in relation to a purpose described in the Schedule or a regulation made for the purposes of this section,

it is not to be taken to be a fixture to the land for the purpose of giving the proprietor of the land a proprietary interest in it.

- (8) A service authority that is the proprietor of an easement referred to in this section may allow any other person, himself or herself or by his or her employees, agents or workers, to enter on and do anything on the land subject to the easement that the proprietor of the easement can do as the proprietor.
- (9) A proprietor of land on which is located an easement referred to in this section must not hinder or obstruct a person entering on or doing anything on the land in pursuance of the authority of the service authority.
- (10) For the purposes of this section, **service authority** includes a person declared to be a service authority under subsection (11).
- (11) The Minister may, by notice in the *Gazette*, declare a person to be a service authority for the purposes of this section.

Division 7 Certification

65 Certification of compliance with permit or Part

- (1) A person may apply to the consent authority for the issue of a certificate in the approved form certifying the extent to which the conditions of a development permit or the requirements of this Part in relation to land have been complied with.
- (2) An application under subsection (1) is to be in the approved form and accompanied by the prescribed fee.
- (3) If an application is made under subsection (1) to the consent authority, it must issue a certificate certifying the extent to which the conditions of a development permit or the requirements of this Part in relation to land have been complied with.
- (4) A certificate issued under this section is prima facie evidence of the facts certified as at the date specified in the certificate.

Division 8 Revocation and modification of permits

66 Minister may revoke or modify permit

- (1) Subject to this section, the Minister may, by notice in the *Gazette*, revoke or modify a development permit.

- (2) The Minister must not revoke or modify a development permit unless the Minister has:
- (a) served notice in writing, in the approved form, on:
 - (i) the owner or occupier of the land; or
 - (ii) the person apparently using or developing the land, of the proposal to revoke or modify the permit;
 - (b) required the Chairman to carry out an inquiry under section 144; and
 - (c) considered the report provided under section 144.
- (3) Before making its report, the Chairman or person appointed under section 144(2) to conduct the inquiry must give the persons on whom the notice under subsection (2) was served an opportunity to be heard in relation to the proposed report.
- (4) As soon as practicable after receiving the report under section 144, the Minister must decide whether or not to revoke or modify the permit.
- (5) Subject to subsections (7) and (8), a person served with notice under subsection (2)(a) must not continue any use or development of the land that is only permitted under the permit referred to in the notice.

Maximum penalty: In the case of a natural person –
200 penalty units and 2 penalty units default penalty.

In the case of a corporation – 1000 penalty units and 10 penalty units default penalty.

- (6) The Minister must, after deciding:
- (a) to revoke or modify a permit; or
 - (b) not to revoke or modify a permit,
- notify the persons served with notice under subsection (2)(a) of his or her decision in writing.

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- (7) After a notice has been served on a person under subsection (6) modifying a permit, he or she must not continue a use or development permitted under the permit except under and in accordance with the permit as modified.

Maximum penalty: In the case of a natural person –
200 penalty units and 4 penalty units default penalty.

In the case of a corporation – 1000 penalty units and 20 penalty units default penalty.

- (8) After receiving notice under subsection (6) that the Minister has decided not to revoke or modify a permit, an applicant may use or develop the land to which the permit relates, under and in accordance with the permit.

Part 6 Developer contributions

67 Definition

In this Part, **infrastructure** means prescribed capital works but does not include:

- (a) the repair or maintenance of capital works;
- (b) works required as a condition of a development permit to be carried out on the land to which the permit relates; or
- (c) the provision of public car parking.

68 Service authority may make contribution plans

- (1) A service authority may prepare a proposed contribution plan.
- (2) A service authority that prepares a proposed contribution plan may, by notice in a newspaper circulating in the Territory or, if the service authority is a local authority, in a newspaper circulating in the council area in respect of the local authority, notify the public:
 - (a) of the exhibition of the proposed contribution plan and the place where it may be viewed; and
 - (b) that submissions may be made in relation to the plan.
- (3) If a service authority gives notice under subsection (2), the proposed contribution plan must be exhibited at the place specified in the notice for not less than 28 days.

- (4) If a service authority:
- (a) has complied with subsections (2) and (3) and the prescribed requirements, if any, in relation to the making of a contribution plan; and
 - (b) has considered all submissions made in relation to the plan, it may:
 - (c) make the proposed plan; or
 - (d) amend the proposed plan and make the proposed plan as amended.
- (5) If a service authority makes a contribution plan under subsection (4), the plan takes effect:
- (a) on the publication of a notice in the *Gazette* specifying that the contribution plan has been made and where copies of the plan may be viewed or purchased; or
 - (b) if a later date is specified in the notice – on the date specified.
- (6) A service authority must ensure that all contribution plans proposed or made by it are available for inspection and purchase by members of the public.
- (7) A contribution plan cannot, in any legal proceedings commenced after the expiration of 90 days after the date on which the notice in relation to the plan appears in the *Gazette* under subsection (5), be declared to be of no effect by virtue only of a defect or irregularity in the procedure prescribed by or under this Act for making a contribution plan.

69 Content of contribution plan

- (1) A contribution plan may specify that the owner of land on which a development of a type specified in the plan occurs will be required to contribute towards the provision of infrastructure or public car parking, as the case may be, in accordance with the plan.
- (2) A contribution plan that is made by a service authority that is a local authority applies only to land within the local authority's council area.

- (3) A contribution plan relates to the policy area specified in the plan, being land that can appropriately be treated as a discrete area for the provision of infrastructure or public car parking of the type specified in the plan because of:
- (a) the location of the land;
 - (b) land uses in the area of land or other common identifiable characteristics;
 - (c) the anticipated future development of the area of land; and
 - (d) the infrastructure or public car parking that is or will be required on the area of land.
- (4) A contribution plan is to contain:
- (a) a description of the infrastructure or public car parking that is or will be required in the policy area specified in the plan;
 - (b) a statement of the intended order in which works relating to the development of the infrastructure or public car parking are to occur;
 - (c) an estimate of, and the method for calculating, the capital cost of works relating to each type of infrastructure or each public car park;
 - (d) in relation to each type of infrastructure for which a contribution is required – a formula for calculating the contribution, determined having regard to prescribed types of information or estimations and descriptions or other information referred to in this section;
 - (e) in relation to public car parking – a formula for calculating the contribution, determined having regard to:
 - (i) the value of the land necessary for an off-street car park in the policy area; and
 - (ii) the estimated cost of construction of public car parking spaces on that land, using the most appropriate or cost effective form of construction, whether ground level or multi-level and having regard to all the circumstances in the policy area; and
 - (f) other prescribed information.

- (5) A formula referred to in subsection (4)(d) may relate to the following:
- (a) the intensity of a development;
 - (b) the anticipated increased usage of proposed infrastructure as a consequence of a development of a particular type;
 - (c) other factors specified in the contribution plan.

70 Contribution towards car parking

- (1) This section applies to a development in a policy area.
- (2) A planning scheme may require a particular type of development to provide for car parking as part of the development to meet the expected increased demand for car parking spaces in the policy area as a consequence of the development.
- (3) If a planning scheme requires a certain number of car parking spaces to be provided as part of a development, the consent authority may determine, as a condition of the development permit, that a different number of car parking spaces may be provided or no car parking spaces need be provided.
- (4) The consent authority must not make such a determination unless:
- (a) it has considered all the circumstances of the particular case; and
 - (b) it is satisfied the intent of the planning scheme will still be fulfilled.
- (5) If a condition of a development permit requires a certain number of car parking spaces to be provided as part of the development, the permit may include a condition that a contribution may be paid to the service authority for the policy area instead of providing a specified number of those parking spaces.
- (6) The contribution payable to the service authority must be calculated in accordance with the formula contained in the contribution plan for the policy area.

71 Contribution payable

- (1) The requirement to pay a contribution is taken to be a condition of the development permit in respect of which the contribution is payable and, subject to subsection (7), the contribution is payable in accordance with this Part by the owner of the land to which the permit relates.

- (2) A contribution to be provided in accordance with this Part is payable:
- (a) if the development consists only of a change in the use to which the land may be put – before the commencement of the new use;
 - (b) if it is a condition of a development permit relating to the development that, at the completion of each specified stage of the development, a specified number of car parking spaces are to be provided or a proportion of the total contribution as assessed by the service authority in accordance with the contribution plan is to be payable – at the completion of each stage and before commencement of the use of that part of the development in accordance with the conditions of the permit;
 - (c) if a time for payment is specified in a written agreement between the service authority and the person who is required to provide the contribution – at that time; or
 - (d) in a case to which paragraph (a), (b) or (c) does not apply – on completion of the development and before commencement of the use to which the development relates.
- (3) A service authority may, by notice in writing to the owner of land to which a contribution plan made by the authority applies, demand that the owner pay the contribution assessed in accordance with the plan in respect of a development on the land.
- (4) A demand may only be made under subsection (3) if the amount, or part of the amount, has become payable under subsection (2).
- (5) If a demand for contribution is made under subsection (3) to an owner of land, he or she must pay the amount specified in the notice in accordance with the terms of the notice.
- (6) If a demand for contribution is made under subsection (3) to an owner of land in relation to development on that land, the balance from time to time outstanding of the amount demanded is an overriding statutory charge, within the meaning of the *Land Title Act*, on the land.
- (7) If a declaration has been made under section 73 or an order has been made under section 125(6) or 130(5), this section applies with the necessary changes in relation to the payment of an amount of contribution to which the declaration or order relates.

- (8) A contribution plan is not valid unless:
- (a) the total cost of providing the infrastructure or car parking in respect of which the contribution is to be payable under the plan by the owner of land is calculated by reference to the most appropriate and cost-effective form of construction;
 - (b) the contribution to be payable by an owner of land is calculated as part or all of the total cost of providing infrastructure or car parking; and
 - (c) the contribution to be payable by an owner of land is relative to the proportion of anticipated future usage of the infrastructure or public car parking attributable to the development of the land.
- (9) If an owner of land is required under this Part to construct infrastructure himself or herself, the amount of money spent in constructing that infrastructure is to be set off against the contribution otherwise payable under this Part to the extent of, but not exceeding, the amount of contribution payable.

72 Duties of service authority

A service authority to which money is paid in accordance with this Part must:

- (a) maintain:
 - (i) a trust account in relation to each contribution plan; or
 - (ii) if the service authority is a local authority – an authorised deposit account within the meaning of the *Local Government Act*,for the purposes of providing the infrastructure or public car parking spaces for which the contribution was provided;
- (b) pay money received by it in accordance with this Part into the account; and
- (c) within a reasonable time, having regard to all the circumstances, expend money paid to it in accordance with this Part for the purpose of providing infrastructure or public car parking for the provision of that infrastructure or public car parking, as the case may be, in the policy area in which the development is situated.

73 Discount, interest rate etc.

- (1) A service authority may, (in the case of a body corporate, by resolution, and, in any other case, in the prescribed manner and form, if any) declare:
 - (a) that a discount is to be given for the prompt payment, or the payment in advance, of a contribution payable under this Part;
 - (b) the rate or rates of a discount referred to in paragraph (a) and the circumstances in which it is to be given;
 - (c) the rate of interest payable on a contribution or part of a contribution if, in each case, the contribution is paid late; or
 - (d) that a refund or remittance of all or part of a contribution otherwise payable is to be made in the special circumstances of a particular case.
- (2) The interest payable under subsection (1)(c) is to be:
 - (a) calculated on the amount outstanding from time to time on a monthly basis until the contribution is paid in full; and
 - (b) not more than:
 - (i) the prescribed rate of interest; or
 - (ii) in the case of a local authority – the rate of interest payable to it on rates payable under the *Local Government Act* but not paid when due and payable.
- (3) A person may apply to the service authority for a refund or remittance, in the special circumstances of the person, of all or part of a contribution otherwise payable by the person under this Part.

74 Enforcement of contribution plan

If a contribution is to be paid to a service authority under this Part, the service authority may:

- (a) if it is the Territory – take proceedings to recover the contribution;
- (b) if it is a local authority or a statutory corporation – in its own name take proceedings to recover the contribution; and
- (c) if it is a minister – in the name of the Territory take proceedings to recover the contribution.

Part 7 Enforcement

Division 1 Offences

75 Use or development to comply with permit or order

(1A) This section does not apply in relation to development of land referred to in section 75A.

- (1) A person must not use or develop land in contravention of the planning scheme that applies to the land, except in accordance with a permit.

Maximum penalty: In the case of a natural person –
200 penalty units and 4 penalty units default
penalty.

In the case of a corporation – 1000 penalty
units and 20 penalty units default penalty.

- (2) A person must not use or develop land in contravention of an interim development control order, except in accordance with a permit in force immediately before the order was made.

Maximum penalty: In the case of a natural person –
200 penalty units and 4 penalty units default
penalty.

In the case of a corporation – 1000 penalty
units and 20 penalty units default penalty.

- (3) A person must not:

(a) use or develop land in a manner that is only permitted in accordance with a permit, except in accordance with the permit; or

(b) subject to section 56(c), use land in a manner that is only permitted in accordance with a permit until all the conditions of the permit that must be complied with before the use is permitted have been complied with.

Maximum penalty: In the case of a natural person –
200 penalty units and 4 penalty units default
penalty.

In the case of a corporation – 1000 penalty
units and 20 penalty units default penalty.

- (d) the person apparently using or developing the land in contravention of the planning scheme or interim development control order,

to cease using or developing the land in contravention of the planning scheme.

- (2) If land is being used or developed in contravention of an interim development control order that applies to the land, the consent authority specified in the order may, by notice in writing, require:

- (a) the owner or occupier of the land; or
- (b) the person apparently using or developing the land in contravention of the interim development control order,

to cease using or developing the land in contravention of the interim development control order.

- (3) If:

- (a) land is being used or developed in contravention of a permit; and
- (b) the development is not otherwise permitted by or under this Act,

the consent authority in respect of the planning scheme that applies to the land may, by notice in writing, require:

- (c) the owner or occupier of the land; or
- (d) the person apparently using or developing the land in contravention of the permit,

to cease using or developing the land in contravention of the permit.

- (4) A notice under this section may be served on:

- (a) the owner of the land;
- (b) an occupier of the land;
- (c) a person apparently in charge of premises on the land; or
- (d) a person apparently in charge of an activity being carried out on the land.

- (5) A person specified in a notice under this section must not contravene, or fail to comply with, the notice.

Maximum penalty: In the case of a natural person –
200 penalty units and 4 penalty units default
penalty

In the case of a corporation – 1000 penalty
units and 20 penalty units default penalty.

Division 2 Enforcement

77 Power to enter land

- (1) A person who is authorised in writing to enter land by the Minister or the Chairman may at any reasonable time, without notice to the owner or occupier of land, enter the land for the purpose of investigating a breach of this Act or of an instrument of a legislative or administrative character made under this Act that the person suspects has occurred, or is occurring, on the land.
- (2) A person authorised under subsection (1) must not enter a building or part of a building used for residential purposes without:
- (a) the consent of the occupier of the building or part of a building;
or
 - (b) a search warrant issued under subsection (3).
- (3) If a member of the Police Force or a person authorised under subsection (1) makes a complaint on oath to a Justice to the effect that the member or authorised person has reason to suspect, and believes, that this Act or the Regulations has or have been or is or are being contravened in or on residential premises, the Justice may, if satisfied that the belief is well founded, authorise by search warrant a member of the Police Force or an authorised person to enter the premises to search for evidence in relation to the contravention in or on the premises.
- (4) Section 120B(4) to (8), inclusive, of the *Police Administration Act* apply to and in relation to a search warrant issued under subsection (3).

78 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 Chairman or the Minister may authorise a person to bring a prosecution in the name of the Development Consent Authority or the Minister respectively.

78A Time for commencing prosecution

A prosecution under this Act must be commenced within 2 years after the day on which any member of the Police Force or any person authorised under section 77(1) becomes aware of the commission of the alleged offence.

Division 3 Court orders etc.

79 Default penalty may be imposed for continuing offences

If:

- (a) in this Act the expression **default penalty** appears in or at the foot of a section or subsection; and
- (b) a court is satisfied on finding a person guilty of an offence against the section or subsection that the person continued to contravene, or to fail to comply with, the section after the date when he or she was notified of the alleged offence,

the Court may, in addition to the penalty, if any, specified for the offence, impose the default penalty in respect of each day during which the offence continued to be committed after the first day on which it was committed.

80 Order to remedy contravention or failure

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

81 Onus of proof

- (1) In a proceeding under this Act:
- (a) an averment by or on behalf of a consent authority or the Minister that:
- (i) land is Crown land, reserved or dedicated land, land held under lease or land occupied under licence or agreement; or

- (ii) a person is authorised to take proceedings, to do an act or perform a duty, or sue for the recovery of a penalty or other money under this Act,

is evidence of the fact;
 - (b) if a question arises as to whether the defendant was authorised or permitted to do the act complained of, proof of that fact lies with the defendant; and
 - (c) all licences, certificates, maps, plans and copies of those documents, purporting to be certified as true under the hand of the Surveyor-General are, in all matters relating to the proceeding, to be sufficient evidence without production of original records and without the personal attendance of the Surveyor-General or proof of his or her signature.
- (2) In a proceeding in respect of an offence against section 75A(1), an averment by or on behalf of the Minister or a consent authority that there was native vegetation on land at a specified date is evidence of the fact.

Part 7A Planning Commission

Division 1 Establishment of Commission and related matters

81A Establishment

The Planning Commission is established.

81B Functions

The Commission has the following functions:

- (a) to review the NT Planning Scheme at regular intervals;
- (b) to prepare integrated strategic plans for inclusion in the NT Planning Scheme;
- (c) to prepare guidelines and assessment criteria for inclusion in the NT Planning Scheme;
- (d) to carry out community consultation before preparing the plans, guidelines and assessment criteria mentioned in paragraphs (b) and (c);
- (e) to provide advice to the Minister or Development Consent Authority (or both) about matters within the objects of this Act;

- (f) as requested by the Minister – to give the Minister significant development reports;
- (g) as requested by the Minister or on its own initiative – to conduct research and give the Minister reports about future land use and development in the Territory, taking into account projected economic, social and demographic changes;
- (h) as requested by the Minister – other functions to assist in achieving the objects of this Act;
- (i) other functions conferred on the Commission under this Act.

81C Powers

- (1) The Commission has the powers necessary to perform its functions.
- (2) The Commission may engage persons with appropriate qualifications and expertise to assist the Commission to perform a particular function.

81D Independence

The Commission must perform its functions and exercise its powers independently, impartially and in the public interest, taking into account the objects of this Act.

81E Staff and facilities

- (1) The Chief Executive Officer must provide the Commission with staff and facilities to enable the Commission to properly perform its functions.
- (2) A staff member provided to the Commission under subsection (1) is subject only to the direction of the Chairperson.

Division 2 Membership of Commission

81F Constitution and appointment of members

- (1) The Commission consists of the following members:
 - (a) the Chairperson;
 - (b) the Chairman of the Development Consent Authority;
 - (c) the chairperson of the Heritage Council under the *Heritage Act*;

- (d) the chairperson of the NT EPA under the *Northern Territory Environment Protection Authority Act*;
 - (e) a representative of the Local Government Association;
 - (f) any other members to a maximum of 5.
- (2) The Minister must appoint a person with appropriate qualifications and expertise to be the Chairperson or a member mentioned in subsection (1)(f).
- (3) The Minister must appoint a person mentioned in subsection (1)(e) on the nomination of the Local Government Association.

81G Duration and conditions of appointment

- (1) An appointed member holds office:
- (a) for 2 years or the shorter period specified in the instrument of appointment; and
 - (b) on the conditions specified in the instrument of appointment.
- (2) The member is eligible for reappointment.

81H Vacation of office

- (1) A person who is an appointed member ceases to be a member if:
- (a) the person resigns by giving written notice to the Minister; or
 - (b) the person's appointment is terminated under section 81J; or
 - (c) the person was appointed on the nomination of the Local Government Association and has ceased to be the representative of the Association.
- (2) The performance of a function or the exercise of a power by the Commission is not affected merely because there is a vacancy in its membership.

81J Termination of appointment

- (1) The Minister may terminate the appointment of a person as an appointed member:
- (a) on the ground of misbehaviour or misconduct; or
 - (b) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or

- (c) if the Minister is satisfied the person has failed to comply with section 81U(2).
- (2) The Minister must terminate the appointment of a person as an appointed member:
 - (a) if the person is absent from 3 consecutive meetings of the Commission without the agreement of a majority of the other members; or
 - (b) if the person is found guilty of an offence of such a nature that it would be inappropriate for the person to continue as a member; or
 - (c) if the person:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit.
- (3) A termination of appointment must be made in writing.

Division 3 Procedures for particular functions

81K Integrated strategic plans

- (1) In preparing an integrated strategic plan mentioned in section 81B(b), the Commission may do any of the following:
 - (a) identify future transport corridors, utility corridors and sites for essential facilities;
 - (b) provide guidance through master plans on where and how communities or urban areas should grow;
 - (c) support urban renewal.
- (2) For subsection (1)(a), essential facilities include:
 - (a) facilities for communication, water and power supply, gas and similar condensates, effluent treatment and regional waste; and
 - (b) other public and social infrastructure.

- (3) For subsection (1)(b), the master plans may include maps, policy statements and objectives relating to any of the following:
- (a) housing;
 - (b) transportation;
 - (c) economic development;
 - (d) the environment;
 - (e) open space;
 - (f) conservation.
- (4) This section does not limit the way in which the Commission may perform the function mentioned in section 81B(b).

81L Community consultation

Before carrying out community consultation mentioned in section 81B(d), the Commission must decide the appropriate method and extent of the consultation, taking into account the particular proposed integrated strategic plans, guidelines or assessment criteria under consideration.

81M Preparation of significant development report

- (1) The member of the Commission who is the Chairman of the Development Consent Authority must not take any part in the Commission's consideration of a significant development proposal or the preparation of a significant development report in relation to the proposal.
- (2) However, subsection (1) does not apply if:
- (a) the Minister is the consent authority under section 4(1) in relation to the land to which the significant development proposal relates; or
 - (b) no development application has been made in relation to the proposal and the Minister has given the Commission written notice that, if an application is made, he or she will direct the Development Consent Authority under section 85(3) that the Minister is the consent authority in relation to the application; or

- (c) a development application has been made in relation to the proposal and the Minister has given the Commission written notice that he or she has directed the Development Consent Authority under section 85(3) that the Minister is the consent authority in relation to the application.

Division 4 General procedures

81N Commission decides its procedures

Subject to this Act and the Regulations, the Commission is to decide its own procedures.

81P Holding meetings

- (1) The Commission must meet as often as is necessary for the performance of its functions.
- (2) However, the Commission must meet at least 4 times in each year.
- (3) The Chairperson must make appropriate arrangements for the Commission to meet.
- (4) The Chairperson must convene a meeting of the Commission when requested by another member to do so.
- (5) A meeting convened under subsection (4) must be held on, or as soon as practicable after, the meeting date requested by the member (which must be at least 7 days after the request is made).

81Q Quorum

Subject to section 81V(1)(c), the quorum for a meeting of the Commission is a majority of its members.

81R Presiding member at meeting

- (1) The Chairperson must preside at all meetings of the Commission at which he or she is present.
- (2) If the Chairperson is absent from a meeting, the members present must elect a member to preside.

81S Voting at meeting

- (1) A decision at a meeting of the Commission is to be made by the majority vote of members present and voting.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote.

81T Records of meetings

The Commission must keep accurate records of its meetings.

81U Disclosure of personal interest

- (1) This section applies if a member has a personal interest in a matter being considered, or about to be considered, at a meeting of the Commission.
- (2) The member must disclose the nature of the personal interest to all other members at or before the meeting.
- (3) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (4) For this section, a member has a personal interest in a matter if the member:
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

81V Effect of personal interest

- (1) If a member has a personal interest in a matter that is required to be disclosed under section 81U(2):
 - (a) the member must not take part in any deliberation or decision of the Commission about the matter; and
 - (b) the member must be disregarded for the purpose of constituting the quorum of the Commission for the deliberation or decision; and
 - (c) the quorum for the deliberation or decision is a majority of members entitled to participate in the deliberation or decision.
- (2) However, a failure by a member to disclose a personal interest in a matter does not, of itself, invalidate any decision of the Commission about the matter.

81W Limitation on challenge to decision of member

- (1) This section applies if a person who is a member of the Commission:
 - (a) takes part in any deliberation or decision of the Commission about a matter; and
 - (b) in another capacity, makes a decision under this Act or any other Act (a **relevant decision**) in relation to:
 - (i) the same matter; or
 - (ii) a place or an area of land in connection with the matter.
- (2) A relevant decision must not be challenged, appealed against, quashed or called into question in any court or tribunal merely because the person took part in the Commission's deliberation or decision.
- (3) A reference in this section to a relevant decision includes a reference to any of the following:
 - (a) an assessment or report;
 - (b) an opinion, advice or recommendation.

81X Committees

- (1) The Commission may establish one or more committees to advise it on matters related to any of the Commission's functions.
- (2) A person may be a member of a committee whether or not the person is a member of the Commission.
- (3) The member of the Commission who is the Chairman of the Development Consent Authority must not be a member of a committee established to advise the Commission on matters related to a significant development proposal (including the preparation of a significant development report) unless section 81M(2)(a), (b) or (c) applies in relation to the proposal.

Division 5 Other matters

81Y Annual report

- (1) The Chairperson must prepare and give to the Minister a report on the performance by the Commission 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.

81Z Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the performance of a function or the exercise of a power as:
 - (a) a member of the Commission; or
 - (b) a person engaged by the Commission under section 81C; or
 - (c) a staff member provided to the Commission under section 81E(1).
- (2) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by the Commission in the performance of a function or exercise of a power under this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory would, apart from those subsections, have for the act or omission.
- (4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

81ZA Confidentiality of information

- (1) A person must not disclose information obtained in the performance of a function or exercise of a power as:
 - (a) a member of the Commission; or
 - (b) a person engaged by the Commission under section 81C; or
 - (c) a staff member provided to the Commission under section 81E(1).

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

- (2) Subsection (1) does not apply if:
- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
 - (b) the information is otherwise available to the public; or
 - (c) the person is authorised or required by law to disclose the information.
- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

Part 8 Development Consent Authority

Division 1 Establishment of Development Consent Authority and Divisions of Authority

82 Development Consent Authority

The Development Consent Authority is established by this section.

83 Minister may establish Divisions of Authority

- (1) The Minister may, by notice in the *Gazette*:
- (a) establish and name a Division of the Development Consent Authority; and
 - (b) specify the area of the Territory to which the Division is to relate.
- (2) The Minister may, by notice in the *Gazette*:
- (a) amend a Division area specified in a notice under subsection (1);
 - (b) rename a Division of the Development Consent Authority; or

- (c) abolish a Division of the Development Consent Authority.
- (3) The Minister may not declare a Division area or amend a Division area if part of the area or area as amended would be within a council area in respect of a local authority and another part would be within another council area.

84 Functions and powers of Development Consent Authority

- (1) The functions of a Division of the Development Consent Authority are:
 - (a) the functions of a consent authority under this Act in relation to the Division area in respect of which the Division was established; and
 - (b) other functions conferred or imposed on it by or under this or any other Act.
- (2) The Development Consent Authority has the powers that are necessary or convenient for, or incidental to, the performance of its functions or the exercise of its powers.

85 Minister may direct Authority

- (1) The Minister may direct the Development Consent Authority generally or in respect of a particular matter other than:
 - (a) the determination of a particular development application; or
 - (b) the contents of any report or recommendation the Authority is required to provide under this Act.
- (2) The Development Consent Authority, in the performance of its functions and the exercise of its powers, is subject to a direction of the Minister under subsection (1).
- (3) At any time before the Development Consent Authority has served a notice under section 53A, 53B or 53C in respect of a particular development application made to it, the Minister may direct the Development Consent Authority that the Minister is the consent authority in relation to the development application.
- (4) If the Minister directs the Development Consent Authority under subsection (3), the Development Consent Authority must, as soon as practicable, forward to the Minister the particular development application and all submissions and other documents in relation to the application.

86 Delegation

- (1) The Development Consent Authority may, by resolution, delegate to an employee within the meaning of the *Public Sector Employment and Management Act* or a member any of its powers and functions under this Act.
- (2) If a committee formed under this Act consists only of members of the Development Consent Authority, the Authority may delegate to it any of its powers and functions under this Act.

Division 2 Membership

87 Constitution of Development Consent Authority

- (1) The Development Consent Authority consists of:
 - (a) the Chairman; and
 - (b) the members appointed by the Minister under section 89 or 90.
- (2) A person may, under section 89 or 90, be appointed a member of more than one Division.

88 Chairman and Deputy Chairman

- (1) The Minister may, in writing, appoint a person to be the Chairman of the Development Consent Authority for 2 years or a lesser period specified in the instrument.
- (2) The Minister may, in writing, appoint:
 - (a) a member to be the Deputy Chairman of the Development Consent Authority; or
 - (b) a member to be the Deputy Chairman of the Development Consent Authority in respect of one or more Divisions of the Authority.
- (3) If the Minister appoints a member to be the Deputy Chairman of the Development Consent Authority under subsection (2)(a), the Deputy Chairman is to act as the Chairman during:
 - (a) any period when the Chairman appointed under subsection (1) is unable to attend a particular meeting; and
 - (b) any vacancy in the office of Chairman.

- (4) If the Minister appoints a member to be the Deputy Chairman of the Development Consent Authority in respect of a Division under subsection (2)(b), the Deputy Chairman is to act as the Chairman during:
- (a) any period when the Chairman appointed under subsection (1) is unable to attend a particular meeting in relation to the Division; and
 - (b) any vacancy in the office of Chairman, but only in relation to matters relating to the Division.

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:
- (a) 2 persons in accordance with subsection (4); and
 - (b) 2 other persons,
- to be Division members in respect of the Division area.
- (2) If an appointment is to be made under subsection (1)(a):
- (a) the local authority may nominate to the Minister a person for appointment; or
 - (b) if the Minister does not receive a nomination under paragraph (a) – the Minister must by notice in writing to the local authority request the local authority to nominate a person for appointment.
- (3) A local authority that receives a notice under subsection (2)(b) may within 30 days nominate to the Minister the person it thinks fit to be a Division member.
- (4) If a person:
- (a) is nominated under subsection (2)(a) or (3) by the local authority – the Minister must under subsection (1)(a) appoint the person to be a member; or
 - (b) is not nominated by the local authority under subsection (2)(a) or within the period specified in subsection (3) – the Minister must under subsection (1)(a) appoint a person he or she thinks fit to be a member.

- (5) If all or part of a Division area is within a council area, the local authority may nominate to the Minister persons it thinks fit to be members under subsection (1)(b) and the Minister may take into account that nomination as he or she thinks fit.

90 Appointment of members outside council area

If no part of a Division area is within a council area, the Minister may, in writing, appoint 4 persons he or she thinks fit to be the Division members of the Development Consent Authority in respect of the Division area.

91 Alternate members for local authority representatives

- (1) The Minister must appoint a person to be an alternate member for both members for a Division appointed under section 89(1)(a) and in office from time to time during the period of appointment of the alternate member.
- (2) If an appointment is to be made under subsection (1):
- (a) the local authority may nominate to the Minister a person for appointment; or
 - (b) if the Minister does not receive a nomination under paragraph (a) – the Minister must by notice in writing to the local authority request the local authority to nominate a person for appointment.
- (3) A local authority that receives a notice under subsection (2)(b) may within 30 days nominate to the Minister the person it thinks fit to be an alternate member for the members appointed under section 89(1)(a).
- (4) If a person:
- (a) is nominated under subsection (2)(a) or (3) by the local authority – the Minister must under subsection (1) appoint the person to be an alternate member; or
 - (b) is not nominated by the local authority under subsection (2)(a) or within the period specified in subsection (3) – the Minister must under subsection (1) appoint a person he or she thinks fit to be an alternate member.
- (5) Subject to subsection (6), a person appointed under subsection (1) to be the alternate member for a Division member may, during the absence or inability to act of the Division member, act in the member's place at a meeting of the Division, but may not act as the alternate member for more than one person at the same meeting.

- (6) A person appointed under subsection (1) may not act in the place of a member appointed to be a Deputy Chairman who is acting as Chairman under section 88(3) or (4).

92 Term of office of member

- (1) Subject to this Act, a member appointed under section 89, 90 or 91 holds office for 2 years or a lesser period specified in the instrument of appointment and is eligible for reappointment.
- (2) If a member is appointed under section 89(1)(a) or 91(1) and the next election (other than a by-election) for the local authority by which he or she was nominated is held before the member ceases to be a member, the member holds office until the expiration of 3 months after the declaration of the polls for the election.
- (3) If the Minister abolishes a Division of the Development Consent Authority, the members appointed under this Part in respect of the Division cease to be members on and from the date on which the notice abolishing the Division appears in the *Gazette*.

93 Chairman may appoint member to act in another Division

- (1) If the Chairman is satisfied that a member appointed in relation to a Division (*the first Division*) in relation to whom there is no alternate member appointed under section 91 is prevented by illness, absence, the operation of section 97 or other cause considered sufficient by the Chairman, from performing the member's duties of office, the Chairman may, in writing, appoint a member in relation to another Division to act as a member in relation to the first Division for a period of not more than 3 months.
- (2) The Chairman may, in writing, appoint a member in relation to the Division who is:
- (a) appointed as a member under section 89(1)(a) in accordance with section 89(4)(b); or
- (b) appointed as a member under section 90,
- to act as a member in relation to another Division in the place of a member of that other Division who is required to act as the Chairman in relation to that other Division.
- (3) The appointment of a member under subsection (1) takes effect on and from the date on which the instrument is signed or a later date specified in the instrument.

- (4) If a period of appointment is not specified in an instrument under subsection (1), the appointment is to be taken to be for a period of 3 months on and from the date on which the instrument is signed.
- (5) The Chairman may, in writing, revoke the appointment of a member of a Division under subsection (1).

94 Minister may appoint temporary member

- (1) If:
 - (a) there is a vacancy in the membership of a Division; and
 - (b) the Minister is of the opinion that it is necessary to appoint a person to act in the vacancy on urgency,the Minister may, despite sections 89 and 90, in writing, appoint a person to be a temporary member of the Division for a period of not more than 6 months specified in the instrument.
- (2) The appointment of a member under subsection (1) takes effect on and from the date on which the instrument is signed or a later date specified in the instrument.
- (3) The Minister may, in writing, revoke the appointment of a temporary member of a Division under this section.

95 Vacancy or defect does not invalidate action of Authority

- (1) The performance of a function or exercise of a power by the Development Consent Authority is not invalid by reason only of there being a vacancy in its membership.
- (2) The appointment of a person as a member is not invalid by reason only of a defect or irregularity in or in connection with the appointment of the person.

96 Resignation of members

A member may resign office by writing signed by him or her and delivered to the Minister.

97 Disclosure of interest

- (1) A member who has:
 - (a) subject to section 99(1), a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Division of which he or she is a member, otherwise than a direct or indirect pecuniary interest as a member of, and in

common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director; or

- (b) a personal, professional, commercial or other relationship with an applicant or another person or association, which relationship is of a nature that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in respect of an application,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest or relationship at or before a meeting of the Division.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the Division.

- (3) If a disclosure is made under subsection (1) by a member, the member:

- (a) must not, after the disclosure, while he or she has that interest or has that relationship, be present during or take part in any deliberation or decision of the Division in relation to the matter in relation to which he or she has declared an interest, including discussions as to whether the Chairman ought to determine otherwise under this subsection; and

- (b) must be disregarded for the purpose of constituting a quorum of the Development Consent Authority in relation to the matter,

unless the Chairman determines otherwise.

Maximum penalty: 50 penalty units.

98 Interests of members nominated by local authority

- (1) In this section, **local authority member** means a member who is appointed under section 89 or 91 on the nomination of a local authority.

- (2) If:

- (a) a development application being considered, or about to be considered, by a Division has not been made by or on behalf of the local authority in relation to the Division;

- (b) a local authority member in relation to the Division declares at each meeting and hearing, if any, in relation to the development application:
 - (i) that he or she was nominated by the local authority; and
 - (ii) the views of the local authority in relation to the application,

then the local authority member:

- (c) may take into account the opinion of the local authority in relation to the application and the Authority is not to be taken to have contravened the rules of natural justice only because the local authority member took that opinion into account; and
 - (d) is not to be taken to have an interest or relationship for the purposes of section 97 by reason only of that person being a local authority member.
- (3) If a development application made by or on behalf of a local authority in relation to a Division is being considered, or is about to be considered, by the Division, a local authority member of the Division is to be taken for the purposes of section 97 to have disclosed the interest he or she may have as a local authority member in relation to the development application.
- (4) If:
- (a) a local authority member is to be taken under subsection (3) to have disclosed under section 97(3) an interest in a development application; and
 - (b) the Chairman makes a determination under section 97(3) in respect of the local authority member and that interest,

in acting in accordance with that determination, the local authority member may take into account the opinion of the local authority in relation to the application and the Authority is not to be taken to have contravened the rules of natural justice by reason only of taking the opinion into account.

99 Direct or indirect interests in companies

- (1) For the purposes of section 97, a member who:
- (a) is a member of the governing body of, or has a substantial holding (within the meaning of section 9 of the Corporations Act 2001) in; or

- (b) has a relevant interest within the meaning of paragraph (a) of the definition of **relevant interest** in the Corporations Act 2001 in,

a company which has a direct or indirect interest in a matter is to be taken to have a direct or indirect interest in the matter.

- (2) For the purposes of section 97, a person who is an employee of, a partner with, an agent for or a consultant to, a person, partnership, firm or company who or which has a direct or indirect interest in a matter or is representing a party to an application under this Act is to be taken to have an interest in the matter.

100 Removal from office

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) If a member:
 - (a) being the Chairman – is absent, except by leave of the Minister, from 3 consecutive meetings of the Development Consent Authority;
 - (b) not being the Chairman – is absent, except by leave of the Chairman, from 3 consecutive meetings of a Division of which he or she is a member; or
 - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister must terminate the appointment of the member.

- (3) The Minister must terminate the appointment of a member:
 - (a) if the member:
 - (i) was, at the time of his or her appointment as a member, a member of the local authority that nominated him or her under section 89; and
 - (ii) has, since his or her appointment, ceased to hold office as a member of the local authority that nominated him or her under section 89; and
 - (b) if the local authority that nominated him or her under section 89 has requested that his or her appointment under that section be terminated.

Division 3 Procedure

101 Meetings of Authority

- (1) The Chairman is to call meetings of the Development Consent Authority necessary for the performance of its functions and the exercise of its powers.
- (2) The Chairman must, within 28 days after receiving a written notice, signed by not less than 2 members of a Division, requiring a meeting of the Division to be held, call a meeting of the Division.
- (3) At a meeting of a Division of the Development Consent Authority:
 - (a) the Authority is constituted by the Division members and, if he or she is present, the Chairman;
 - (b) 3 members constitute a quorum;
 - (c) the Chairman or, in the Chairman's absence or inability to act, a member elected by the Division members at the meeting is to preside; and
 - (d) questions arising are to be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the member presiding over the meeting is to have, in addition to his or her deliberative vote, a casting vote.
- (4) The procedures of the Development Consent Authority and of committees of the Development Consent Authority, including but not limited to the calling and conduct of meetings, are to be:
 - (a) as determined from time to time by the Chairman; or
 - (b) in the absence of a determination by the Chairman in respect of a particular matter – as determined by the member presiding over a particular meeting.

102 Attendance of public at meetings

- (1) Subject to this section, the part of a meeting of the Development Consent Authority at which evidence is to be taken in relation to an application for a development permit is to be open to the public and the applicant for a permit.

- (2) Despite subsection (1), if, in the opinion of the Chairman:
 - (a) information disclosed or likely to be disclosed at a meeting of the Development Consent Authority in respect of a particular application should be treated as confidential; or
 - (b) the absence of the public from a meeting of the Development Consent Authority in relation to an application is necessary or likely to be necessary for the orderly conduct of a meeting,he or she may direct that the meeting be closed to the public.
- (3) If the Chairman directs under subsection (2) that a meeting is closed to the public, the meeting is closed to the public.
- (4) The part of a meeting of the Development Consent Authority during which part deliberations in respect of a development application are occurring is not open to the public or the applicant.

103 Minutes

- (1) The Development Consent Authority is to cause minutes to be kept of all meetings of the Development Consent Authority and of its committees.
- (2) The Development Consent Authority is to keep available for public inspection during normal office hours the minutes of meetings of the Development Consent Authority and of its committees.

104 Committees

- (1) The Development Consent Authority may establish one or more committees for the purposes of advising the Authority on matters related to its functions or for the purpose of performing functions delegated to it under section 86, or for both purposes.
- (2) A person may be a member of a committee of the Development Consent Authority whether or not he or she is also a member of the Authority.

105 Protection of members and witnesses

- (1) No action or proceeding, civil or criminal, is to lie against a member or person acting with the authority of the Development Consent Authority for or in respect of an act or thing done or omitted to be done in good faith by the member or person or by the Authority in:
 - (a) the performance or purported performance of a function; or
 - (b) the exercise or purported exercise of a power,

under this or any other Act imposing a function or conferring a power on the Authority.

- (2) A witness appearing before the Development Consent Authority has the same protection and immunity as a witness in proceedings before the Supreme Court.

106 Contempt

- (1) A person must not, during a meeting of the Development Consent Authority:
- (a) insult a member;
 - (b) interrupt proceedings of the Authority; or
 - (c) create a disturbance or take part in creating or continuing a disturbance, in or near a place where the Authority is meeting.

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

- (2) If a person has, in the opinion of the Chairman, committed an offence against this section during a meeting of the Development Consent Authority, the Chairman may eject him or her from the meeting.
- (3) A person ejected from a meeting under subsection (2) must not return to the meeting from which he or she was ejected.

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

107 Confidentiality

A member or a person appointed to a committee must not disclose information obtained in the course of his or her duties as a member or a person appointed to the committee unless:

- (a) the information is otherwise available to the public;
- (b) the disclosure is made in the course of exercising powers or performing functions under this Act;
- (c) authorised or required by law to do so;
- (d) for the purposes of court proceedings; or

- (e) the information:
- (i) is disclosed by the member or person at a meeting, other than a public meeting, of a local authority; and
 - (ii) does not relate to a direction or other communication between the Minister and the Development Consent Authority.

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

Part 9 Appeals

Division 1 Appeals Tribunal

108 Appeals Tribunal

The Lands, Planning and Mining Tribunal established under the *Lands, Planning and Mining Tribunal Act* is the Appeals Tribunal for the purposes of this Act.

109 Application of Lands, Planning and Mining Tribunal Act to Tribunal

The provisions of the Lands, Planning and Mining Tribunal Act, other than:

- (a) sections 14(2) and (4A), 17(1)(b)(ii) and (2) and Divisions 2 and 3 of Part 3; and
- (b) sections 36, 37 and 38,

apply in relation to the Appeals Tribunal in relation to an appeal under this Part.

110 Interests of members of Appeals Tribunal

- (1) A personal, professional, commercial or other relationship that a member of the Appeals Tribunal has with an appellant or another person or association, which relationship is one that it is likely to, or may reasonably be regarded as likely to, inhibit or prevent the exercise by the member of independent judgment in relation to an appeal under this Act is an interest for the purposes of section 32 of the *Lands, Planning and Mining Tribunal Act*.
- (2) A direct or indirect pecuniary interest that a member of the Appeals Tribunal has as a member of, and in common with the other members of, an incorporated company consisting of not less than

25 persons and of which he or she is not a director, is not, in relation to an appeal under this Act, an interest for the purposes of section 32 of the *Lands, Planning and Mining Tribunal Act*.

- (3) A member of the Appeals Tribunal who is an employee of, a partner with, an agent for or a consultant to, a person, partnership, firm or company who or which has a direct or indirect interest in a matter to which an appeal under this Act relates or is representing a party to an appeal under this Act is to be taken to have an interest in relation to the appeal for the purposes of section 32 of the *Lands, Planning and Mining Tribunal Act*.

Division 2 Determinations that may be appealed against

111 Appeal against refusal to issue development permit

- (1) A person who made a development application under section 46 may appeal to the Appeals Tribunal against a determination of the consent authority under section 53(c) refusing to consent to the development proposed in the application.
- (2) The appeal must be made within 28 days after the person is served with the notice of refusal under section 53C.

112 Appeal if consent authority does not determine application

- (1) A person who made a development application under section 46 may appeal to the Appeals Tribunal:
- (a) if, within 12 weeks after making the application, the person has not received notification under section 46(5) or been served with a notice under section 53A, 53B or 53C in respect of the application;
- (b) if all of the following circumstances apply:
- (i) the person has received notification under section 46(5) of a deferral under section 46(4)(c);
- (ii) the Minister has made the decision under section 25(2) that is relevant to the deferral;
- (iii) within 12 weeks after that decision was made, the person has not been served with a notice under section 53A, 53B or 53C in respect of the application; or
- (ba) if all of the following circumstances apply:
- (i) the person has received notification under section 46(5) of a deferral under section 46(4)(d);

- (ii) the relevant procedures under section 50C have been completed;
 - (iii) within 12 weeks after completion of those procedures, the person has not been served with a notice under section 53A, 53B or 53C in respect of the application; or
 - (c) if:
 - (i) the consent authority notified the Minister administering the *Environmental Assessment Act* of the development application; and
 - (ii) within 12 weeks after the last day an administrative action has been or may be taken under that Act, the person has not been served with a notice under section 53A, 53B or 53C in respect of the application.
- (2) A person who made an application under section 57 or 59 may appeal to the Appeals Tribunal if the person has not, within 12 weeks after making the application, been notified by the consent authority of a determination of the application.
- (3) An appeal may be made under this section at any time before the consent authority determines the application.
- (4) If a person appeals under this section, the consent authority is taken to have determined the person's application under section 53, 57 or 59 (as applicable) by refusing the application.
- (5) Despite subsection (4), the consent authority may actually determine the person's application under section 53, 57 or 59 (as applicable) at any time before the Appeals Tribunal determines the person's appeal.
- (6) If the consent authority actually determines the person's application in accordance with subsection (5):
 - (a) the person's appeal under this section lapses;
 - (b) all fees paid in respect of the lapsed appeal must be refunded;
 - (c) the person may, in accordance with this Part, subsequently appeal against the actual determination of the consent authority; and
 - (d) the Appeals Tribunal may, in any subsequent appeal, admit any evidence provided in respect of the lapsed appeal that is admissible in relation to the subsequent appeal.

113 Appeal against refusal to extend period of development permit

- (1) A person who made an application to a consent authority under section 59 may appeal to the Appeals Tribunal against a determination of the consent authority under that section other than in accordance with the application.
- (2) The appeal must be made within 28 days after the person is given the statement of reasons for the determination under section 59(4).

114 Appeal against determination of development application

- (1) A person who made a development application under section 46 may appeal to the Appeals Tribunal against a determination by the consent authority:
 - (a) under section 53(b), to alter the proposed development in the application; or
 - (b) under section 53(a) or (b), to impose a condition on the proposed development in the application or on the altered proposed development, including a condition referred to in section 70(3).
- (2) The appeal must be made within 28 days after the person is served with a notice under section 53A or 53B in respect of the determination.

115 Appeal against refusal to refund or remit contribution

- (1) A person who made an application to a service authority under section 73(3) may appeal to the Appeals Tribunal against 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 appeal under subsection (1) must be made within 28 days after the applicant is notified in writing of the refusal.
- (3) If a service authority does not determine a person's application under section 73(3) within 12 weeks after receiving the application:
 - (a) the 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 appeal to the Appeals Tribunal at any time after the expiry of those 12 weeks and before the matter is determined by the service authority.

- (4) Despite subsection (3)(a), a service authority may actually determine the person's application at any time before the Appeals Tribunal determines the person's appeal made under subsection (3)(b).
- (5) If the service authority actually determines the person's application in accordance with subsection (4):
 - (a) the person's appeal under subsection (3)(b) lapses;
 - (b) all fees paid in respect of the lapsed appeal must be refunded;
 - (c) the person may subsequently appeal under subsection (1) against an actual determination of the service authority refusing to refund or remit any contribution otherwise payable by the person; and
 - (d) the Appeals Tribunal may, in any subsequent appeal, admit any evidence provided in respect of the lapsed appeal that is admissible in relation to the subsequent appeal.

116 Appeal against refusal to vary condition of development permit

- (1) A person who made an application under section 57 may appeal to the Appeals Tribunal against a determination of the consent authority under that section refusing to vary the condition in accordance with the application.
- (2) The appeal must be made within 28 days after the person is given the statement of reasons for the determination under section 57(5).

117 Appeals by third parties in respect of development applications

- (1) Subject to the Regulations, a person or local authority who made a submission in accordance with section 49 in relation to a development application may appeal to the Appeals Tribunal against a determination under section 53(a) or (b):
 - (a) to consent to the development, as proposed or as altered; or
 - (b) to impose conditions on the proposed development or proposed altered development, including a condition referred to in section 70(3).
- (2) The appeal must be made within 14 days after the person or local authority is served with the notice of determination in respect of the development application.

- (3) A person or local authority must not appeal under this section for reasons of commercial competition.
- (4) The Regulations may specify other circumstances under which there is no right of appeal under this section, including by reference to the type of development in conjunction with:
 - (a) the zone of the land on which the development is to take place;
 - (b) the zone of land adjacent to the land on which the development is to take place; or
 - (c) the zone of land referred to in both paragraph (a) and (b).

Example for section 117

The Regulations may specify there is no right of appeal in respect of development on land zoned for industrial use or development unless the land is adjacent to land zoned for residential use or development.

Division 2A Determinations that may not be appealed against

117A No appeal against certain determinations of Minister

- (1) There is no right of appeal to the Appeals Tribunal against the determination of a development application by the Minister when he or she is the consent authority under section 4(5).
- (2) The Minister may, by notice in the *Gazette*, declare that a right of appeal against a particular determination of the Minister as the consent authority, otherwise exercisable by a person under Division 2, is no longer exercisable by the person.

Division 3 Beginning an appeal

118 Notice of appeal etc.

- (1) An appeal under this Part is to be commenced by lodging a notice of appeal at the office of the Registrar.
- (2) A notice of appeal is to:
 - (a) be in the approved form;
 - (b) state the name of the appellant;
 - (c) specify details of the application in respect of which the appeal is lodged;
 - (d) state the grounds of the appeal; and

- (e) be accompanied by the prescribed fee.
- (3) As soon as practicable after a notice of appeal is lodged, the Registrar must send a copy of the notice to each other party to the appeal.
- (3A) If more than one appeal in respect of the same determination is made under section 117, the Registrar must ensure each appellant is sent a copy of:
 - (a) the notice of appeal lodged by each other appellant under section 117; and
 - (b) any notice of appeal lodged under section 114 in respect of the determination.
- (4) An appellant may, by notice to the Registrar and each other party, amend the grounds of appeal specified in his or her notice of appeal at any time up until the conclusion of a conference under Division 4.
- (5) An appellant under section 117 may lodge further documents in support of the appeal not later than 14 days after the date of lodgment of the notice of appeal.

118A Parties to appeal

Each of the following is a party to an appeal:

- (a) the person making the appeal (the ***appellant***);
- (b) in any appeal other than under section 115 – the consent authority against whose determination or failure to make a determination the appeal is made;
- (c) in an appeal under section 115 – the service authority against whose determination or failure to make a determination the appeal is made;
- (d) in an appeal under section 117 – the person who made the development application determined by the consent authority.

119 No works or use permitted under permit if appeal lodged

Subject to this Act, if a notice of appeal is lodged under section 118 in relation to the issue of a development permit, the holder of the permit must not develop or use the land in a manner only permitted under the permit until the appeal is determined by the Tribunal.

Maximum penalty: In the case of a natural person –
200 penalty units and 2 penalty units default penalty

In the case of a corporation – 1000 penalty units and 10 penalty units default penalty.

120 Authorities to provide information

- (1) On receipt of a notice of appeal, other than in relation to an appeal under section 115, the Registrar must require the consent authority to provide to the Registrar and each other party, before a date specified by the Registrar in the requirement, copies of all information before it when it made the determination in respect of the application under section 46, 57 or 59 to which the appeal relates.
- (2) On receipt of a notice of appeal in relation to an appeal under section 115, the Registrar must require the service authority to provide to the Registrar and the appellant, before a date specified by the Registrar in the requirement, copies of all information before it when it made the determination under section 73(1)(d) to which the appeal relates.
- (3) The date specified under subsection (1) or (2) is to be at least 7 days before the date to be fixed by the Registrar under section 121 for a conference in relation to the matter.

Division 4 Compulsory conferences

121 Registrar to fix date for conference

The Registrar must, as soon as practicable after a notice of appeal has been lodged under section 118:

- (a) fix a date, time and place for a conference between the parties; and
- (b) give to each party notice in writing of the date, time and place fixed for the conference.

122 Appointment of mediator

- (1) The Chairperson within the meaning of the *Lands, Planning and Mining Tribunal Act* must appoint in writing a panel of persons (which may include the Registrar) who are willing to act as mediators for the purposes of this Division.
- (2) As soon as reasonably practicable after a notice of appeal has been lodged under section 118, the Registrar must nominate a person appointed under subsection (1) (including himself or herself) to mediate at a conference under this Division.

123 Attendance at conference

- (1) A person nominated under section 122(2) to be a mediator at a conference must attend the conference.
- (2) The mediator is to preside at a conference.
- (3) A party who is a natural person must attend a conference in person.
- (4) A party who is not a natural person must appoint a representative to represent the party at a conference.
- (5) Except in relation to an appeal under section 115 and subject to subsection (5A), the Chairman of the Development Consent Authority or at least one member of the Division that made the decision to which the appeal relates must attend a conference in person.
- (5A) If the determination being appealed against was made by the Minister as the consent authority, the Minister must ensure that a person who is authorised in writing by the Minister to represent the Minister attends at the conference.
- (6) If an appeal is made under section 115, the service authority against whose decision or failure to make a decision the appeal is lodged must ensure that a person who is authorised in writing by the service authority to represent the service authority attends at the conference.
- (7) The mediator at a conference may permit a person to take part in the conference if he or she is of the opinion that the person may be of assistance in reaching a compromise or settlement.

124 Objects of conference

The objectives of a conference under this Division are:

- (a) to determine the matters in dispute between the parties; and

- (b) to enable the parties to discuss their reasons for instigating or resisting the appeal and where possible to settle or resolve the matters in dispute without requiring further action to be taken under Division 5.

125 Compromise and settlement

- (1) A compromise or settlement agreed to at a conference under this Division by the parties or by the parties' representatives is binding on the parties.
- (2) A compromise or settlement agreed to at a conference is to be reduced to writing and signed by the parties and the mediator.
- (3) The mediator is to notify the member of the Appeals Tribunal presiding over the appeal if a compromise or settlement is made at a conference in relation to a decision of the Development Consent Authority.
- (4) If the member of the Appeals Tribunal presiding over an appeal is informed of a compromise or settlement under subsection (3), he or she may order the consent authority to take an action under Part 5, Division 3 to give effect to the compromise or settlement.
- (5) Part 5, Division 2 does not apply in relation to an action taken in accordance with an order under subsection (4).
- (6) If a compromise or settlement is made at a conference in relation to a service authority, the mediator is to notify the member of the Appeals Tribunal presiding over the appeal, and the Tribunal may order the authority to take an action under section 73(1)(d) to give effect to the compromise or settlement.
- (7) Evidence of anything said or done in the course of a conference, including the terms of a compromise or settlement, is not admissible in proceedings under Division 5 before the Appeals Tribunal, except by consent of both parties.

126 Mediator may make orders at conference

- (1) The mediator may, at the conference, make the orders he or she considers necessary for the expeditious handling of the matter.
- (2) Without limiting the generality of subsection (1), orders that may be made under that subsection include orders for or in relation to the exchange of reports or other documents or proofs of evidence between parties who intend to tender those reports or other documents or evidence at the hearing of the appeal.

Division 5 Determination by Tribunal

127 Application for determination by Appeals Tribunal

- (1) If:
- (a) a conference has been held under Division 4 in relation to an appeal; and
 - (b) a compromise or settlement has not been reached under section 125 in relation to the appeal,

the appellant may give notice to the Registrar that he or she wishes the matter to be determined by the Appeals Tribunal.

- (2) A notice under subsection (1) is to be in a form approved by the Registrar and accompanied by the prescribed fee.
- (3) The Registrar must provide to each other party to the appeal:
- (a) a copy of a notice under subsection (1); and
 - (b) a notice stating that the party has 14 days from the receipt of the notice to make a submission to the Appeals Tribunal in relation to the grounds of appeal.

128 Parties may make written submissions

- (1) An appellant must, within 14 days of giving a notice to the Registrar under section 127, make a written submission to the Appeals Tribunal specifying his or her argument in relation to the grounds of appeal specified in his or her notice of appeal and serve a copy of the submission on each other party to the appeal.
- (2) The consent authority or, if the appeal is made under section 115, the relevant service authority must, within 14 days after receiving notice under section 127, make a written submission to the Appeals Tribunal in response to the grounds of appeal specified in the notice of appeal and serve a copy of the submission on each other party to the appeal.
- (3) A party may, within 28 days after the lodging of a notice under section 127, make a written submission to the Appeals Tribunal in reply to a submission under subsection (1) or (2) by another party.
- (4) A written submission for the purposes of this section may not introduce material or evidence not before the consent authority or the service authority, as the case may be, when it made the determination to which the appeal relates.

129 Consideration of appeals by Tribunal

- (1) Subject to subsection (2), the Appeals Tribunal is to determine an appeal in the absence of the parties and having regard only to:
 - (a) the information before the consent authority or the service authority, as the case may be, at the time it made the determination to which the appeal relates;
 - (b) in the case of an appeal, other than an appeal under section 113 or 115 – the matters specified in section 51; and
 - (c) submissions made to it under section 128.
- (2) The Appeals Tribunal may, if it thinks fit, require:
 - (a) a person who is a party;
 - (b) a person who made a submission under section 49 or gave evidence or information under section 50; or
 - (c) any other person,to appear before it and answer questions put to him or her by the Appeals Tribunal.
- (3) The Appeals Tribunal may only permit a person, including a party, to appear and give evidence before it under subsection (2):
 - (a) if each party to the appeal is notified by the Registrar of the date and time and place at which the evidence is to be given; and
 - (b) if the evidence is given:
 - (i) in the presence of all the parties to the appeal; or
 - (ii) in the presence of less than all the parties if any of the other parties, having been invited to attend at a date, time and place specified under paragraph (a), has not appeared.
- (4) A party is not permitted to cross-examine a person or party giving evidence under subsection (2) in relation to an appeal.
- (5) The Appeals Tribunal may consider and determine 2 or more appeals concurrently if the appeals relate to the same determination of the consent authority, even if the appeals have different grounds of appeal.

- (6) The Appeals Tribunal may engage one or more consultants with expertise in planning or development to assist it to determine an appeal.

130 Determination of appeals

- (1) The Appeals Tribunal must determine an appeal to which a notice given to the Registrar under section 127 relates.
- (2) In determining an appeal, except an appeal under section 113 or 115, the Appeals Tribunal must take into account the matters specified in section 51.
- (3) The Appeals Tribunal must not determine an appeal to permit a proposed development if:
- (a) in its opinion, the development would be contrary to a provision of an applicable planning scheme referred to in section 9(1)(a); or
 - (b) the development would be contrary to a provision of an applicable planning scheme referred to in section 9(1)(b).
- (4) The Appeals Tribunal must, in writing, determine an appeal against a determination of a consent authority by taking one of the following actions:
- (a) confirming the determination of the consent authority;
 - (b) in respect of an appeal under section 114 or 117 only – revoking the determination set out in the notice served under section 53A or 53B, substituting the determination of the Appeals Tribunal and ordering the consent authority to issue a development permit subject to any conditions the Appeals Tribunal thinks fit;
 - (c) ordering the consent authority to issue or vary a development permit subject to any conditions the Appeals Tribunal thinks fit.
- (5) The Appeals Tribunal must determine an appeal under section 115 by ordering that:
- (a) all or some contribution paid or payable by the appellant is to be refunded or remitted by the service authority; or
 - (b) no contribution paid or payable by the appellant is to be refunded or remitted by the service authority.

- (6) To avoid doubt, a determination of an appeal by the Appeals Tribunal is a review of the determination of the consent authority or service authority on its merits.
- (7) Also, the Appeals Tribunal may take action under subsection (4)(b) or (c) only if satisfied:
 - (a) the consent authority manifestly failed to take into account a matter referred to in section 51; or
 - (b) the determination of the consent authority would result in a planning outcome manifestly contrary to a provision of a planning scheme.

131 Reasons for determination to be given

- (1) The Appeals Tribunal must give written reasons for, and maintain a record of, its determinations.
- (2) The Appeals Tribunal must cause to be served on the parties a copy of the determination and its reasons for making the determination.
- (3) The Appeals Tribunal must make available for inspection and purchase by the public copies of all determinations made by the Tribunal, together with the written reasons given under subsection (1).

132 Powers of Appeals Tribunal

In addition to any powers it has under the *Lands, Planning and Mining Tribunal Act*, the Appeals Tribunal may do any of the following:

- (a) appoint one or more of the members of the Appeals Tribunal to make an inquiry or an inspection that appears to be necessary or expedient for the purposes of this Part;
- (b) permit a notice of appeal or a notice under section 127 to be withdrawn;
- (c) if the applicant does not appear at a conference, dismiss the appeal;
- (d) order an appellant under section 117 to pay the costs of any other party if the Appeals Tribunal is satisfied the appeal has been made for reasons of commercial competition or is frivolous or vexatious.

133 Appeals to Supreme Court

- (1) A person may appeal against a determination of the Tribunal to the Supreme Court only on a question of law.
- (2) An appeal under subsection (1) must be made within 28 days after the date of service by the Tribunal of the statement of reasons for the determination.

Part 10 Miscellaneous

Division 1 Administration

134 Delegation by Minister

The Minister may, in writing, delegate to a person any of the Minister's powers and functions under this Act except the following:

- (a) the power under section 85 to direct the Development Consent Authority;
- (b) the power under section 117A(2) to declare a right of appeal is no longer exercisable.

135 Fees and charges

- (1) The Minister may, by notice in the *Gazette*, prescribe the fees to be charged in relation to matters under this Act.
- (2) The Minister may, in the circumstances of a particular case, in writing, waive, or remit the whole or part of, a fee prescribed under subsection (1).
- (3) An amount may be charged for the provision of a service relating to a matter under this Act for which a charge is not otherwise prescribed if the amount is reasonably proportionate to the reasonable cost of providing the service.

135A Approved forms

The Minister may approve forms to be used under this Act.

Division 2 Notice of instruments under this Act

136 Planning schemes to be available to public

- (1) The Minister must make available, for purchase or inspection by the public, copies of:
 - (a) each planning scheme;
 - (b) all proposed amendments of a planning scheme that have been or are on exhibition;
 - (c) all land use objectives, control plan amendments and explanatory documents made under the former Act; and
 - (d) all repealed provisions of a planning scheme.
- (2) A copy of a control plan amendment within the meaning of the former Act is not to be sold unless an explanatory document in relation to the amendment is sold with the copy.
- (3) A copy of provisions of a planning scheme that incorporate a map, plan, design or diagram may be sold although the map, plan, design or design is not sold with the copy.

137 Certified copies of planning documents, permits etc.

- (1) A person may apply to the Minister for a certified copy of any of the following:
 - (a) a planning document, as in force at a specified date under a Planning Act;
 - (b) a permit issued under a Planning Act;
 - (c) any other document issued under a Planning Act.
- (2) The application must be in the approved form and be accompanied by the prescribed fee.
- (3) A copy certified under this section is admissible in a court, or before a body or person acting judicially, as evidence of the contents of the document of which it is a copy.
- (4) In this section:

Planning Act means any of the following, as in force from time to time:

- (a) the *Planning Act 1979*;

- (b) the *Planning Act 1993*;
- (c) this Act.

planning document means any of the following:

- (a) a planning scheme or part of a planning scheme;
- (b) planning and development objectives of the Territory, a planning instrument, control plan, land use objective, incorporated document or development provision;
- (c) an instrument amending or proposing to amend a document referred to in paragraph (a) or (b).

138 Registers and plans for public inspection

A consent authority must retain and keep available for public inspection during normal office hours:

- (a) a copy of each plan of subdivision or consolidation approved by the consent authority;
- (b) a register of all permits issued by the consent authority; and
- (c) a register of all determinations of the Appeals Tribunal, or the Planning Appeals Tribunal under the former Act, in respect of determinations of the consent authority.

139 Service of notices and other documents

- (1) Except if otherwise provided in this Act, a notice or other document required by this Act to be given to or served on a person may be delivered personally to the person or sent by post, addressed:
 - (a) in the case of an individual – to the person's last-known place of business or residence; and
 - (b) in the case of a corporation – in accordance with the Corporations Act 2001.
- (2) A notice under, or arising out of a breach of, this Act or a condition of a permit may, in the case of a corporation without a registered office in the Territory, be served by affixing a copy of the notice on a conspicuous part of the land to which it relates.

Division 3 Planning certificates

140 Planning certificates

- (1) A person may apply in the approved form accompanied by the prescribed fee to the Minister for a certificate under this section.
- (2) A certificate issued under this section is prima facie evidence of the facts certified in it.
- (3) A certificate under this section is to:
 - (a) be in the approved form; and
 - (b) show in relation to the land in respect of which it is issued as at the date on which the certificate is issued:
 - (i) whether a provision of a planning scheme or an interim development control order applies;
 - (ii) in general terms, the effect of restrictions or prohibitions, if any, placed by or under this Act on the use of the land;
 - (iii) if a development application has been determined within 2 years before the date of the application for a certificate under this section – the nature of the development application and the determination made in respect of it;
 - (iv) if a permit is in force – the nature of the permit; and
 - (v) if an application for a permit has been made but no permit or notice relating to the determination of the application has been issued or served – the nature of the application.
- (4) If a condition of the permit referred to in section 56 permits the development to which the application relates to be completed in stages, a certificate issued under this section may certify that the requirements of this Act have been complied with in respect of the development of land although not all stages of the development permitted under the development permit have been completed in relation to the balance of that land.

141 Effect of planning certificates

- (1) For the purpose of proceedings for an offence against this Act taken by or against a person who has obtained a certificate under section 140, the certificate is, in favour of the person, conclusive evidence of the matters stated in it at the time the certificate was issued.

- (2) For the purposes of the registration of a plan or instrument intended to affect or evidence the title to land, a certificate under section 140 is, in favour of:
 - (a) the person to whom the certificate is issued; and
 - (b) the Registrar-General, the Solicitor for the Northern Territory or another person registering or certifying title,conclusively presumed to be true and correct.
- (3) A claim against the Development Consent Authority in respect of a certificate referred to in this section is a claim against the Territory.

Division 4 Compensation

142 Compensation for abortive expenditure

- (1) A person who, relying on a development permit, has incurred expenditure that has been rendered abortive in whole or in part by the revocation or modification of the permit under section 66, may recover the amount of the expenditure under this section from the Territory.
- (2) Divisions 2 and 3 of Part VIII of the *Lands Acquisition Act*, with the necessary changes, apply to and in relation to a claim for compensation under subsection (1) as they apply to claims for compensation for abandoned proposals under that Act.
- (3) For the purposes of subsection (2), a reference in Divisions 2 and 3 of Part VIII of the *Lands Acquisition Act*:
 - (a) to a claim for compensation under section 60 of that Act – is to be read as a reference to a claim for compensation under subsection (1);
 - (b) to the date of service of a notice under section 35 of that Act – is to be read as a reference to the date of service of notice of revocation or modification of a permit under section 66;
 - (c) to compensation under that Act – is to be read as a reference to compensation under subsection (1); and
 - (d) to Schedule 2 to that Act – is to be disregarded.

143 Compensation and liability

Except as provided by this Act, the Territory is not liable to pay compensation to a person as a result of the operation of this Act or of the due exercise of a power, function, authority or discretion

conferred by this Act unless, in a particular case, it amounts to an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, in which case the acquisition is to be on just terms.

Division 5 Other

144 Inquiries

- (1) The Minister may require the Chairman or a Division to conduct an inquiry for purposes connected with the administration of this Act.
- (2) The Chairman or a Division may appoint a person to conduct an inquiry the Chairman or the Division is required to conduct under subsection (1).
- (3) The Inquiries Act applies to and in relation to an inquiry under this section as if the Chairman or the Division or the person appointed under subsection (2) had been appointed as a Board or Commissioner, as the case may be, under section 4(1) of that Act.
- (4) The Development Consent Authority or the person appointed under subsection (2), as the case may be, must provide a report to the Minister setting out the results of an inquiry under this section.

144A Advisory committees

- (1) The Minister may establish one or more advisory committees to advise the Minister on matters in connection with planning for or control of the use and development of land.
- (2) The Minister may set the terms of reference for an advisory committee and appoint the members of the committee as the Minister sees fit.
- (3) An advisory committee may be established to provide advice on a specific matter for a limited period of time or to provide ongoing advice.

145 Territory lease term of no effect if inconsistent with Scheme or order

If a planning scheme or an interim development control order applies to land the subject of a lease from the Territory, a provision or covenant in the lease that permits or requires the use of the leased land for purposes inconsistent with the planning scheme or order is, to the extent of the inconsistency, of no effect.

146 Saving of other laws

Nothing in this Act permits a person to use or develop land in contravention of any other law in force in the Territory.

147 Actions not to be invalidated

An action taken by the Development Consent Authority, the Minister or the Appeals Tribunal is not invalid by reason only of administrative error or oversight if the action was done in good faith and will not cause hardship to, or prejudice the interests of, a person.

148 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular:

- (c) providing for the payment of fees and expenses to witnesses required by this Act to attend and give evidence before the Development Consent Authority, the Appeals Tribunal or any other person;
- (d) prescribing the manner in which fees or payments prescribed are to be calculated or paid;
- (e) prescribing types of easements for the purposes of section 64 and the purposes of, and powers in relation to, those easements;
- (f) providing for the inspection of instruments required to be kept under section 137 and of the registers required to be kept under section 138;
- (g) providing a method for assessing, reviewing and collecting the contribution payable under a contribution plan;
- (h) requiring the notification of administrative interests and information in relation to land affected by this Act; and
- (j) prescribing penalties, not exceeding 10 penalty units, for offences against the Regulations.

- (2) The Regulations may provide for any of the following:
- (a) offences against the Regulations to be regulatory offences;
 - (b) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations, the service of a notice relating to the payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice.

Part 11 Repeal and transitional matters for Planning Act 1999

Division 1 Repeal and definitions

149 Repeal

The *Planning Act 1993* (No. 85 of 1993) is repealed.

150 Definitions

In this Part, unless the contrary intention appears:

commencement date means the date of commencement of the *Planning Act 1999*.

control plan and ***control plan amendment*** have the same respective meanings they had in the former Act.

draft control plan amendment has the same meaning as in the former Act.

former Appeals Tribunal means the Planning Appeals Tribunal within the meaning of the former Act.

former Authority means the Northern Territory Planning Authority constituted under the former Act.

former consent authority means the consent authority within the meaning of the former Act.

planning instrument means a planning instrument saved under section 134 of the former Act.

Division 2 Development Consent Authority

151 Development Consent Authority to replace Planning Authority

On and from the commencement date:

- (a) all real and personal property that immediately before that date was vested in the former Authority vests in the Territory;
- (b) all money and liquidated and unliquidated claims that, immediately before that date, were payable to or recoverable by the former Authority are to be money and liquidated and unliquidated claims payable to or recoverable by the Territory;
- (c) all proceedings in a court commenced before that date:
 - (i) by the former Authority and pending immediately before that date are to be taken to be proceedings pending on that date by the Territory and may be continued in the name of the former Authority; and
 - (ii) by any person against the former Authority and pending immediately before that date are to be taken to be proceedings pending on that date by that person against the Territory;
- (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the former Authority and in force immediately before that date are to be taken to be contracts, agreements, arrangements and undertakings entered into with and securities given to or by the Territory;
- (e) the Territory may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, in its own name, pursue the same remedies for the recovery of money and claims referred to in this section and for the prosecution of actions and proceedings so referred to as the former Authority might have done but for the enactment of this Act;
- (f) the Territory may enforce and realise any security or charge existing immediately before that date in favour of the former Authority and may exercise any powers thereby conferred on the former Authority as if the security or charge were a security or charge in favour of the Territory;

- (g) all debts, money and claims, liquidated and unliquidated, that immediately before that date were due or payable by or recoverable against the former Authority, are to be debts due and payable by, money payable by and claims recoverable against, the Territory; and
- (h) all liquidated and unliquidated claims for which the former Authority would, but for the commencement of this Act, have been liable are to be liquidated and unliquidated claims, as the case may be, for which the Territory is to be liable.

152 References in other documents

A reference in:

- (a) another Act; or
- (b) an instrument of a legislative or administrative character (other than an instrument appointing a person as a member of the former Authority),

to the former Authority is to be taken to be a reference to the Development Consent Authority.

153 Saving of actions

An act, matter or thing done or omitted to be done before the commencement of this Act by, to or in respect of the former Authority is, to the extent that but for the commencement of this Act that act, matter or thing would on or after the commencement date have had any force or effect or been in operation, to be taken to have been done or omitted to be done by, to or in respect of the Development Consent Authority, as the case may be.

154 Development Consent Authority to keep records of former Authority

The Development Consent Authority must retain all records and minutes that the former Authority had kept as required under the former Act.

Division 3 Components of Planning Scheme

155 Saving of objectives

- (1) On and from the commencement date, a land use objective in force under the former Act immediately before the commencement date is to be taken to be a land use objective made under this Act.

- (2) If a proposed land use objective within the meaning of the former Act, or a proposed amendment to such a land use objective, had been, or begun to be, exhibited under section 8 of the former Act but had not been made under that Act, the proposal is to be taken to be a proposed land use objective or an amendment to a land use objective under this Act and the exhibition is to be taken to have taken, or to be taking, place under section 17 of this Act.

156 Saving of control plans

- (1) On and from the commencement date, a control plan (including a planning instrument) within the meaning of the former Act in force under the former Act immediately before the commencement date is to be taken to be part of the development provisions under this Act.
- (2) If a provision of the development provisions specifies the area to which part of the development provisions is to relate and all of the area specified is within a Division area, the Minister may, within 3 months after the commencement date, by notice in the *Gazette*, amend the development provisions:
- (a) by repealing a provision specifying the consent authority in relation to that part of the development provisions; or
 - (b) by omitting a reference to the Planning Authority and substituting a reference to the consent authority.
- (3) Part 2 of this Act does not apply in relation to an amendment to the development provisions made under subsection (2).

157 Proposed new control plans

- (1) Subject to this section, this Act applies in relation to a proposed control plan existing under the former Act immediately before the commencement date as if it were a proposed amendment to the Development Provisions.
- (2) If under the former Act a proposed control plan has been exhibited for part only of the period required by or under section 19 of that Act, this Act applies as if the plan were required under section 17(1) of this Act to be exhibited for all of the period required by or under section 19 of the former Act in relation to the proposal.

- (3) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of that Act and the former Authority has made a submission to the Minister under section 23 of the former Act in relation to the plan, the Minister may:
- (a) require a further hearing or consultation under section 23 of this Act, in which case Divisions 3 and 4 of Part 2 of this Act apply to the proposed control plan; or
 - (b) deal with the proposed control plan under Division 4 of Part 2 of this Act,
- as if:
- (c) a submission made to the former Authority under section 21 of the former Act had been made to the Minister under section 19 of this Act; and
 - (d) the report under section 23 of the former Act were a report under section 20 of this Act.
- (4) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of the former Act but the former Authority:
- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed plan; and
 - (b) has not part-heard the matter,
- then:
- (c) a submission made under section 21 of the former Act in relation to the proposed control plan is to be taken to be a submission made under section 19 of this Act; and
 - (d) sections 20, 22 and 23 and Division 4 of Part 2 of this Act apply in relation to the proposed control plan.
- (5) If under the former Act a proposed control plan has completed the exhibition period required by or under section 19 of the former Act but the former Authority:
- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed control plan; and
 - (b) has part-heard the matter,

then:

- (c) a submission made under section 21 of the former Act in relation to the proposed control plan is to be taken to be a submission made under section 19 of this Act;
- (d) the Chairman of the Planning Authority within the meaning of the former Act must, within 60 days after the commencement of this Act:
 - (i) prepare and deliver to the Minister under section 20 of this Act a report as if he or she had been asked to do so under that section; and
 - (ii) prepare and deliver to the Minister under section 22 of this Act a report on so much of the hearing as has been part-heard as if he or she had been asked to do so under that section;
- (e) the Minister must appoint a person under section 22 to complete the hearing and report to the Minister in accordance with that section; and
- (f) section 23 and Division 4 of Part 2 apply in relation to the proposed control plan.

158 If exhibition of draft control plan amendment not completed

- (1) If an application was made under the former Act for an amendment to a control plan but a draft control plan amendment has not, before the commencement date, begun to be exhibited under the former Act, this Act applies as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions.
- (2) If an application was made under the former Act for an amendment to a control plan but a draft control plan amendment has been exhibited for part only of the period required by or under section 19 of the former Act, this Act applies as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions and were required under section 17(1) of this Act to be exhibited for all of the period required by or under section 19 of the former Act in relation to the amendment.

159 If decision not made in relation to exhibited draft control plan amendments

- (1) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of that Act and the former Authority has made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment, the Minister may:
- (a) require a further hearing or consultation under section 23 of this Act, in which case Divisions 3 and 4 of Part 2 of this Act apply to the amendment; or
 - (b) deal with the amendment under Division 4 of Part 2 of this Act, as if:
 - (c) the proposed amendment were a proposed amendment to the Planning Scheme consisting of an amendment to the development provisions;
 - (d) a submission made to the former Authority under section 21 of the former Act had been made to the Minister under section 19 of this Act; and
 - (e) the report under section 23 of the former Act were a report under section 20 of this Act.
- (2) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of the former Act and the former Authority:
- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment; and
 - (b) has not part-heard the matter,
- then:
- (c) a submission made under section 21 of the former Act in relation to the proposed amendment is to be taken to be a submission made under section 19 of this Act; and
 - (d) sections 20, 22 and 23 and Division 4 of Part 2 of this Act apply in relation to the draft control plan amendment as if it were a proposed amendment to the Planning Scheme consisting of an amendment to the development provisions.

- (3) If a draft control plan amendment has, under the former Act, completed the exhibition period required by or under section 19 of the former Act and the former Authority:
- (a) has not made a submission to the Minister under section 23 of the former Act in relation to the proposed amendment; and
 - (b) has part-heard a matter,
- then:
- (c) a submission made under section 21 of the former Act in relation to the proposed amendment is to be taken to be a submission made under section 19 of this Act;
 - (d) the Chairman of the Planning Authority within the meaning of the former Act must, within 60 days after the commencement of this Act:
 - (i) prepare and deliver to the Minister under section 20 of this Act a report as if he or she had been asked to do so under that section; and
 - (ii) prepare and deliver to the Minister under section 22 of this Act a report on so much of the hearing as has been part-heard as if he or she had been asked to do so under that section;
 - (e) the Minister must appoint a person under section 22 to complete the hearing; and
 - (f) section 23 and Division 4 of Part 2 apply as if it were an application made under section 12 of this Act for an amendment to the Planning Scheme consisting of an amendment to the development provisions.

160 Declaration of incorporated documents

- (1) Despite Part 2 of this Act, the Minister may, in writing, within 30 days after the commencement date, declare an instrument to be an incorporated document.
- (2) The Minister must publish in the *Gazette* a notice specifying that an incorporated document has been declared and that copies of the document are available for purchase or viewing at a place specified in the notice.

Division 4 Development applications, permits, interim development control orders etc.

161 Saving of interim development control orders

An interim development control order within the meaning of the former Act that was in force immediately before the commencement date is to be taken to be an interim development control order made under this Act.

162 Saving of existing non-conforming uses and works

A use of land (including of a building) or works that was or were lawful immediately before the commencement date under Part 6 of the former Act continues to be lawful under this Act but may be varied under this Act as if it were an existing use or existing works.

163 Saving of determinations

A determination saved by section 136 of the former Act and in force immediately before the commencement date continues in force for the period specified in the determination.

164 Saving of extensions of period and applications

- (1) If a period referred to in section 46 of the former Act was extended under section 47 of the former Act, the period is to be taken to be a period extended under section 37 of this Act commencing at the time it commenced under the former Act.
- (2) If an application was received under section 47 of the former Act but was not determined under that section before the commencement date, it is to be taken to be an application under section 37 of this Act.
- (3) An application that was received under section 43 of the former Act but was not determined under section 45 of the former Act before the commencement of this Act is to be taken to be an application under section 38 of this Act.

165 Saving of existing use determinations and permits

- (1) A determination under section 45 of the former Act to consent to a proposal is to be taken to be an exceptional development permit issued under this Act.
- (2) A development permit within the meaning of the former Act or a consent taken under section 137 of the former Act to be a development permit issued under that Act is to be taken to be a development permit issued under this Act and to be subject to the

conditions, if any, specified on the permit or taken to be the conditions of the permit under that section.

- (3) A consent that was, immediately before the commencement date, continuing in force by virtue of the operation of section 138(4) of the former Act is to be taken to be a development permit issued under this Act subject to the conditions, if any, taken under that section to be imposed on the determination.

166 Saving of statement of reasons and appeal periods

- (1) A statement of reasons issued under section 52(2), 57 or 58 of the former Act is, subject to this section, to be taken to be a statement of the reasons for the determination in respect of a particular matter under section 54, 59 or 57 of this Act, respectively.
- (2) A person must not lodge a notice of appeal relating to a statement of reasons referred to in this section after the expiration of 28 days after the date of the determination to which the reasons relate.

167 Development applications etc. lodged under former Act

- (1) If:
 - (a) an application was made to the former Authority as consent authority under section 48, 57 or 58 of the former Act;
 - (b) a hearing in respect of the application was commenced or completed under the former Act; and
 - (c) a determination in respect of the application was not made before the commencement date,

the former Authority continues in existence for the purposes of determining the application, and may deal with the application under the former Act, as if this Act had not come into operation.

- (2) If:
 - (a) an application was made to the former Authority as consent authority under section 48, 57 or 58 of the former Act; and
 - (b) a hearing in respect of the application had not been commenced under the former Act,

this Act applies to the application as if it were an application under section 46, 59 or 57, respectively, of this Act.

Division 5 Contribution plans etc.

168 Saving of contribution plans

A contribution plan within the meaning of the former Act that was in force immediately before the commencement date is to be taken to be a contribution plan made under this Act.

169 Trust accounts

Money held immediately before the commencement of this Act in a trust account under section 31(2) of the former Act:

- (a) is to be taken to be money held in a trust account under section 72(a) of this Act; and
- (b) is to be used under and in accordance with Part 6 of this Act.

170 Saving of policy areas and claims etc.

If an area of land was, immediately before the commencement date, a policy area within the meaning of the former Act or the *Planning (Parking Space Contributions) Regulations* saved under the former Act and any amendments to those Regulations under that Act:

- (a) that area is to be taken to be a policy area within the meaning of this Act;
- (b) the method of calculating the amount of a contribution determined under the former Act in respect of the area is to be taken to be a formula for calculation within the meaning of this Act;
- (c) all debts, money and claims, liquidated and unliquidated, that, immediately before that date, were due or payable to the local authority by virtue of section 29 or 145 of the former Act continue to be debts or money due or payable to and claims recoverable by the local authority;
- (d) any money due or payable to the local authority by virtue of section 29 or 145 of the former Act and paid after the commencement date is to be taken to be money received under section 72 of this Act and is to be dealt with in accordance with that section; and
- (e) a rate of interest payable, or a discount, declared under section 32 of the former Act, or a decision to remit or refund money, continues in force until revoked by resolution of the local authority.

Division 6 Appeals

171 Appeal to Appeals Tribunal under former Act

- (1) If a notice of appeal within the meaning of the former Act was lodged with the former Appeals Tribunal under section 99 of the former Act and a hearing (other than a preliminary hearing) in respect of the matter was held under that Act before the commencement date:
 - (a) the former Appeals Tribunal; and
 - (b) the former consent authority whose determination is the subject of the notice of appeal,continue in existence for the purpose of determining the matter and Part 9 of the former Act applies as if the former Act had not been repealed by this Act.
- (2) If a notice of appeal was lodged with the former Appeals Tribunal under section 99 of the former Act and a hearing (other than a preliminary hearing) in respect of the matter was not held before the commencement date:
 - (a) the former consent authority in respect of the land to which the instrument relates is to be the consent authority for the purposes of the appeal; and
 - (b) this Act applies as if the notice of appeal had been lodged with the Appeals Tribunal under this Act.
- (3) If a person had, immediately before the commencement date, a right of appeal to the former Appeals Tribunal under the former Act but had not before the commencement date lodged a notice of appeal under section 99 of the former Act:
 - (a) a notice of appeal may be lodged under and in accordance with section 118 of this Act as if the determination of the former consent authority were a determination under the relevant corresponding provision of this Act; and
 - (b) the former consent authority under the former Act whose determination is the subject of the appeal is to be taken to be the consent authority in respect of the land to which the request relates for the purposes of determining the appeal.

172 Saving of determinations of former Appeals Tribunal

Without affecting the limitation period to which a claim is subject under the *Limitation Act*, a determination of the former Appeals Tribunal under section 103 of the former Act continues in existence as if it was made under section 130 of this Act.

173 Appeals to Supreme Court under former Act

A person who was eligible under the former Act to appeal to the Supreme Court on a question of law may do so as if the former Act had not been repealed.

Division 7 Miscellaneous

174 Saving of notices

- (1) A notice served on a person under section 66(2)(a) of the former Act and in force immediately before the commencement date continues in force, and may be enforced, as if it were a notice served under section 66(2)(a) of this Act.
- (2) A notice served on a person under section 38 of the former Act and in force immediately before the commencement date continues in force, and may be enforced, as if it were a notice served under section 76 of this Act.

175 Saving of rights to compensation

Without affecting the limitation period to which a claim is subject under the *Limitation Act*, section 142 of this Act applies in respect of a person who had a right to receive compensation under section 122 of the former Act as if the right had accrued under this Act.

176 Saving of provisions of certain regulations

Regulation 5 and Schedule 3 of the *Planning Regulations* continued in existence under section 135(3) of the former Act continue in existence as if they were made under this Act and as if a reference in regulation 5 of those Regulations to section 4 were a reference to section 3 of this Act, but may be repealed or amended by Regulations made under this Act.

177 Saving of inquiries

- (1) Subject to this section, an inquiry commenced under section 120 of the former Act is to be taken to be an inquiry under section 144 of this Act.

- (2) If the former Authority was directed to conduct an inquiry under section 120 of the former Act, the former Authority continues in existence for the purpose of reporting to the Minister in respect of the inquiry.
- (3) If a person other than the former Authority was appointed to conduct an inquiry under section 120 of the former Act, he or she must complete the inquiry and report to the Minister in accordance with section 144 of this Act.

178 Maintenance of registers

If, immediately before the commencement date, a register was kept under section 118 of the former Act by the former Authority, the Development Consent Authority must maintain the register in accordance with section 138 of this Act.

179 Saving of certificates

- (1) A certificate issued under the former Act is to be taken to be a certificate issued under this Act.
- (2) A certified copy or extract issued under the former Act is to be taken to be a certified copy or extract issued under this Act.

180 Saving of restriction on powers under easements

If:

- (a) a plan of survey referred to in section 65(1) of the former Act that was registered before the commencement of the *Statute Law Revision Act (No. 2) 1998* indicates an intended easement in favour of a specified service authority and describes it by a description in Schedule 1 of the former Act; and
- (b) the easement is in force immediately before the commencement date,

despite section 64(5) of this Act, the service authority, has, for itself and its agents, servants and workers, only the powers specified in Schedule 1 of the former Act.

181 Transitional regulations

- (1) For the purposes only of ensuring the proper transfer of powers, functions and property and the continuity of rights and obligations of persons or bodies under the former Act, the Administrator may make regulations that he or she considers necessary or convenient to be made.

- (2) The power given by subsection (1) may only be exercised within 12 months after the commencement date.
- (3) A regulation made under this section remains in force until repealed or amended under this Act.
- (4) Regulations made under this section may be made retrospective to the commencement date or any date after that commencement date and are to have force accordingly.
- (5) To the extent that the provisions of the Regulations made under this section are inconsistent with this Act or a provision of an Act specified in the Regulations, the Regulations are to prevail.

Part 12 Transitional matters for Planning Amendment Act 2005

Division 1 Preliminary

182 Definitions

In this Part:

amended, in relation to a specified provision, means as in force immediately after the commencement of the *Planning Amendment Act 2005*.

commencement date means the date of commencement of the *Planning Amendment Act 2005*.

former, in relation to a specified provision, means as in force immediately before the commencement date.

Planning Scheme means the Northern Territory Planning Scheme as in force immediately before the commencement date.

Division 2 Planning schemes

183 Northern Territory Planning Scheme continues in force

- (1) The Planning Scheme continues in force as the NT Planning Scheme.
- (2) A provision of the Planning Scheme, or a document forming part of the Planning Scheme, that is specified as or taken to be a development provision, land use objective or incorporated document is a provision of the NT Planning Scheme of an applicable category specified in amended section 9(1).

- (3) All maps, plans, designs and diagrams included in the Planning Scheme continue in force as part of the NT Planning Scheme.
- (4) All maps, plans, designs and diagrams referred to in the Planning Scheme continue to have effect in accordance with the NT Planning Scheme.
- (5) This section does not apply in relation to the development provisions referred to in section 184.

184 Special planning scheme for town of Jabiru

The document entitled "Jabiru Town Plan" which, immediately before the commencement date, formed part of the development provisions of the Planning Scheme is taken to be a specific planning scheme referred to in amended section 8(1).

Division 3 Amendments of Northern Territory Planning Scheme

185 Meaning of proposed amendment

For sections 187, 188 and 189, a proposed amendment is one of the following:

- (a) a proposed amendment of the Planning Scheme in respect of which the Minister has made a decision under former section 14(1)(b) to take the actions required under former Part 2, Divisions 3 and 4;
- (b) a proposed amendment of the Planning Scheme referred to in paragraph (a) that has been altered by the Minister and which, by virtue of former section 29(1), must be re-exhibited under former Part 2, Division 3.

186 Application not decided before commencement date

- (1) This section applies in relation to an amendment of the Planning Scheme:
 - (a) proposed in an application made under former section 12; and
 - (b) in respect of which the Minister has not, before the commencement date, made a decision under former section 14.

- (2) For subsection (1), the Minister is taken not to have made a decision if the Minister:
 - (a) under former section 14(1)(c) deferred consideration of the amendment as proposed; and
 - (b) has not, immediately before the commencement date, made any further decision under former section 14.
- (3) The Minister must make a decision in respect of the amendment in accordance with amended section 13 as if the amendment had been proposed in a request made under amended section 13(1).

187 Proposed amendment not exhibited before commencement date

- (1) This section applies in relation to a proposed amendment in respect of which the Minister has not, immediately before the commencement date, determined the period of exhibition under former section 17.
- (2) The proposed amendment is taken to be a proposal within the meaning of paragraph (a) or (c), as applicable, of the definition of **proposal** in amended section 14.
- (3) Amended Part 2, Divisions 3, 4 and 5 apply in relation to the proposed amendment.

188 Proposed amendment requiring further actions under former Part 2

- (1) This section applies in relation to a proposed amendment in respect of which:
 - (a) the Minister has, under former section 17, determined the period of exhibition; and
 - (b) immediately before the commencement date, further actions are required to be taken under former Part 2, Division 3.
- (2) Former Part 2, Division 3 continues to apply in relation to the proposed amendment until all the actions required under that Division have been taken.
- (3) After all the required actions have been taken, the Minister must take further action in relation to the proposed amendment under amended Part 2, Division 5 as if it were a proposal referred to in amended section 25(1).

189 Actions in determining application for proposed amendment

- (1) This section applies in relation to a proposed amendment in respect of which:
 - (a) all actions required to be taken under former Part 2, Division 3 have been taken; and
 - (b) the Minister has not, before the commencement date, taken action under former section 25, 26 or 27.
- (2) The Minister must take further action in relation to the proposed amendment under amended Part 2, Division 5 as if it were a proposal referred to in amended section 25(1).

Division 4 Exceptional development permits

190 Meaning of proposal

For this Division, a proposal is one of the following:

- (a) a proposal, referred to in former section 14(1)(d)(ii), to consider granting an exceptional development permit under former section 40 instead of considering making an amendment to the Planning Scheme;
- (b) a proposal in an application for the grant or variation of an exceptional development permit that the Minister has decided under former section 39 to exhibit under former Part 2, Division 3;
- (c) a proposal referred to in paragraph (a) or (b) that has been altered by the Minister and which, by virtue of former section 29(1), must be re-exhibited under former Part 2, Division 3.

191 Proposal not exhibited before commencement date

- (1) This section applies in relation to a proposal in respect of which the Minister has not, immediately before the commencement date, determined the period of exhibition under former section 17.
- (2) The proposal is taken to be a proposal within the meaning of paragraph (b) of the definition of "proposal" in amended section 14.
- (3) Amended Part 2, Divisions 3, 4 and 5 apply in relation to the proposal.

192 Proposal requiring further actions under former Part 2

- (1) This section applies in relation to a proposal in respect of which:
 - (a) the Minister has, under former section 17, determined the period of exhibition; and
 - (b) immediately before the commencement date, further actions are required to be taken under former Part 2, Division 3.
- (2) Former Part 2, Division 3 continues to apply in relation to the proposal until all the actions required to be taken under that Division have been taken.
- (3) After all those required actions have been taken, the Minister must take further action in relation to the proposal under amended Part 2, Division 5 as if it were a proposal referred to in amended section 26(1).

193 Actions in determining application for proposal

- (1) This section applies in relation to a proposal in respect of which:
 - (a) all actions required to be taken under former Part 2, Division 3 have been taken; and
 - (b) the Minister has not, before the commencement day, granted or refused to grant an exceptional development permit or varied or refused to vary an exceptional development permit (as applicable).
- (2) The Minister must take further action in relation to the proposal under amended Part 2, Division 5 and amended section 40 as if it were a proposal referred to in section 26(1).

Division 5 Development applications and development permits

194 Development application

Former Part 5, Divisions 2 and 3 continue to apply in relation to a development application to the consent authority:

- (a) made under former section 46; and
- (b) not determined by the consent authority before the commencement date.

195 Direction in respect of particular development application

The Minister may direct the Development Consent Authority under amended section 85(3) in respect of a particular development application even if the application was made before the commencement date.

196 Application for variation of development permit

Former section 57 continues to apply in relation to an application to the consent authority for a variation of a condition of a development permit:

- (a) made under former section 57; and
- (b) not determined by the consent authority before the commencement date.

Division 6 Miscellaneous

197 Alternate members for local authority representatives

A person appointed under former section 91(1) to be an alternate member for particular members for a Division:

- (a) is taken to have been appointed under amended section 91(1); and
- (b) is the alternate member for both members for the Division in office from time to time during the period of appointment of the alternate member.

198 Determination of appeals

Former Part 9 continues to apply in relation to all appeals in respect of an application referred to in former Part 9, Division 2 that was made before the commencement date, whether the application is determined before, on or after the commencement date.

Division 7 Regulations

199 Regulations may contain savings or transitional provisions

- (1) The Regulations may contain provisions of a savings or transitional nature consequent on the commencement of the *Planning Amendment Act 2005*.

- (2) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
 - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.
- (3) If a regulation made under this section is inconsistent with a provision of this Act or a provision of an Act specified in the regulation, the regulation prevails to the extent of the inconsistency.

Part 13 Transitional matters for Land Title and Related Legislation Amendment Act 2008

200 Application

- (1) The amendments apply to a relevant subdivision or relevant consolidation for which a units plan or a document covered by section 9A of the *Real Property (Unit Titles) Act* is lodged with the Registrar-General on or after the commencement.

Examples

- 1 *A development permit may be issued for a consolidation under a units plan of consolidation if the plan is lodged with the Registrar-General on or after the commencement.*
 - 2 *Section 61 as amended by the Land Title and Related Legislation Amendment Act 2008 does not apply to a subdivision under a units plan lodged with the Registrar-General before the commencement.*
- (1A) However, the amendments do not apply to a relevant subdivision that relate to 1 or both of the following:
- (a) a development permit or exceptional development permit for the carrying out of works on or in relation to land, that was in force under this Act immediately before the commencement;
 - (b) a building permit that was in force under the *Building Act* immediately before the commencement.
- (1B) The regulations may provide for a matter that is of a savings or transitional nature consequent on the enactment of the *Land Title and Related Legislation Amendment Act 2008* (the **relevant Act**).

- (1C) A regulation mentioned in subsection (1B) may have retrospective operation only to the extent to which the regulation:
- (a) does not have effect before the commencement of this section; and
 - (b) does not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (1D) Subsection (1B) and any regulation made under the subsection cease to have effect 1 year after the commencement of this section.

(2) In this section:

amendments means the amendments made to this Act by the *Land Title and Related Legislation Amendment Act 2008*.

commencement means the commencement of the amendments.

relevant consolidation means a consolidation under the *Unit Titles Act*, other than a consolidation of:

- (a) lots defined for Part IVB of that Act; or
- (b) building lots defined for Part IVC of that Act.

relevant subdivision means a subdivision under the *Unit Titles Act* as defined for Part III, or in section 4(6), of that Act.

Part 14 Transitional matters for Unit Title Schemes Act 2009

201 Savings – repeal of section 43

An exceptional development permit in force immediately before the repeal of section 43 by the *Unit Title Schemes Act 2009* that is in force after the repeal has effect as if that section had not been repealed.

202 Application for development permit or exceptional development permit

- (1) The amendments made to sections 3, 46 and 51 by the *Unit Title Schemes Act 2009* apply to an application for a development permit or exceptional development permit only if:
 - (a) the application is made on or after the commencement of the amendments (the **commencement**); or
 - (b) both of the following apply in relation to the application:
 - (i) the application was made before the commencement for the development of land for a proposed units plan or building development plan but the development permit or exceptional development permit had not been issued;
 - (ii) the applicant amends the application to include the information mentioned in section 46(3)(l) and any other information requested by the consent authority and the consent authority accepts the amended application.
- (2) The consent authority and the applicant must comply with any requirement (including, for example, a notification requirement) in relation to the application prescribed by regulation.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION*****Planning Act 1999 (Act No. 55, 1999)***

Assent date	14 December 1999
Commenced	12 April 2000 (<i>Gaz S15, 12 April 2000</i>)

Statute Law Revision Act 2000 (Act No. 19, 2000)

Assent date	6 June 2000
Commenced	12 July 2000 (<i>Gaz G27, 12 July 2000, p 2</i>)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000 (Act No. 2, 2000)</i> and <i>Gaz G38, 27 September 2000, p 2</i>)

Law of Property (Consequential Amendments) Act 2000 (Act No. 46, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Law of Property Act 2000 (Act No. 1, 2000)</i> and <i>Gaz G38, 27 September 2000, p 2</i>)

Unit Titles (Consequential Amendments – Building Development) Act 2001 (Act No. 15, 2001)

Assent date	28 June 2001
Commenced	1 March 2002 (s 2, s 2 <i>Unit Titles Amendment Act 2001 (Act No. 14, 2001)</i> and <i>Gaz G8, 2002, p 6</i>)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001 (Cth Act No. 50, 2001)</i> and <i>Cth Gaz S285, 13 July 2001</i>)

Statute Law Revision Act 2003 (Act No. 12, 2003)

Assent date	18 March 2003
Commenced	18 March 2003

Planning Amendment Act 2005 (Act No. 12, 2005)

Assent date 17 March 2005
 Commenced 30 September 2005 (*Gaz G39*, 28 September 2005, p 4)

Statute Law Revision Act 2007 (Act No. 4, 2007)

Assent date 8 March 2007
 Commenced 8 March 2007

Land Title and Related Legislation Amendment Act 2008 (Act No. 3, 2008)

Assent date 11 March 2008
 Commenced pt 6: 18 March 2009 (*Gaz G11*, 13 March 2009, p 4);
 rem: 1 July 2009 (*Gaz S30*, 26 June 2009)

Planning Amendment (Development Applications) Act 2008 (Act No. 4, 2008)

Assent date 11 March 2008
 Commenced 1 July 2008 (*Gaz S32*, 1 July 2008)

Statute Law Revision Act 2008 (Act No. 6, 2008)

Assent date 11 March 2008
 Commenced 11 March 2008

Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)

Assent date 14 November 2008
 Commenced 1 July 2008 (s 2)

Unit Title Schemes Act 2009 (Act No. 14, 2009)

Assent date 26 May 2009
 Commenced pt 2.3, div 3, s dv 4 and s 135 (to ext ins s 54C):
 1 January 2010; s 111: 1 July 2010; rem: 1 July 2009 (s 2,
Gaz S30, 26 June 2009, p 1, s 2 *Land Title and Related
 Legislation Amendment Act 2008* (Act No. 3, 2008) and *Gaz
 S30*, 26 June 2009, p 1)

Statute Law Revision Act 2009 (Act No. 25, 2009)

Assent date 1 September 2009
 Commenced 16 September 2009 (*Gaz G37*, 16 September 2009, p 3)

Heritage Act 2011 (Act No. 34, 2011)

Assent date 15 November 2011
 Commenced 1 October 2012 (*Gaz S43*, 31 July 2012)

Planning Amendment Act 2012 (Act No. 26, 2012)

Assent date 6 December 2012
 Commenced 1 January 2013 (*Gaz S79*, 20 December 2012)

Northern Territory Environment Protection Authority Act 2012 (Act No. 28, 2012)

Assent date 6 December 2012
 Commenced 1 January 2013 (*Gaz S82*, 21 December 2012)

Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)

Assent date 12 July 2013
 Commenced 28 August 2013 (*Gaz G35*, 28 August 2013, p 2)

3 LIST OF AMENDMENTS

s 2A	ins No. 12, 2005, s 4
s 3	amd No. 46, 2000, s 9; No. 15, 2001, s 8; No. 12, 2003, s 18; No. 12, 2005, s 5; No. 4, 2007, s 7; No. 28, 2008, s 3; No. 3, 2008, s 50; No. 14, 2009, s 143; No. 26, 2012, s 4
s 4	amd No. 12, 2005, s 6
s 5	amd No. 28, 2008, s 3; No. 3, 2008, s 51
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ss 13A – 13B	ins No. 26, 2012, s 5
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s 16	sub No. 12, 2005, s 7
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ss 17 – 19	sub No. 12, 2005, s 7
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ss 20 – 24	sub No. 12, 2005, s 7
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ss 25 – 29	sub No. 12, 2005, s 7
s 30	rep No. 12, 2005, s 7
ss 31 – 32	amd No. 12, 2005, s 48
pt 4 hdg	sub No. 12, 2005, s 8
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ss 33 – 37	sub No. 12, 2005, s 8
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s 45	sub No. 12, 2005, s 9
s 46	amd No. 19, 2000, s 8; No. 12, 2005, s 10; No. 14, 2009, s 145; No. 26, 2012, s 6; No. 28, 2012, s 52
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s 47A	ins No. 4, 2008, s 4
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s 50	sub No. 12, 2005, s 11; No. 4, 2008, s 4
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s 51	amd No. 12, 2005, s 12; No. 4, 2008, s 5; No. 14, 2009, s 146; No. 34, 2011, s 169; No. 28, 2012, s 52
s 52	amd No. 12, 2005, s 13
s 53	sub No. 12, 2005, s 14 amd No. 4 2008, s 6
ss 53A – 53C	ins No. 12, 2005, s 14
s 54	sub No. 12, 2005, s 14
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s 59A	ins No. 12, 2005, s 16
s 60	amd No. 12, 2005, s 48
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s 63	amd No. 23, 2013, s 12
s 64	amd No. 45, 2000, s 11; No. 46, 2000, s 9
s 66	amd No. 12, 2005, s 17; No. 23, 2013, s 12
s 69	amd No. 12, 2005, s 18
s 70	sub No. 12, 2005, s 19
s 71	amd No. 45, 2000, s 11; No. 12, 2005, s 20
ss 72 – 73	amd No. 28, 2008, s 3
s 75	amd No. 12, 2005, s 21; No. 23, 2013, s 12
s 75A	ins No. 12, 2005, s 22 amd No. 23, 2013, s 12
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s 128	amd No. 12, 2005, s 48
s 129	amd No. 12, 2005, s 35
s 130	sub No. 12, 2005, s 36
s 132	amd No. 12, 2005, s 37; No. 4, 2007. s 7
s 134	amd No. 12, 2005, s 38
s 135A	ins No. 12, 2005, s 39
s 136	amd No. 12, 2005, s 40
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s 139	amd No. 17, 2001, s 21; No. 12, 2005, s 48
s 140	amd No. 12, 2005, s 42
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s 162	amd No. 12, 2005, s 48
s 171	amd No. 19, 2000, s 8
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pt 13 hdg ins No. 3, 2008, s 53
s 200 ins No. 3, 2008, s 53
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pt 14 hdg ins No. 14, 2009, s 148
ss 201 – 202 ins No. 14, 2009, s 148
sch rep No. 46, 2000, s 9