

NORTHERN TERRITORY OF AUSTRALIA

PLANNING AMENDMENT ACT 2012

Act No. 26 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 26 of 2012

An Act to amend the *Planning Act*

[Assented to 6 December 2012]
[Second reading 30 October 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Planning Amendment Act 2012*.

2 Commencement

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

3 Act amended

This Act amends the *Planning Act*.

4 Section 3 amended

(1) Section 3(1), definition *member*

omit

(2) Section 3(1)

insert (in alphabetical order)

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

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.

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.

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

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

5 Part 2, Division 2A inserted

After section 13

insert

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.

6 Section 46 amended

Section 46(4)

omit, insert

- (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.

7 Part 5, Division 2A inserted

After section 50

insert

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

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- (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.

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- (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.

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- (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.

8 Part 5, Division 3A inserted

After section 57

insert

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.

9 Part 7A inserted

After section 81

insert

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;

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- (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*;

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- (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).

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- (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;

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- (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

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- (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).

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

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- (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.

10 Section 112 amended

Section 112(1)(b)

omit, insert

- (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