

NORTHERN TERRITORY OF AUSTRALIA

HERITAGE CONSERVATION AMENDMENT ACT 1998

No. 17 of 1998

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Principal Act
4. Council may initiate own assessment
5. Repeal
6. Offences relating to heritage places or objects
7. New Parts:

"PART 6A — REVOCATION OF DECLARATION OF
HERITAGE PLACE OR HERITAGE OBJECT

- "39A. REQUEST OR APPLICATION FOR REVOCATION OF
DECLARATION OF HERITAGE PLACE OR HERITAGE
OBJECT
- "39B. COUNCIL MAY INITIATE OWN ASSESSMENT
- "39C. COUNCIL TO GIVE NOTICE OF REQUEST OR
APPLICATION FOR REVOCATION
- "39D. ASSESSMENT OF REQUEST OR APPLICATION
- "39E. RECOMMENDATION TO MINISTER
- "39F. MINISTER MAY ACCEPT OR REJECT
RECOMMENDATION
- "39G. APPLICATION FOR REVOCATION OF DECLARATION
OF HERITAGE PLACE OR HERITAGE OBJECT
- "39H. MINISTER MAY REVOKE DECLARATION OF
HERITAGE PLACE OR HERITAGE OBJECT

"PART 6B — WORKS, &c., ON HERITAGE PLACE OR
HERITAGE OBJECT

- "39J. APPLICATION FOR APPROVAL TO PERFORM WORKS,
&c., ON HERITAGE PLACE OR HERITAGE OBJECT
- "39K. MINISTER MAY APPROVE CERTAIN WORKS, &c.,
IN RELATION TO HERITAGE PLACE OR HERITAGE
OBJECT
- "39L. COUNCIL MAY DELEGATE PROVISION OF
COMMENTS"

8. Aggrieved person may appeal to Local Court
9. Transitional



NORTHERN TERRITORY OF AUSTRALIA

No. 17 of 1998

AN ACT

to amend the *Heritage Conservation Act*

[Assented to 30 March 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Heritage Conservation Amendment Act 1998*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

The *Heritage Conservation Act* is in this Act referred to as the Principal Act.

4. COUNCIL MAY INITIATE OWN ASSESSMENT

Section 23 of the Principal Act is amended by omitting from subsection (1) "or 27(1)".

Heritage Conservation Amendment

5. REPEAL

Section 27 of the Principal Act is repealed.

6. OFFENCES RELATING TO HERITAGE PLACES OR OBJECTS

Section 33 of the Principal Act is amended —

- (a) by omitting from subsection (1) "(1) Subject to subsection (2), a person" and substituting "A person";
- (b) by inserting in subsection (1)(a) "demolish, destroy," after "damage,";
- (c) by omitting from subsection (1) "Minister's delegate" and substituting "Minister's delegate under section 39K"; and
- (d) by omitting subsection (2).

7. NEW PARTS

The Principal Act is amended by inserting after Part 6 the following:

"PART 6A — REVOCATION OF DECLARATION OF
HERITAGE PLACE OR HERITAGE OBJECT

"39A. REQUEST OR APPLICATION FOR REVOCATION OF DECLARATION
OF HERITAGE PLACE OR HERITAGE OBJECT

"(1) The Minister may request the Council to make an assessment as to whether the Minister should revoke —

- (a) all or part of the declaration of a heritage place; or
- (b) the declaration of a heritage object.

"(2) An owner of a heritage place or heritage object may, in prescribed circumstances, apply to the Council —

- (a) for the revocation by the Minister of; and
- (b) for the Council's assessment as to whether or not the Minister should revoke,

all or part of the declaration of the heritage place or the declaration of a heritage object.

"(3) An application under subsection (2) is to —

- (a) be in the approved form; and
- (b) contain or be accompanied by the prescribed information.

Heritage Conservation Amendment

"(4) The Council must provide to the Minister a copy of an application under subsection (2) as soon as practicable after the date it receives the application and in any case not later than 7 days after the date.

"(5) Before carrying out an assessment of whether the Minister should revoke the declaration of all or part of a heritage place or heritage object to which an application under subsection (2) relates, the Council may request from the applicant additional information relating to the matter as it thinks fit.

"39B. COUNCIL MAY INITIATE OWN ASSESSMENT

"The Council may of its own motion assess whether the Minister should revoke all or part of the declaration of a heritage place or heritage object and this Part, with the necessary changes, applies to and in relation to that assessment or re-assessment as if it were as the result of a request under section 39A(1).

"39C. COUNCIL TO GIVE NOTICE OF REQUEST OR APPLICATION FOR REVOCATION

"(1) The Council must, within 7 days of receiving a request or application under section 39A and before making its recommendation to the Minister in relation to the request or application —

- (a) give notice in accordance with subsection (2) to —
 - (i) where the proposed recommendation relates to a heritage place — the owner and any occupier of the heritage place and to each person shown in the Register kept under the *Real Property Act* as having or claiming an interest in land comprising the place; or
 - (ii) where the proposed recommendation relates to a heritage object — the owner and any person in lawful possession of the heritage object;
- (b) give notice in accordance with subsection (2) to all persons who are likely to be directly affected by the decision of the Minister in relation to the recommendation; and
- (c) for the purposes of notifying —
 - (i) the persons referred to in paragraph (a) — post a notice in accordance with subsection (2) to the person's last known address and publish the notice in such newspapers in the Territory as it thinks fit; and

Heritage Conservation Amendment

- (ii) the persons referred to in paragraph (b) — publish a notice in accordance with subsection (2) in such newspapers in the Territory as it thinks fit.

"(2) A notice for the purposes of subsection (1) is to —

- (a) advise that the request or application has been made; and
- (b) invite written comments on the request or application to be given to the Council by a date not later than 28 days after the first publication of a notice in a newspaper under subsection (1)(c) in relation to the request or application.

"(3) A person may, before the date specified in a notice under subsection (1) in relation to a request or application, submit to the Council comments on the request or application.

"39D. ASSESSMENT OF REQUEST OR APPLICATION

"(1) The Council must assess whether the Minister should revoke —

- (a) all or part of the declaration of the heritage place; or
- (b) the declaration of a heritage object,

to which the request or application relates.

"(2) In assessing under subsection (1) whether the Minister should revoke all or part of the declaration of a heritage place or revoke the declaration of a heritage object the Council —

- (a) must have regard to the relevant heritage assessment criteria, if any, in relation to the place or object;
- (b) must consider all comments received as a result of the notices under section 39C in relation to the place or object; and
- (c) may carry out or cause to be carried out research it thinks necessary for the purposes of paragraph (a) or (b).

"39E. RECOMMENDATION TO MINISTER

"(1) As soon as practicable after it completes an assessment under section 39D, and in any case not later than 28 days after the date specified in the first notice published in a newspaper under section 39C in relation to

Heritage Conservation Amendment

the request or application to which the assessment relates, the Council must -

- (a) recommend to the Minister that he or she revoke all or part of the declaration of the heritage place, or revoke the declaration of the heritage object, to which the request or application relates; or
- (b) recommend to the Minister that he or she not revoke all or part of the declaration of the heritage place, or that he or she not revoke the declaration of the heritage object, to which the request or application relates.

"(2) The Council must forward with its recommendation -

- (a) a statement of the heritage values of the heritage place or heritage object to which the recommendation relates;
- (b) a copy of all comments received as a result of the notices under section 39C in relation to the heritage place or heritage object to which the recommendation relates; and
- (c) the Council's suggestions, if any, on possible ways of resolving any conflict that may arise as the result of the proposed recommendation.

"39F. MINISTER MAY ACCEPT OR REJECT RECOMMENDATION

"(1) As soon as practicable after receiving a recommendation under section 39E or subsection (4), the Minister must -

- (a) accept the recommendation;
- (b) reject the recommendation; or
- (c) subject to subsection (5), refer the matter back to the Council with a request that the Council provide, by the date specified in the referral, further information or make a further recommendation relating to the matter or a suggested variation.

"(2) The Minister may accept or reject a recommendation in relation to all, or part only, of a heritage place.

"(3) Where the Council is requested to provide further information under subsection (1)(c), the Council must provide the further information to the Minister within the period specified in the referral.

Heritage Conservation Amendment

"(4) Where the Minister refers a matter back to the Council under subsection (1)(c) and the Council is requested in that referral to make a further recommendation, the Council must, within the period specified in the referral, recommend to the Minister that he or she —

- (a) revoke all or part of the declaration of the heritage place, or revoke the declaration of the heritage object; or
- (b) not revoke all or part of the declaration of the heritage place, or that he or she not revoke the declaration of the heritage object,

to which the request or application relates.

"(5) A matter the subject of a recommendation under section 39E may be referred back to the Council under subsection (1)(c) twice only before the Minister must take an action referred to in subsection (1)(a) or (b).

"39G. APPLICATION FOR REVOCATION OF DECLARATION OF HERITAGE PLACE OR HERITAGE OBJECT

"(1) For the purpose of protecting the health or safety of persons or in an emergency, the owner of a heritage place or a heritage object may apply to the Minister for the revocation by the Minister of all or part of the declaration of the heritage place or of the declaration of the heritage object.

"(2) An application under subsection (1) is to —

- (a) be in the approved form; and
- (b) contain or be accompanied by the prescribed information.

"39H. MINISTER MAY REVOKE DECLARATION OF HERITAGE PLACE OR HERITAGE OBJECT

"(1) The Minister may, by notice in the *Gazette*, revoke the declaration of —

- (a) all or part of an area of land to be a heritage place; or
- (b) a heritage object.

"(2) The Minister may, under subsection (1), revoke the declaration of a heritage place or heritage object —

- (a) of his or her own motion;
- (b) on receipt of an application under section 39G; or

Heritage Conservation Amendment

- (c) where the Minister has made a request to the Council under section 39A(1), or a person has made an application under section 39A(2), in relation to the heritage place or heritage object — after considering the recommendation of the Council under section 39E in relation to the heritage place or heritage object.

"(3) The Minister must not revoke a declaration under subsection (2)(a) or (b) except —

- (a) for the purpose of protecting the health or safety of persons; or
- (b) in an emergency.

"(4) As soon as practicable after revoking under subsection (1) all or part of a declaration, the Minister must give notice of the revocation —

- (a) where it relates to a heritage place — to each owner and each occupier of the heritage place and to each person shown in the Register kept under the *Real Property Act* as having or claiming an interest in land comprising the heritage place; or
- (b) where it relates to a heritage object — to each owner and any person in lawful possession of the object.

"(5) A notice to be given to a person under subsection (4) is to be posted to the person's last known address.

"(6) As soon as practicable after revoking under subsection (1) all or part of a declaration, the Minister must cause a copy of the notice of revocation to be published in at least one newspaper circulating in that part of the Territory in which the place is situated or object located.

"(7) Where the Minister revokes a declaration under subsection (2)(a) or (b), the Minister must table in the Legislative Assembly his or her reasons for the revocation within 3 sitting days of the Assembly after the revocation.

"(8) The Minister may exercise his or her power under subsection (1) in relation to a heritage place or heritage object notwithstanding —

- (a) any other provision of this Act (including section 3); or
- (b) that a conservation management plan is in force in relation to the heritage place or heritage object.

Heritage Conservation Amendment

"PART 6B — WORKS, &c., ON HERITAGE PLACE
OR HERITAGE OBJECT

"39J. APPLICATION FOR APPROVAL TO PERFORM WORKS, &c., ON
HERITAGE PLACE OR HERITAGE OBJECT

"(1) The owner of a heritage place or heritage object may apply to the Minister or the Minister's delegate for approval to —

- (a) carry out work of a sort specified in the application on the heritage place or heritage object;
- (b) damage, desecrate or alter the heritage place;
- (c) damage, destroy, demolish, desecrate or alter the heritage object;
- (d) remove from a heritage place a heritage object or an object associated with a place declared under section 26(1)(a) to be part of the Northern Territory heritage; or
- (e) remove a heritage object from the Territory.

"(2) The owner of a heritage place may apply to the Minister for approval to destroy or demolish the heritage place or a building or structure on the heritage place.

"(3) An application under subsection (1) or (2) is to —

- (a) be in the approved form; and
- (b) contain or be accompanied by the prescribed information.

"39K. MINISTER MAY APPROVE CERTAIN WORKS, &c., IN RELATION
TO HERITAGE PLACE OR HERITAGE OBJECT

"(1) Where the Minister or the Minister's delegate receives an application under section 39J(1), the Minister or the Minister's delegate may, by notice in writing, authorise —

- (a) the carrying out of work on the heritage place or heritage object specified in the application;
- (b) damage to, or the desecration or alteration of, the heritage place specified in the application;
- (c) damage to, or the destruction, demolition, desecration or alteration of, the heritage object specified in the application;

Heritage Conservation Amendment

- (d) the removal from a heritage place of a heritage object or an object associated with a place declared under section 26(1)(a) to be part of the Northern Territory heritage; or
- (e) the removal of a heritage object from the Territory.

"(2) Where the Minister receives an application under section 39J(2) in relation to a heritage place, the Minister may, by notice in writing, authorise the destruction or demolition of the heritage place or a building or structure on the heritage place.

"(3) The Minister may, of his or her own motion, by notice in writing authorise the carrying out, on a heritage place on —

- (a) vacant Crown land; or
- (b) land to which relates an estate in fee simple registered in the name of the Crown,

of work of any sort, including the alteration, destruction or demolition of the heritage place or a building or structure on the heritage place.

"(4) Subject to subsection (5), the Minister or Minister's delegate may exercise his or her power under subsection (1), (2) or (3) in relation to a heritage place or a heritage object notwithstanding —

- (a) any other provision of this Act (including section 3); or
- (b) that a conservation management plan is in force in relation to the heritage place or heritage object.

"(5) The Minister or the Minister's delegate must not authorise the conduct of an activity under subsection (1), (2) or (3) unless the Minister or the Minister's delegate has referred the matter to the Council for comment and has considered the comments received in accordance with the referral.

"(6) Where the Minister or the Minister's delegate receives an application under section 39J(1) or (2), the Minister or the Minister's delegate must refer the matter to which the application relates to the Council within 7 days after receiving the application.

"(7) Where the Minister or the Minister's delegate refers a matter to the Council in pursuance of subsection (5), the Council must provide its comments within —

- (a) 14 days after receiving the referral; or

Heritage Conservation Amendment

(b) if the Minister specifies a longer period — that period.

"(8) The Minister or the Minister's delegate must advise the Council of his or her decision in respect of a matter referred to the Council for comment in pursuance of subsection (5) and the reasons for that decision.

"(9) The Territory is liable to pay reasonable compensation for any damage or loss suffered by an aggrieved person in consequence of the carrying out of work under subsection (3).

"(10) Authorisation under subsection (1) or (2) to an action referred to in that subsection does not relieve a person from a requirement to obtain the necessary consent for that action under any other law in force in the Territory.

"(11) For the purposes of subsection (9), 'aggrieved person' means a person with a proprietary or possessory interest in —

(a) the land in relation to which the works are carried out; or

(b) any other land or object the use or value of which is directly affected by the works carried out.

"39L. COUNCIL MAY DELEGATE PROVISION OF COMMENTS

"(1) The Council may, by resolution, delegate to a specified person or to a person for the time being holding, acting in or performing the duties of a specified office, designation or position any of its powers in relation to providing comments for the purposes of section 39K(5).

"(2) A power delegated under subsection (1) is to be taken to have been exercised by the Council.

"(3) A delegation under subsection (1) does not prevent the exercise of a power by the Council."

8. AGGRIEVED PERSON MAY APPEAL TO LOCAL COURT

Section 48 of the Principal Act is amended by omitting from subsection (1) "27, 28" and substituting "28, 39F".

Heritage Conservation Amendment

9. TRANSITIONAL

- (1) Where, before the commencement of this Act —
- (a) the Minister had directed the Council under section 23 of the Principal Act to assess or re-assess the heritage value of a heritage place or heritage object for the purpose of determining whether the Minister should revoke or not revoke the declaration of all or part of the heritage place or the heritage object; and
- (b) the Council —
- (i) made a recommendation under the Principal Act to the Minister in relation to the direction — the recommendation is to be taken to be a recommendation made by the Council under section 39F(4) of the Principal Act as in force after the commencement of this Act; or
- (ii) had not made a recommendation under the Principal Act to the Minister in relation to the direction —
- (A) section 39F of the Principal Act as in force after the commencement of this Act applies to the direction as if it were a referral requesting a further recommendation under 39F(1)(c); and
- (B) the day 28 days after the date on which this Act commences is to be taken to be the date specified in the referral.
- (2) An —
- (a) application or request may be made under section 39A(1) or (2) or 39G; and
- (b) assessment may be initiated under section 39B,

of the Principal Act as in force after the commencement of this Act, notwithstanding that the declaration of the heritage place or heritage object to which the application, request or assessment relates was made before the commencement of this Act.

(3) The Minister or the Minister's delegate may exercise his or her powers under section 39F, 39H or 39K of the Principal Act as in force after the commencement of this Act notwithstanding that the declaration of the heritage place or heritage object was made before the commencement of this Act.