

NORTHERN TERRITORY OF AUSTRALIA

PLANNING ACT 1993

---

No. 85 of 1993

---

TABLE OF CONTENTS

Section

PART 1 - PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act to bind Crown

PART 2 - ADMINISTRATION

5. Power to enter land
6. Delegation by Minister
7. Fees and charges

PART 3 - LAND USE OBJECTIVES  
AND INTERIM DEVELOPMENT CONTROL ORDERS

8. Minister may declare land use objectives
9. Inconsistency between plan, &c., and objective
10. Interim development control orders

PART 4 - LAND USE CONTROL PLANS

*Division 1 - Land Use Control Plans*

11. Control plans
12. Consent authority for replacement of existing control plan
13. Notice of making of control plan
14. Application to leases

*Division 2 - Amendments to Control Plans*

15. Initiation of draft control plan amendment
16. Preparation of draft control plan amendment

*Division 3 - Exhibition of Proposed Control Plans  
and Draft Control Plan Amendments*

17. Exhibition of plans
18. Notice in respect of land proposed for rezoning
19. Exhibition period
20. Exemption from exhibition
21. Submissions
22. Hearings

*Division 4 - Acceptance, &c., of Proposed Control  
Plans and Draft Control Plan Amendments*

- 23. Submission to Minister
- 24. Acceptance by Minister
- 25. Re-exhibition if extensive change by Minister

*Division 5 - Developer Contributions*

- 26. Definitions
- 27. Service authority may make a contribution plan
- 28. Contributions for car parking
- 29. Contribution payable as a condition of permit
- 30. Payment of contribution
- 31. Duties of service authority
- 32. Discount, interest rate, &c.
- 33. Enforcement

*Division 6 - General*

- 34. Availability of control plans
- 35. Maps, &c., need not be sold
- 36. Certified copies and extracts of control plans

**PART 5 - ENFORCEMENT OF CONTROL PLANS**

- 37. No use or development except in accordance  
with control plans, &c.
- 38. Notice to cease

**PART 6 - EXISTING USES**

- 39. Interpretation
- 40. Existing uses protected
- 41. Existing construction or works protected
- 42. Repairs and maintenance
- 43. Application for consent to certain uses
- 44. Consent authority to consider and report
- 45. Determination of application for consent
- 46. Abandonment of existing non-conforming uses
- 47. Extension of period

**PART 7 - DEVELOPMENT APPLICATIONS**

*Division 1 - Preliminary*

- 48. Application
- 49. Development applications

*Division 2 - Determination of Development  
Applications*

- 50. Notification of proposal
- 51. Matters to be taken into account
- 52. Determination of development applications
- 53. Conditions may be placed on permits
- 54. Conditions may relate to stage of development

*Division 3 - Duration of Development Permits*

- 55. Definitions
- 56. Duration of permit
- 57. Extension of period of permit

*Division 4 - Development Works*

- 58. Variation of conditions of permit
- 59. Development to be in accordance with permit
- 60. Consultation and agreement

*Division 5 - Subdivisions and Consolidations*

- 61. Restriction on subdivisions and consolidations
- 62. Plans not to be approved, &c., without consent
- 63. Purported subdivision or consolidation prohibited

*Division 6 - Certification*

- 64. Certification of compliance with permit or Part

*Division 7 - Implementation*

- 65. Effect of lodging plans, &c.

*Division 8 - Revocation and Modification of Permits*

- 66. Revocation or modification of permit

**PART 8 - NORTHERN TERRITORY  
PLANNING AUTHORITY**

*Division 1 - Northern Territory  
Planning Authority*

- 67. Planning Authority
- 68. Functions and powers
- 69. Delegation

*Division 2 - Membership*

- 70. Membership
- 71. Members within area of local authority
- 72. Members outside area of local authority
- 73. Term of office
- 74. Alternate members
- 75. Vacancy not to invalidate
- 76. Defects not to invalidate
- 77. Resignation of members
- 78. Disclosure of interest
- 79. Direct or indirect interests in companies
- 80. Removal from office

*Division 3 - Procedure*

- 81. Constitution of Authority for purpose of meeting
- 82. Meetings of Authority
- 83. Meetings to be open
- 84. Minutes
- 85. Committees
- 86. Protection of members and witnesses
- 87. Contempt
- 88. Confidentiality

PART 9 - APPEALS

*Division 1 - Establishment of  
Planning Appeals Tribunal*

- 89. Planning Appeals Tribunal
- 90. Appeals Tribunal members
- 91. President and Deputy President
- 92. Term of office
- 93. Removal from office
- 94. Resignation of members
- 95. Disclosure of interest
- 96. Direct or indirect interests in companies
- 97. Protection of members

*Division 2 - Appeals*

- 98. Interpretation and application
- 99. Applicant may appeal
- 100. Notices of appeal
- 101. Appeal
- 102. Constitution of Appeals Tribunal to hear appeal
- 103. Determination by Appeals Tribunal

*Division 3 - Proceedings*

- 104. Public hearings
- 105. Practice and procedure
- 106. Preliminary conference
- 107. Fixing of preliminary hearings
- 108. Preliminary hearings
- 109. Public notice of hearing
- 110. Powers of Appeals Tribunal
- 111. Summonses
- 112. Representation
- 113. Sworn evidence
- 114. Contempt
- 115. Appeals to Supreme Court

PART 10 - MISCELLANEOUS

*Division 1 - Planning Certificates*

- 116. Planning certificates
- 117. Effect of planning certificates

*Division 2 - General*

- 118. Registers
- 119. Service of notices, &c.
- 120. Inquiries
- 121. Prosecution and penalties
- 122. Compensation for abortive expenditure
- 123. Saving of other laws
- 124. Onus of proof
- 125. Compensation and liability
- 126. Actions not to be invalidated
- 127. Regulations

PART 11 - REPEAL AND TRANSITIONAL

- 128. Repeal
- 129. Definitions
- 130. Planning Authority to replace former Authority
- 131. References in other Acts, &c.
- 132. Saving of actions
- 133. Saving of planning objectives
- 134. Saving of draft planning instruments
- 135. Saving of planning instruments
- 136. Saving of determinations under Division 1 of Part IV of former Act
- 137. Saving of consents
- 138. Saving of instruments of determination
- 139. Saving of notices
- 140. Saving of inquiries
- 141. Planning Authority to keep records of former Authority
- 142. Maintenance of registers
- 143. Saving of certificates, &c.
- 144. Trust accounts
- 145. Saving of car parking schemes
- 146. Development applications lodged under former Act
- 147. Applications to Appeals Committee under former Act
- 148. Saving of determinations of former Appeals Committee
- 149. Appeals to Supreme Court under former Act
- 150. Transitional Regulations

SCHEDULE 1

SCHEDULE 2





# NORTHERN TERRITORY OF AUSTRALIA

---

No. 85 of 1993

---

## AN ACT

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

[Assented to 31 December 1993]

**B**E 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:

### PART 1 - PRELIMINARY

#### 1. SHORT TITLE

This Act may be cited as the *Planning Act 1993*.

#### 2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3. INTERPRETATION

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

"Appeals Tribunal" means the Planning Appeals Tribunal established by section 89;

"approved form" means a form approved by the Minister;

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

---

## *Planning*

"Chairman" means the person appointed as Chairman of the Planning Authority and includes a Deputy Chairman while acting as the Chairman and a person appointed to act as the Chairman under section 70;

"commencement date" means the date of commencement of this Act;

"committee" means a committee of the Planning Authority established under section 85;

"consent authority" means -

- (a) in relation to land (including land held under a lease) in respect of which consent to perform an activity or action is required by or under this Act and to which a control plan or an interim development control order does not apply - the Minister;
- (b) in relation to land or a development to which an interim development control order applies -
  - (i) where the Planning Authority is nominated under section 10(3) as the consent authority in the relevant interim development control order - the Planning Authority; or
  - (ii) where the Minister is nominated under section 10(3) as the consent authority in the relevant interim development control order - the Minister; and
- (c) in any other case -
  - (i) where the Planning Authority is nominated in the relevant control plan as the consent authority - the Planning Authority; or
  - (ii) where the Minister is nominated in the relevant control plan as the consent authority - the Minister;

"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*, where the land remains, after consolidation, pastoral land within the meaning of that Act;



## *Planning*

- (b) a consolidation under the *Unit Titles Act* except the consolidation of lots, being lots defined for the purposes of Part IVB 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 131 of the *Local Government Act* with land adjoining that land, where 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) build, re-build, erect or re-erect;
- (b) make alterations to;
- (c) enlarge or extend; and
- (d) place or relocate the building on land;

"control plan" means a land use control plan in force from time to time under Part 4;

"control plan amendment" means a draft control plan amendment accepted by the Minister under section 24(1) (a) or (b);

"Deputy Chairman" means a Deputy Chairman of the Planning Authority;

"Deputy President" means the Deputy President of the Appeals Tribunal;

"development", in relation to land, means an activity which involves -

- (a) the establishment of, or a change in, the use of the land;
- (b) the subdivision or consolidation of the land; or

## *Planning*

- (c) the carrying out of works on or in relation to the land, including excavation, land-filling, the clearing of vegetation, the construction of a building, the construction or upgrading of roads and drains (other than by a statutory corporation, by a statutory authority or corporation incorporated under an Act of the Commonwealth or by a local authority or where the works are carried out in pursuance of a statutory responsibility), the construction or upgrading of hardstand car parking, landscaping or any other operation which affects the physical character of the land;

"development application" means an application under section 49;

"development permit" means a development permit issued under section 52, varied under section 58, amended pursuant to an order under section 103 or as modified under section 66;

"draft control plan amendment" means a draft control plan amendment prepared under section 16;

"explanatory document", in relation to a proposed control plan or a draft control plan amendment, means an explanatory document referred to in section 18(5);

"former Act" means the *Planning Act* as in force immediately before the commencement date;

"interim development control order" means an interim development control order under section 10;

"land" includes land covered by water and buildings constructed on land;

"land use objective" means a land use objective declared under section 8, in respect of which notice has been given under that section;

"local authority" means a municipal council or community government council within the meaning of the *Local Government Act*;

"local member", in relation to a control plan, means a person appointed under section 71 or 72 to be a member in respect of the area to which the control plan relates;

## *Planning*

"member" means a person appointed as a member of the Planning Authority and includes the Chairman and a Deputy Chairman and an alternate member appointed under section 74 while acting as a member;

"member of a local authority" has the same meaning as "member" has in the *Local Government Act*;

"member of the Appeals Tribunal" includes the President and the Deputy President;

"municipality" has the same meaning as in the *Local Government Act*;

"notice of refusal" means a notice of refusal issued under section 52;

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

"Planning Authority" means the Northern Territory Planning Authority established by section 67;

"President" means the person appointed under section 91 as the President of the Appeals Tribunal and includes -

(a) the Deputy President and the member nominated under section 91(3), while performing the functions or exercising the powers of the President; and

(b) in relation to an appeal, a member nominated under section 102(2) to preside over the appeal, while the member is so presiding;

"proposed control plan" means a control plan prepared for the purposes of section 11;

"service authority" means the Territory, a minister, a local authority, the Power and Water Authority established by the *Power and Water Authority Act* or a statutory corporation prescribed for the purposes of Division 5 of Part 4 and/or section 65, as the case may be;

"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;

## *Planning*

"subdivision" means, subject to subsections (2) and (3) of this section, 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,

but does not include -

- (c) 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, where the remainder of each parcel of land on which the road is situated remains one allotment;
  - (iii) the vesting of land in a local authority under section 131 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* where it is to be consolidated with the land already held by the grantee;
- (d) a subdivision under the *Unit Titles Act* within the meaning of Part III of the *Unit Titles Act* or referred to in section 4(6) of that Act;
- (e) a subdivision which creates not more than 2 lots where 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*;
- (f) the subdivision of pastoral land under section 61 or 66 of the *Pastoral Land Act* where the land will remain, after the subdivision, pastoral land within the meaning of that Act;
- (g) a subdivision required pursuant to the *Encroachment of Buildings Act*;

## *Planning*

- (h) a sublease under the *Pastoral Lands Act*;
- (j) a subdivision required under any other Act;  
or
- (k) a subdivision or a subdivision of a class  
of subdivision prescribed for the purposes  
of this definition;

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

"town" means -

- (a) a town within the meaning of the *Crown  
Lands Act*;
- (b) a municipality; or
- (c) land specified by the regulations to be an  
area which is to be treated as a town or  
land which was specified to be treated as  
a town under the former Act and which shall  
continue to be so treated by virtue of the  
operation of section 135 of this Act;

"works" means, as the case requires -

- (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.

(2) Land shall not 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  
exceeding 12 years; or
- (b) by reason only of the lease of part of a  
building.

(3) For the purposes of subsection (2), a lease,  
licence or other right to use or occupy a part of land  
which 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

## *Planning*

- (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 exceeds 12 years, shall be taken to be a lease, licence or right for a term exceeding 12 years.

### 4. 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 - ADMINISTRATION

### 5. POWER TO ENTER LAND

- (1) Subject to this section, where -
  - (a) the Minister or a person authorised in writing by the Minister for the purpose of performing a function or exercising a power of the Minister; or
  - (b) the Planning Authority or a person authorised in writing by the Planning Authority for the purpose of performing a function or exercising a power of the Planning Authority,

has -

- (c) reasonable grounds to believe that it is necessary to do so for the purpose of performing that function or exercising that power; and
- (d) given reasonable notice to the owner, occupier or person apparently in charge of the land,

he, she or it may, at all reasonable times, enter any land.

(2) A person shall not enter a building or part of a building used for residential purposes without the consent of the occupier of the building or part of a building or a search warrant.

(3) Where a member of the Police Force or an authorised officer makes a complaint on oath to a Justice to the effect that the member or authorised officer has reason to suspect, and believes, that this Act has or the Regulations have been or is or are being contravened in or

## *Planning*

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 officer to enter the premises to search for evidence in relation to the contravention in or on the premises.

(4) Section 120BA(4) to (8), inclusive, of the *Police Administration Act* apply to and in relation to a search warrant issued under and in pursuance of subsection (3).

### 6. DELEGATION BY MINISTER

(1) The Minister may, by instrument in writing, delegate to a person or to the holder for the time being or from time to time of an office by or under an Act any of the Minister's powers and functions under this Act, other than this power of delegation.

(2) A power or function delegated under this section, when exercised or performed by the delegate is, for the purposes of this Act or the Regulations, deemed to have been exercised or performed by the Minister.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

### 7. FEES AND CHARGES

(1) The Minister may, by notice in the *Gazette*, prescribe the fees to be charged in connection with matters under this Act.

(2) The Minister may, in the circumstances of a particular case, in writing, waive 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, commensurate with the reasonable cost of providing the service.

## PART 3 - LAND USE OBJECTIVES AND INTERIM DEVELOPMENT CONTROL ORDERS

### 8. MINISTER MAY DECLARE LAND USE OBJECTIVES

(1) Subject to this section, the Minister may, by instrument in writing, declare a land use objective in relation to an area specified in the instrument or declare an amendment to a land use objective.

## *Planning*

(2) The Minister shall not declare a land use objective or an amendment to a land use objective unless he or she -

(a) has, subject to this section, determined a process for, and the manner and form of, public consultation in respect of the particular objective or amendment proposed (including, but not limited to, the formation of working groups for the purposes of this section); and

(b) has -

- (i) subject to subsection (7), exhibited a copy of the proposed land use objective or amendment, or a notice describing the intention of the objective or amendment, in accordance with his or her determination under paragraph (a);
- (ii) advertised that a copy of, or a notice describing the intention of, the proposed land use objective or amendment has been exhibited;
- (iii) sought submissions from the public in such manner and form as he or she thinks fit (including submissions from the Planning Authority or a local authority), such submissions to be provided within such period, ending not earlier than 28 days after the date of the advertisement under subparagraph (ii) as the Minister has determined under paragraph (a) and specifies in the advertisement; and
- (iv) after the expiration of the period referred to in subparagraph (iii), considered the submissions, if any, received.

(3) Where the Minister decides to alter a proposed land use objective or amendment that has been exhibited under this section, the Minister may, in such manner and form as he or she thinks fit, re-exhibit and/or seek further submissions in respect of the land use objective or amendment as altered.

(4) The Minister shall cause notice of the declaration of a land use objective or an amendment to a land use objective to be published in the *Gazette*.

(5) A notice under subsection (4) shall -

(a) contain a brief summary of the objects and purpose of the land use objective or amendment; and



## *Planning*

(b) specify the area of land to which it relates, and indicate the place where copies of the declaration may be inspected and purchased.

(6) A land use objective or an amendment to a land use objective takes effect on -

(a) the date of its notification under subsection (4); or

(b) where a later date is provided for in the notice, that later date.

(7) Where the Minister is of the opinion that a proposed amendment to a land use objective is not so significant as to require exhibition in accordance with this section, he or she may, without exhibiting the amendment, declare the amendment to a land use objective.

### 9. INCONSISTENCY BETWEEN PLAN, &c., AND OBJECTIVE

(1) A consent authority shall, where it is of the opinion that an existing control plan is inconsistent with a land use objective, prepare and exhibit under Part 4 a draft control plan amendment proposing the removal of the inconsistency.

(2) Where a consent authority, other than the Minister, proposes to determine a development application in a manner which may be, in its opinion, inconsistent with a land use objective, it -

(a) shall notify the Minister in writing; and

(b) where the Minister -

(i) does not respond within 14 days after being notified under paragraph (a) or approves the proposed determination - may determine the application in accordance with the proposed determination; or

(ii) within 14 days after being notified under paragraph (a), advises that, in his or her opinion, the proposed determination is inconsistent with a land use objective - shall determine the application in accordance with the direction of the Minister.

## *Planning*

### 10. INTERIM DEVELOPMENT CONTROL ORDERS

(1) Where -

(a) the Minister -

(i) decides that a land use objective or an amendment to a land use objective is to be declared; or

(ii) intends to prepare a proposed control plan; or

(b) a consent authority intends to prepare a proposed control plan or draft control plan amendment,

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 land use objective, amendment to a land use objective proposed control plan or draft control plan amendment is to apply.

(2) An interim development control order may declare that -

(a) a provision of a control plan does not apply to all or part of the land to which the order relates; or

(b) development specified in the order in all or part of the land to which the order relates may proceed only with the consent under Part 7 of the consent authority specified in the order,

and while the order remains in force the provision does not apply, or the development may only proceed, accordingly.

(3) The Minister may, in an interim development control order, nominate himself or herself or the Planning 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) where a later date is provided for in the order, that later date,

and remains in force for such period, not exceeding 12 months, as is specified in the order.

## *Planning*

(5) An interim development control order shall 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 where it relates to a different matter to the order that has expired.

(6) The Minister shall not make an interim development control order that allows a development of land which, if the interim development control order had not been made, would not be lawful under the control plan relating to the land.

(7) Where there is an inconsistency between an interim development control order and a control plan, the interim development control order shall prevail and the control plan, to the extent of the inconsistency, has no effect.

(8) Where there is an inconsistency between an interim development control order and a land use objective -

- (a) the interim development control order shall prevail; and
- (b) the land use objective, to the extent of the inconsistency, has no effect,

for the duration of the order.

### PART 4 - LAND USE CONTROL PLANS

#### *Division 1 - Land Use Control Plans*

#### 11. CONTROL PLANS

(1) Subject to this Act, the Minister may, by notice in the *Gazette*, make a land use control plan.

(2) A control plan shall -

- (a) specify the land to which it applies; and
- (b) nominate the Minister or the Planning Authority as the consent authority for the control plan.

(3) A control plan takes effect on -

- (a) the date it is notified in the *Gazette*; or
- (b) where a later date is provided for in the notice, that later date.

## *Planning*

(4) The Minister may, after having regard to the matters specified in section 16(4) -

- (a) prepare and exhibit; and
- (b) seek submissions in respect of,

a proposed control plan, other than a proposed control plan prepared under subsection (6), in accordance with Divisions 3 and 4.

(5) The Minister shall not make a control plan under this section until the proposed control plan to which it relates has been exhibited and any submissions received have been considered.

(6) Where the Planning Authority is nominated as the consent authority for a control plan it may, after having regard to the matters specified in section 16(4) -

- (a) prepare and exhibit; and
- (b) seek submissions in respect of,

a proposed control plan to replace the control plan in accordance with Divisions 3 and 4.

(7) The Minister shall not make a control plan if part of the area to which it would relate is within the jurisdiction of one local authority and another part is within the jurisdiction of another local authority.

### 12. CONSENT AUTHORITY FOR REPLACEMENT OF EXISTING CONTROL PLAN

A control plan ("the replacement control plan") which replaces an existing control plan ("the previous control plan") may declare that the local members holding office in respect of the previous control plan immediately before the commencement of the replacement control plan, are, subject to this Act, deemed to be local members for the purposes of the replacement control plan for the balance of the term for which, if the previous control plan had not been revoked, they would have held office and they shall be the local members for those purposes accordingly.

### 13. NOTICE OF MAKING OF CONTROL PLAN

Where the Minister makes a control plan under section 11, the Minister shall cause notice of the making of the plan to be published in a newspaper circulating in the area to which the plan applies.

## *Planning*

### 14. APPLICATION TO LEASES

Where a control plan or interim development control order applies to land the subject of a lease from the Territory, a provision or covenant in the lease which permits or obligates the use of the leased land for purposes inconsistent with the plan or order is, to the extent of the inconsistency, of no effect.

#### *Division 2 - Amendments to Control Plans*

### 15. INITIATION OF DRAFT CONTROL PLAN AMENDMENT

(1) The Minister may direct a consent authority to prepare and exhibit a draft control plan amendment under this Part.

(2) A person may, on the payment of the prescribed fee, request in writing a consent authority to consider the preparation and exhibition of a draft control plan amendment.

(3) A request under subsection (2) shall be accompanied by an assessment of the effect of the amendment sought on the area in which the land is situated.

(4) A consent authority requested under subsection (2) to prepare a draft control plan amendment may require the person making the request to provide it with such information as it considers necessary to enable it to prepare the draft control plan amendment.

### 16. PREPARATION OF DRAFT CONTROL PLAN AMENDMENT

(1) A consent authority shall, on being so directed under section 15(1), prepare a draft control plan amendment.

(2) A consent authority may -

(a) after considering a request received under section 15(2); and

(b) on receiving from the person making the request the prescribed fee for the preparation and exhibition of a draft control plan amendment and the information, if any, required by it under section 15(4),

prepare the draft control plan amendment requested.

(3) A consent authority may, of its own motion, prepare a draft control plan amendment.

## *Planning*

(4) A consent authority shall, in considering whether or not to prepare a draft control plan amendment under subsection (2) or (3), have regard to the following matters in respect of the land to which the control plan it is proposed to amend applies:

- (a) the land use objectives, if any;
- (b) all draft control plan amendments, if any, currently being exhibited or which have been exhibited but have not been accepted or refused under section 24;
- (c) the merits of the proposal;
- (d) the physical characteristics of the land and its suitability for particular uses;
- (e) the public facilities available and the present or future requirements for such facilities;
- (f) the potential impact on the existing and future amenity of the area in which the land is situated;
- (g) the public interest;
- (h) the social, cultural or environmental impact of the proposal; and
- (j) such other matters as it thinks fit.

### *Division 3 - Exhibition of Proposed Control Plans and Draft Control Plan Amendments*

#### 17. EXHIBITION OF PLANS

- (1) Subject to sections 19 and 20 -
  - (a) the Minister shall, before -
    - (i) making a control plan under section 11; or
    - (ii) accepting under section 24 a draft control plan amendment which he or she caused to be prepared; and
  - (b) a consent authority shall, before submitting under section 23 a proposed control plan or draft control plan amendment to the Minister,

exhibit the proposed control plan or draft control plan amendment by -

## *Planning*

- (c) publishing or causing to be published in the *Gazette* a notice -
  - (i) that a proposed control plan or draft control plan amendment is to be exhibited;
  - (ii) of the places where it is to be exhibited;
  - (iii) of the period of exhibition determined under section 19;
  - (iv) of the person or body to whom written submissions should be made in respect of the proposed control plan or draft control plan amendment; and
  - (v) containing a brief summary of the contents of the proposed control plan or draft control plan amendment, including, where, it consists of or includes a change in the zoning of land and it is, in the opinion of the consent authority, practicable to do so, the address, current zoning and proposed zoning of each parcel of land in respect of which a change of zoning is proposed; and
- (d) displaying or causing to be displayed a copy in a prominent position at places referred to in paragraph (c)(ii).

(2) The Minister or the consent authority, as the case may be, shall publish or cause to be published twice in a newspaper circulating in the area to which the control plan or proposed control plan relates, the notice referred to in subsection (1)(c).

### 18. NOTICE IN RESPECT OF LAND PROPOSED FOR REZONING

(1) Subject to subsection (2), where a proposed control plan or draft control plan amendment proposes the zoning of land or a change in the zoning of land, the consent authority shall, before exhibiting it under section 17 -

- (a) serve or cause to be served notice on the owner of the land; and
- (b) place or cause to be placed on or in the vicinity of the land to which the proposed zoning or change of zoning relates as many notices, in accordance with subsection (3), as it thinks fit,

declaring the current zoning of the land and the change of zoning, if any, and the zoning or change in zoning proposed for the land.

## *Planning*

(2) Subsection (1) does not apply where, in the opinion of the consent authority -

- (a) it is impractical to comply with the subsection because of the location of the land or the number of parcels of land to be affected by the zoning or change of zoning proposed for the land; and
- (b) the notice placed in a newspaper under section 17 is such that all persons likely to be affected by the zoning or change of zoning proposed for the land could reasonably be expected to have notice of it.

(3) A notice under subsection (1)(b) shall be of sufficient size and be so placed that a person with normal unimpaired eyesight can, without optical assistance, read it from the boundary of the public road nearest to the lot in respect of which the zoning or change of zoning is proposed.

(4) A person shall not remove a notice placed on land in accordance with this section until after the end of the exhibition period required under section 19.

Penalty: In the case of a natural person - \$5,000;

In the case of a corporation - \$25,000.

(5) The Minister or the consent authority shall not exhibit a proposed control plan or draft control plan amendment unless it is accompanied by an explanatory document setting out -

- (a) the aims and objectives sought to be achieved through the proposed control plan or the control plan as proposed to be amended; and
- (b) the manner in which the proposed control plan or the control plan as proposed to be amended will be implemented to achieve those aims and objectives.

### 19. EXHIBITION PERIOD

(1) The consent authority shall determine the period of exhibition of a proposed control plan or a draft control plan amendment, which period shall commence on or after the first day on which the notice appears in the newspaper in accordance with section 17(2) and shall end not earlier than 28 days after that day.

(2) Subject to this Part, a proposed control plan or draft control plan amendment shall be exhibited during the period of exhibition determined under subsection (1).



## *Planning*

### 20. EXEMPTION FROM EXHIBITION

(1) Notwithstanding section 17, where in the case of a draft control plan amendment -

- (a) the consent authority, being the Minister, is;  
or
- (b) where the consent authority is not the Minister, the consent authority and the Minister are,

of the opinion that the amendment to be effected as provided in the draft control plan amendment is not so significant as to require exhibition, the draft control plan amendment need not be exhibited.

(2) Where the Minister and the Planning Authority are of the opinion that a class of draft control plan amendments are not so significant as to require exhibition, a draft control plan amendment within the class need not be exhibited.

### 21. SUBMISSIONS

A person may, within the period during which a proposed control plan or draft control plan amendment is exhibited under this Division, make a written submission in relation to the plan to the person or body specified in the notice under section 17 as the person or body to whom written submissions should be directed.

### 22. HEARINGS

(1) Where a consent authority other than the Minister receives a submission under section 21, it shall hold a hearing to consider the proposed control plan or draft control plan amendment and may invite the person from whom the submission was received to attend the hearing.

(2) The consent authority may invite any person to make oral submissions at a hearing under this section.

### *Division 4 - Acceptance, &c., of Proposed Control Plans and Draft Control Plan Amendments*

### 23. SUBMISSION TO MINISTER

- (1) As soon as practicable after -
  - (a) the expiration of the period of exhibition of a proposed control plan or draft control plan amendment specified under section 19; or
  - (b) the preparation of a draft control plan amendment which, by virtue of section 20, need not be exhibited,

## *Planning*

the consent authority, where it is not the Minister, shall submit to the Minister -

- (c) the proposed control plan or draft control plan amendment;
- (d) the explanatory documents accompanying the proposed control plan or draft control plan amendment, as exhibited;
- (e) all submissions received under section 21 in respect of the proposed control plan or draft control plan amendment; and
- (f) a report on -
  - (i) the purpose and suitability of; and
  - (ii) the issues raised in oral and written submissions received in relation to,the proposed control plan or draft control plan amendment.

(2) The Chairman may, at the request of a consent authority, prepare the report under subsection (1)(f).

### 24. ACCEPTANCE BY MINISTER

(1) After considering a proposed control plan and the submissions and report, if any, under section 23 relating to it, the Minister may -

- (a) accept the proposed control plan and make a control plan under section 11;
- (b) subject to this Part, alter and accept the proposed control plan and make a control plan under section 11; or
- (c) refuse to make a control plan in accordance with the proposed control plan.

(2) After considering a draft control plan amendment and the submissions and the report, if any, under section 23 relating to it, the Minister may -

- (a) accept the draft control plan amendment and, by notice in the *Gazette*, amend the control plan to which it relates;
- (b) subject to this Division, alter and accept the draft control plan amendment and, by notice in the *Gazette*, amend the control plan to which it relates; or

## *Planning*

(c) refuse to amend a control plan in accordance with the draft control plan amendment.

(3) An amendment of a control plan takes effect on -

(a) the date it is notified in the *Gazette*; or

(b) where a later date is provided for in the notice, that later date.

(4) The Minister shall not accept a draft control plan amendment if it relates to land part of which is in the jurisdiction of one local authority and another part of which is in the jurisdiction of another local authority.

### 25. RE-EXHIBITION IF EXTENSIVE CHANGE BY MINISTER

(1) Where the Minister -

(a) alters a proposed control plan or draft control plan amendment under section 24; and

(b) is satisfied that the alterations are sufficiently extensive or significant as to justify the re-exhibition of the plan or amendment as altered,

the Minister shall re-exhibit the proposed control plan or draft control plan amendment as altered, or, where the Minister is not the consent authority, refer the plan or amendment, as altered, to the consent authority for re-exhibition and the consent authority shall re-exhibit it accordingly.

(2) Subject to this section, sections 17, 18, 19, 21, 22, 23 and 24 apply to and in relation to the re-exhibition under subsection (1) of a control plan or draft control plan amendment altered under section 24 as if the control plan or draft control plan amendment so altered had not previously been exhibited.

(3) Section 21 applies to a control plan or draft control plan amendment re-exhibited under subsection (1) only in relation to the alterations made under section 24.

(4) Section 18 applies to an alteration under section 24 only if the zoning of the land, after the alteration is made, varies from that originally proposed in the plan or draft control plan amendment to which the alteration relates.

## *Planning*

### *Division 5 - Developer Contributions*

#### 26. DEFINITIONS

In this Division, unless the contrary intention appears -

"contribution" means the amount calculated under and in accordance with a contribution plan payable in accordance with this Division;

"contribution plan" means a contribution plan made under section 27;

"formula for calculation" means a formula for the calculation of contribution referred to in section 27(8)(d) or 28(3);

"infrastructure" means prescribed works (being capital works only and not including the repair or maintenance of such works), but does not include works required as a condition of a development permit to be carried out on the land to which the permit relates or the provision of public car parking;

"policy area" means a policy area within the meaning of section 27(7).

#### 27. SERVICE AUTHORITY MAY MAKE A CONTRIBUTION PLAN

(1) A control plan may require, in relation to a particular type of development, the payment of a contribution towards infrastructure or public car parking, as assessed by a service authority in accordance with a contribution plan, in order to meet the expected increased demand for infrastructure or public car parking as a consequence of the development in a policy area specified in the relevant contribution plan.

(2) A service authority may, after the proposed contribution plan to which it relates has been exhibited for a period of not less than 28 days, and any submissions received have been considered, by notice in the *Gazette* make a contribution plan.

(3) A service authority -

(a) may prepare; and

(b) shall exhibit and seek submissions in respect of,

a proposed contribution plan.

## *Planning*

(4) A service authority shall ensure that all contribution plans proposed or made by it are available for inspection and purchase by the public.

(5) A contribution plan shall not, in any legal proceedings commenced after the expiration of 90 days after the date on which the making or purported making of the plan is notified in the *Gazette*, 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 the making of such a plan.

(6) A contribution plan made by a service authority that is a local authority shall not apply to land other than land within the jurisdiction of the local authority.

(7) A contribution plan shall relate to a policy area specified in the plan, being land which can appropriately be treated as a discrete area for the provision of infrastructure or public car parking of the type specified in the plan by virtue 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 which is or will be required in the area of land.
- (8) A contribution plan shall contain -
- (a) a description of the infrastructure or public car parking which is or will be required in the policy area;
  - (b) an estimation of the priority for the order of construction of works comprised in each type of infrastructure or public car park;
  - (c) an estimation, and the method for calculation of, the capital cost of works comprised in each type of infrastructure or public car park;
  - (d) a formula for calculation, in respect of each type of development for which a contribution is required under the plan, of the contribution required, being -
    - (i) in relation to the provision of infrastructure - determined with regard to prescribed types of information or estimations, descriptions or other information referred to in this section; and

## *Planning*

- (ii) in relation to the provision of public car parking - determined in accordance with section 28; and

- (e) such other information as is prescribed.

(9) A formula for calculation referred to in subsection (8)(d)(i) may relate to the intensity of a development, the anticipated increased usage of proposed infrastructure as a consequence of a development of a particular type and/or such other factors as are specified in the contribution plan.

### 28. CONTRIBUTIONS FOR CAR PARKING

(1) A control plan may require, in relation to a particular type of development, that the development shall include provision for public car parking in order to meet the expected increased demand for car parking spaces in the policy area as a consequence of the development.

(2) Notwithstanding that a control plan requires that a certain number of public car parking spaces be provided as part of a development, the consent authority, after considering all the circumstances of a particular case and if satisfied that the intent of the control plan will still be fulfilled, may determine, as a condition of a development permit, that a different number of public car parking spaces, or no spaces, are to be provided as part of the development.

(3) Where a consent authority has determined, as a condition of a development permit, that a number of public car parking spaces are to be provided as part of the development, a contribution, calculated in accordance with a formula for calculation contained in a contribution plan made by the service authority, being the local authority for the area to which the control plan relates, may be paid to the local authority in lieu of the provision of some or all of the number of car parking spaces required in accordance with subsection (1) or (2).

(4) A formula for calculation referred to in subsection (3) shall have regard to -

- (a) the value of the land necessary for an off - street car park in the policy area; and
- (b) the estimated cost of construction of public car parking spaces on the land referred to in paragraph (a), using the most appropriate or cost effective form of construction, whether ground level or multi-level, having regard to all the circumstances in the policy area.

## *Planning*

### 29. CONTRIBUTION PAYABLE AS CONDITION OF PERMIT

(1) Subject to subsection (2) and section 103(6), a contribution payable under this Division is deemed to be a condition of the development permit in respect of which it is payable and is to be provided by the holder of the permit in accordance with this Division.

(2) A contribution plan is not valid unless -

- (a) the total cost of the provision of infrastructure or car parking in respect of which the contribution is to be payable under the plan by the holder of the permit is calculated by reference to the most appropriate and cost-effective form of construction;
- (b) the contribution to be payable by the holder of the permit is calculated as part or all of the total cost of the provision of infrastructure or car parking; and
- (c) the contribution to be payable by the holder of the permit is relative to the proportion of anticipated future usage of the infrastructure or public car parking attributable to the development of the land to which the permit relates.

(3) Where the holder of a development permit is required, as a condition of the permit, to construct infrastructure himself or herself, the amount of money spent in constructing that infrastructure shall be set off against the contribution otherwise payable under this Division, to the extent of, but not exceeding, the amount of contribution payable.

### 30. PAYMENT OF CONTRIBUTION

A contribution to be provided in accordance with this Division shall be provided -

- (a) on completion of the development;
- (b) where the development is constituted only by a change in the use to which the land may be put - before the commencement of the new use;
- (c) where 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 shall be provided or a proportion of the

## *Planning*

total contribution as assessed by the service authority in accordance with the contribution plan shall 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; or

- (d) as otherwise specified in a written agreement between the service authority and the holder of the development permit.

### 31. DUTIES OF SERVICE AUTHORITY

A service authority to which money is paid in accordance with this Division shall -

- (a) maintain a trust account in relation to each contribution plan, being, where the service authority is a local authority, a trust 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 under this section into the trust account; and
- (c) within a reasonable time, having regard to all the circumstances, expend money paid into the trust account 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.

### 32. DISCOUNT, INTEREST RATE, &c.

A service authority may, (in the case of a body corporate, by resolution, and, in any other case, in such manner and form as is prescribed) declare -

- (a) that a discount shall be given for the prompt payment or the payment in advance, of a contribution payable under this Division;
- (b) the rate or rates of a discount referred to in paragraph (a) and the circumstances in which it shall be given;
- (c) the rate of interest payable on a contribution or part of a contribution where, in each case, the contribution is paid late, such interest -
  - (i) being calculable on the amount outstanding from time to time on a monthly basis until the contribution is paid in full; and



## *Planning*

- (ii) being not more than the prescribed rate of interest, or, in the case of a local authority, not more than the rate of penalty interest payable to it on rates payable under the *Local Government Act* but not paid when due and payable; and
- (d) that a refund or remittance of all or part of a contribution otherwise payable shall be made in the special circumstances of a particular case.

### 33. ENFORCEMENT

Where a contribution is to be paid to a service authority under this Division, the service authority may -

- (a) where it is a body corporate or a statutory corporation, in its own name take proceedings to enforce or secure the observance of the condition;
- (b) where it is a minister, in the name of the Territory take proceedings to enforce or secure the observance of the condition; and
- (c) in any other case, take proceedings to enforce or secure the observance of the condition in the prescribed manner and/or form.

### *Division 6 - General*

### 34. AVAILABILITY OF CONTROL PLANS

(1) The Minister shall make available, for purchase or inspection by the public, copies of all proposed control plans exhibited under section 11(4).

(2) A consent authority shall make available, for purchase or inspection by the public, copies of all -

- (a) proposed control plans exhibited under section 11(6);
- (b) control plans;
- (c) draft control plan amendments in respect of control plans, being amendments exhibited under Division 3;
- (d) control plan amendments in respect of control plans;
- (e) the explanatory documents relating to proposed control plans or draft control plan amendments; and

## *Planning*

- (f) repealed control plans or repealed control plan amendments,

for which it is or was nominated as the consent authority.

(3) A copy of a proposed control plan or a draft control plan amendment shall not be sold unless an explanatory document in relation to the plan or amendment is sold with it.

### 35. MAPS, &c., NEED NOT BE SOLD

A copy of a control plan, proposed control plan, control plan amendment or draft control plan amendment which incorporates maps, plans, designs or diagrams may be sold notwithstanding that a map, plan, design or diagram so incorporated is not sold with it.

### 36. CERTIFIED COPIES AND EXTRACTS OF CONTROL PLANS

(1) A person may apply to the consent authority in the approved form accompanied by the prescribed fee for a certified copy or extract of a control plan or control plan amendment for which it is or was nominated as the consent authority, whether or not the plan or amendment is in force at the time the application is made.

(2) A consent authority may certify that a copy or extract of a control plan or an amendment to a control plan for which it is or was nominated as the consent authority is a true copy of the plan or part of the plan.

(3) The Minister may, where a request is made to him or her and where it is possible to do so, certify that a copy or extract of a planning instrument made or deemed to be made and repealed under the former Act or under an Act repealed by the former Act is a true copy of that planning instrument.

(4) The Minister may, where a request is made to him or her and it is possible to do so, certify that a copy or extract of a repealed control plan or an amendment to a repealed control plan in respect of an area of land in relation to which the Planning Authority is not the consent authority nominated under section 11 at the time of the application is a true copy of or extract from the repealed control plan.

(5) A copy of a plan, of an extract of a plan, of a planning instrument made or deemed to be made under the former Act or of a repealed control plan certified under subsection (2), (3) or (4) is admissible in a court or before a body or person acting judicially as prima facie evidence of the contents of the control plan, control plan amendment, repealed planning instrument under the former Act or repealed control plan, as the case may be.

## *Planning*

### PART 5 - ENFORCEMENT OF CONTROL PLANS

#### 37. NO USE OR DEVELOPMENT EXCEPT IN ACCORDANCE WITH CONTROL PLANS, &c.

Subject to this Act, a person shall not use or develop land -

- (a) to which a control plan applies except in accordance with the control plan; or
- (b) to which an interim development control order applies except in accordance with the order and the control plan, if any, applying to the land.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

#### 38. NOTICE TO CEASE

(1) Without derogating from section 37, where land is being used or developed in contravention of a control plan or an interim development control order, the consent authority may serve on the owner of the land a notice to cease in the approved form requiring the owner to cease the use or development.

(2) Where an owner has been served with a notice to cease under subsection (1), he or she shall immediately cease to use or develop the land in contravention of the control plan or interim development control order.

Penalty: In the case of a natural person - \$10,000 and \$500 for each day during which the offence continues;

In the case of a corporation - \$50,000 and \$2500 for each day during which the offence continues.

### PART 6 - EXISTING USES

#### 39. INTERPRETATION

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

"existing non-conforming use" means a use of land (including an existing building or existing works) lawful under this Act immediately before the commencement of a control plan or a control plan amendment and which would, except for this

## *Planning*

Part, be unlawful under this Act by virtue of that plan or amendment and includes a non-conforming use;

"former control plan", in relation to land, means the control plan that applied to the land immediately before the commencement of the control plan currently applying to the land;

"non-conforming use" means a use of land not permitted under a control plan otherwise than in accordance with a consent under section 45.

(2) In relation to a control plan, a building is an existing building or works are existing works for the purposes of this Part, if -

- (a) it or they -
  - (i) was or were in existence or being carried out immediately before the commencement of the control plan or control plan amendment; or
  - (ii) is or are completed as referred to in section 41; and
- (b) after the commencement of the control plan or control plan amendment, the land is used or the works continue to be carried out for the same purposes as those for which it was used or they were being carried out or was or were permitted to be used or carried out immediately before the commencement of the control plan or control plan amendment.

### 40. EXISTING USES PROTECTED

(1) Subject to subsection (2), a person does not contravene a control plan by reason only of continuing an existing non-conforming use after the commencement of the provision of the control plan with which the use conflicts.

(2) A person may continue an existing non-conforming use only where -

- (a) the use is restricted to the part of the land on which, immediately before the commencement of the provision of the control plan with which it conflicts, the use took place; and
- (b) the intensity of the use is not greater than the intensity of use immediately before the commencement of the provision of the control plan with which it conflicts.

## *Planning*

### 41. EXISTING CONSTRUCTION OR WORKS PROTECTED

(1) A person does not contravene a control plan by reason only of continuing works (whether or not to completion) after the commencement of the provision of the control plan with which those works conflict if -

- (a) the works were lawful under a development permit in force immediately before that commencement; or
- (b) the works were -
  - (i) otherwise lawful under this Act; and
  - (ii) substantially commenced,  
immediately before the commencement of the provision.

(2) A building or works to which this section refers may be used for the purpose for which it was or they were constructed.

(3) Sections 57 and 58 do not apply to a development permit referred to in subsection (1).

### 42. REPAIRS AND MAINTENANCE

A person may perform repair work on or maintain an existing building or existing works, which repair work or maintenance would, except for this section, constitute unauthorised development, if the repair work or maintenance is not so extensive as to constitute a modification or alteration of the building or works for which the Minister's consent should be sought under section 43(1)(b).

### 43. APPLICATION FOR CONSENT TO CERTAIN USES

(1) The owner of land, or a person authorised in writing by the owner, may, in accordance with subsection (2), apply in the approved form, accompanied by the prescribed fee, for the Minister's consent to -

- (a) engage in a non-conforming use of the land in the place of an existing non-conforming use; or
- (b) to modify or alter works or a building on the land, where such activities would not otherwise be permitted in respect of an existing non-conforming use.

(2) An applicant shall lodge his or her application with the consent authority in respect of the land to which the application relates.

## *Planning*

(3) Where the consent authority receives an application under subsection (2) it shall notify or cause the applicant to notify, in the prescribed manner and form -

- (a) that an application has been made under this section;
- (b) of the details of the application; and
- (c) that a member of the public may make a submission in respect of the application within such period, ending not earlier than 14 days after the date on which notice was given, as is specified in the notice.

(4) A person may make a submission to the consent authority in respect of an application under this section.

(5) A consent authority may invite a person who has made a submission to it in respect of an application under this section to appear and to give evidence at a hearing of the application.

(6) The consent authority may charge the applicant the reasonable cost of notification in accordance with this section.

### 44. CONSENT AUTHORITY TO CONSIDER AND REPORT

Where a consent authority receives an application under section 43, it shall, after the expiration of 14 days after notice is given under subsection (3) of that section -

- (a) consider the application by applying the criteria specified in section 45(2) or (3);
- (b) have regard to all submissions, if any, made under section 43;
- (c) have regard to all land use objectives, if any, declared in respect of the land to which the application relates; and
- (d) where it is not the Minister, submit to the Minister -
  - (i) a recommendation that the Minister consent conditionally or unconditionally, or refuse to consent, to the proposal in the application; and
  - (ii) its written reasons for the recommendation.

## *Planning*

### 45. DETERMINATION OF APPLICATION FOR CONSENT

- (1) The Minister shall, as soon as practicable -
  - (a) after receiving an application under section 43 and considering it under section 44(a); or
  - (b) where the Minister is not the consent authority in respect of the land to which an application relates, after -
    - (i) the expiration of the period for making submissions of which notice has been given under section 43; and
    - (ii) considering the recommendation of the consent authority under section 44(d),

determine the application by -

- (c) consenting, conditionally or unconditionally; or
- (d) refusing to consent,

to the proposal in the application.

(2) Notwithstanding a control plan, the Minister shall not consent to the proposal in an application under section 43(1)(a) unless the use to be substituted for the existing non-conforming use would, in the opinion of the Minister, be less detrimental to the amenity of the area in which the land is situated than the existing non-conforming use.

(3) The Minister shall not consent to the proposal in an application under section 43(1)(b) unless, in his or her opinion, the modification or alteration proposed will not -

- (a) adversely affect the amenity of the area in which the land is situated;
- (b) result in a substantial increase in the physical size of a building, as determined by the floor area, storage capacity or other structural dimensions considered by the Minister to be relevant; or
- (c) result in a substantial increase in the intensity of the use of the land.

(4) The Minister shall, as soon as practicable after determining an application under subsection (1), give to -

- (a) the applicant; and

## *Planning*

- (b) where the consent authority is not the Minister  
- the consent authority,

written notice of the determination.

(5) Where the Minister approves an application under this section in relation to a proposal referred to in section 16 of the *Unit Titles Act*, the building to which the approval relates is deemed to conform with the relevant control plan for the purposes of that section.

### 46. ABANDONMENT OF EXISTING NON-CONFORMING USES

A person is conclusively presumed to have abandoned an existing non-conforming use if he or she discontinues the use for a continuous period of not less than 12 months or such longer period as the Minister determines under section 47(4)(a).

### 47. EXTENSION OF PERIOD

(1) An owner of land, or a person authorised in writing by the owner, may, within 12 months after discontinuing an existing non-conforming use, apply to the Minister, in the approved form accompanied by the prescribed fee, for an extension of the period referred to in section 46.

(2) An application under subsection (1) shall be delivered to the consent authority.

(3) Where the consent authority, not being the Minister, receives an application under subsection (2), it shall -

- (a) consider the application; and

- (b) submit to the Minister -

- (i) a recommendation that the Minister consent conditionally or unconditionally or refuse to consent to the proposal in the application; and

- (ii) its written reasons for the recommendation.

(4) Subject to this Act, the Minister shall, after considering the recommendation, if any, of the consent authority under subsection (3), determine an application under subsection (1) by -

- (a) extending, either conditionally or unconditionally; or

- (b) refusing to extend,

the period.



## *Planning*

(5) The Minister shall, as soon as practicable after determining an application under subsection (4), issue to the applicant and, where the consent authority in respect of the land is not the Minister, the consent authority, notice of the determination.

### PART 7 - DEVELOPMENT APPLICATIONS

#### *Division 1 - Preliminary*

#### 48. APPLICATION

This Part applies -

- (a) where a control plan permits development only with the consent of the consent authority;
- (b) to the subdivision or consolidation of freehold or leasehold land; and
- (c) where, under an interim development control order, the consent of a consent authority to a development is required.

#### 49. DEVELOPMENT APPLICATIONS

(1) The owner of land, or a person authorised in writing by the owner, may, in the approved form accompanied by the prescribed fee, apply to the consent authority for consent to carry out a development on the land.

(2) A development application shall contain an assessment of the effect of the proposed development on the area in which the land is situated.

(3) A consent authority to which an application has been made under subsection (1) may require the applicant to provide it with such additional information as it considers necessary in order to enable the proper consideration of the application.

#### *Division 2 - Determination of Development Applications*

#### 50. NOTIFICATION OF PROPOSAL

(1) Where a development application is received by a consent authority, the consent authority shall, before it determines the application, notify, or require the applicant to notify, in the prescribed manner and form -

- (a) that a development application has been made;
- (b) of the details of the application; and

## *Planning*

- (c) that a member of the public may make a submission in respect of the application within such period, ending not earlier than 14 days after the date on which notice was given, as is specified in the notice.

(2) Where a development application in respect of land within the jurisdiction of a local authority is received by the consent authority, the consent authority shall notify, in writing, the local authority -

- (a) that a development application has been made;
- (b) of the details of the application; and
- (c) that it may make a submission in respect of the application within such period, ending not earlier than 14 days after the date on which notice was given, as is specified in the notice.

(3) A person or local authority who or which has been notified of a development application under this section may, within the period specified under subsection (1) or (2), make a submission to the consent authority and, where the consent authority receives such a submission, it shall consider the submission before determining the application.

(4) A consent authority shall, at the request of a local authority notified under subsection (2), permit a representative of the local authority to attend and give evidence at a hearing of the development application.

- (5) A consent authority may invite -

- (a) a person; or
- (b) where the person is not a natural person, a representative of the person,

who has made a submission to it in respect of a development application to appear and to give evidence at the hearing of the application.

(6) The consent authority may charge the applicant the reasonable cost of notification in accordance with this section.

### 51. MATTERS TO BE TAKEN INTO ACCOUNT

A consent authority shall, in considering a development application, take into account -

- (a) the land use objectives, if any, relating to the land;
- (b) the control plan or an interim development control order, if any, applying to the land; and

## *Planning*

(c) the following matters:

- (i) where a report or final statement within the meaning of the *Environmental Assessment Act* has been prepared in relation to the proposed development - the contents of the report or statement and the results of any assessment of the report or statement under that Act by the Minister administering that Act;
- (ii) the merits of the proposed development;
- (iii) the physical characteristics of the land and its suitability for the purposes of the proposed development;
- (iv) the public facilities or public open space available in the area in which the land is situated and the requirement, if any, for such facilities or land to be provided by the developer;
- (v) 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 such utilities, infrastructure or land to be provided by the developer for that purpose;
- (vi) the potential impact on the existing and future amenity of the area in which the land is situated;
- (vii) the public interest;
- (viii) any submissions received from a local authority or a person under section 50; and
- (ix) such other matters as it thinks fit.

### 52. DETERMINATION OF DEVELOPMENT APPLICATIONS

(1) Subject to this Act, a consent authority shall, as soon as practicable after receiving it, determine a development application by -

- (a) consenting, either conditionally or unconditionally, to -
  - (i) the proposed development; or

## *Planning*

- (ii) the proposed development as amended by the consent authority in such manner as it thinks fit,

and issuing a development permit or permits, in the approved form; or

- (b) refusing to grant its consent and issuing a notice of refusal in the approved form.

(2) As soon as practicable after a consent authority determines an application under subsection (1), it shall -

- (a) serve on the applicant a statement of the reasons for the determination; and
- (b) where a submission has been made under section 50(3) in respect of the development application to which the determination relates - make available for inspection and purchase by the public a copy of the statement of the reasons for the determination.

(3) Where the Minister is not the consent authority, a statement of the reasons for the determination shall contain a statement as to whether the applicant has a right to appeal to the Appeals Tribunal under Part 9 against a condition imposed on a permit, the refusal to grant a permit or the amendment of a proposal in a development application.

(4) A consent authority shall advise the local authority, if any, in respect of the land to which an application relates as to whether consent was given to the development proposal in the application and provide to the local authority a copy of the statement of the reasons for the determination, if any.

(5) Where the Minister directs a consent authority in respect of all or a part of a development permit, the consent authority shall state in the statement of reasons provided to the applicant that all or a specified part of the development permit, as the case may be, was subject to a direction of the Minister and shall not be the subject of an appeal.

### 53. CONDITIONS MAY BE PLACED ON PERMITS

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

## *Planning*

### 54. CONDITIONS MAY RELATE TO STAGE OF DEVELOPMENT

A condition under section 53 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 where 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, whether the stage completed relates to all or part of the area of land to which the permit relates and notwithstanding that conditions relating to stages yet to be completed have not been complied with.

### *Division 3 - Duration of Development Permits*

### 55. DEFINITIONS

In this Division, unless the contrary intention appears -

"date of consent" means -

- (a) the date on which the consent authority issued the development permit under section 52(1); or
- (b) where an appeal under Part 8 has been determined - the date on which the consent authority, in accordance with an order under section 103(4), issued or amended the development permit,

whichever is the later;

"base period of the 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;
- (b) where no date on which the permit will lapse is specified in a permit, a period of 2 years after the relevant date of consent; or
- (c) a period referred to in paragraph (a) or (b), as extended, if at all, under section 57.

## *Planning*

### 56. DURATION OF PERMIT

(1) Subject to this Part, a development permit remains in force during the base period of the permit, and, where the duration of a permit is extended under this section or section 57, for the period of that extension.

(2) Where a consent is conditional on the carrying out of works and those works are substantially commenced in accordance with the permit within the base period of the permit, then the permit shall not lapse at the end of the base period of the permit but shall instead be automatically extended for another 2 years from the date on which it would otherwise lapse.

(3) A development permit which relates to a plan of subdivision or consolidation shall not lapse if within the base period of the permit, or within the period extended in accordance with this section or section 57, the plan of survey is approved under section 49(3) of the *Licensed Surveyors Act*.

(4) Subject to this Part, where a development under a development permit includes or consists of the establishment of or a change in a use, the development permit shall not lapse if the use has commenced in accordance with the permit within the base period of the permit or within the period extended in accordance with this section or section 57.

### 57. EXTENSION OF PERIOD OF PERMIT

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 in the approved form accompanied by the prescribed fee, for an extension of the base period of the permit or of the period during which the permit does not lapse after it has been extended in accordance with section 56(2) and 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,

and shall, where it does not make a determination in accordance with the application, give to the applicant a statement of its reasons.

## *Division 4 - Development Works*

### 58. VARIATION OF CONDITIONS OF PERMIT

(1) The owner of land the subject of a development permit, or a person authorised by the owner, may, at any time before the permit lapses, apply to the consent authority, in the approved form accompanied by the

## *Planning*

-prescribed fee, for a variation of a condition to which the development permit is subject.

(2) The consent authority may, in writing, vary a condition to which a permit is subject if satisfied that the variation would not result in the development being substantially different from the development originally permitted and shall, where it does not make a determination in accordance with the application, give to the applicant a statement of its reasons.

### 59. DEVELOPMENT TO BE IN ACCORDANCE WITH PERMIT

(1) A person shall not develop land to which a development permit applies except -

- (a) in accordance with the permit; or
- (b) as permitted under the control plan, if any, applying to the land, or, where an interim development control order applies to the land, as permitted under the order; or
- (c) as otherwise permitted under this Act.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

(2) Subject to this section and section 54, a person shall not use land in a manner which is only permitted in accordance with a development permit until all the relevant conditions of the permit have been complied with.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

(3) Subject to this Act, where a notice of appeal is lodged under section 99 in respect of a development permit, the holder of the permit shall not develop or use the land in a manner only permitted under the development permit until the appeal is concluded under this Act.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

## *Planning*

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

### 60. CONSULTATION AND AGREEMENT

(1) In this section, "consultant" means a statutory corporation, a body corporate, the holder of a statutory office under a law of the Territory or the Commonwealth, a local authority or a minister, specified in a control plan for the purposes of this section.

(2) A control plan may specify that a consent authority shall not consent to a development taking place unless it has -

- (a) consulted with; or
- (b) obtained the agreement of,

a consultant.

(3) Where a control plan specifies that the agreement of a consultant shall be obtained before consenting to a development taking place, it shall specify the matters which the consultant shall take into account in considering whether to agree.

(4) A consultant may, by notice in writing to the consent authority, specify circumstances in which the consultation or agreement required by the control plan may be assumed to have taken place or been given.

(5) A consent authority shall not consent to a development unless -

- (a) where the control plan requires the consent authority to consult with a consultant before consenting -
  - (i) the consent authority has consulted with the consultant; or
  - (ii) the circumstances in which the consultation required by the control plan may be assumed to have taken place exist in relation to the development application; or
- (b) where the control plan requires the consent authority to obtain the agreement of a consultant before consenting -
  - (i) the consent authority has obtained the agreement; or
  - (ii) the circumstances in which the agreement may be assumed to have been given exist.



## *Planning*

### *Division 5 - Subdivisions and Consolidations*

#### 61. RESTRICTION ON SUBDIVISIONS AND CONSOLIDATIONS

A person shall not subdivide or consolidate land otherwise than in accordance with a plan of survey approved under section 49(3) of the *Licensed Surveyors Act*.

Penalty: In the case of a natural person - \$5,000;

In the case of a corporation - \$25,000.

#### 62. PLANS NOT TO BE APPROVED, &c., WITHOUT CONSENT

(1) The Surveyor-General shall not approve, under section 49 of the *Licensed Surveyors Act*, a plan of survey submitted under that section for a subdivision or consolidation of land unless satisfied that consent under this Part has been given for the subdivision or consolidation and, where works are required under this Part to be carried out -

(a) they have been carried out in accordance with the requirements of the consent authority; or

(b) security to the satisfaction of the consent authority has been given for the due completion of the works.

(2) Where land proposed to be subdivided is, or the land to be consolidated is to be, the subject of a lease from the Crown containing development conditions, the security referred to in subsection (1) may, if the consent authority thinks fit, be the lease.

#### 63. PURPORTED SUBDIVISION OR CONSOLIDATION PROHIBITED

(1) A person shall not enter into a transaction purporting to subdivide or consolidate land in contravention of this Part.

Penalty: In the case of a natural person - \$5,000;

In the case of a corporation - \$25,000.

(2) A transaction purporting to subdivide or consolidate land which is in contravention of this Part is void.

### *Division 6 - Certification*

#### 64. CERTIFICATION OF COMPLIANCE WITH PERMIT OR PART

(1) A person may apply in the approved form accompanied by the prescribed fee to the consent authority for the issue of a certificate in the approved form certifying that, or as to the extent to which, the

## *Planning*

conditions of a development permit or the requirements of this Part in relation to land have been complied with and the consent authority shall issue a certificate accordingly.

(2) A certificate issued under this Division is prima facie evidence of the facts certified.

### *Division 7 - Implementation*

#### 65. EFFECT OF LODGING PLANS, &c.

(1) On the depositing, under section 101 of the *Real Property Act*, with the Registrar-General, and registration of, a plan of survey approved under section 49(3) of the *Licensed Surveyors Act* for the subdivision or consolidation of land, all land shown on the plan of survey as -

- (a) a road, street, passage, court, alley, thoroughfare or cul-de-sac, vests in fee simple in the Territory and vests in the service authority for the purpose specified in the plan of survey; or
- (b) a square, park, water or drainage reserve, reserve or other similar open space, vests in fee simple in the service authority specified in the plan of survey,

by virtue of this section and without further assurance, freed and discharged of all interests, trusts, restrictions, dedications, reservations, obligations, mortgages, encumbrances, contracts, licences, charges and rates of any kind.

(2) On the registration of a plan of survey as referred to in subsection (1), the Registrar-General shall make such entries in relation to the affected land in the Register kept under the *Real Property Act* as he or she thinks fit, to record -

- (a) the fact that the plan of survey has been deposited and registered; or
- (b) the vesting of the land under subsection (1).

(3) Every road, street, passage, court, alley, thoroughfare or cul-de-sac vested under subsection (1) shall be a road within the meaning and for the purposes of the *Control of Roads Act* or 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 in favour of a specified service authority.

## *Planning*

(5) Where a plan of survey referred to in subsection (1) indicates an intended easement in favour of a specified service authority and describes it by a description in Schedule 1 or in a regulation made for the purposes of this section then, on the registration of the plan of subdivision as referred to in subsection (1) -

- (a) the intended easement shall be an easement notwithstanding that it may not be appurtenant to a dominant tenement; and
- (b) without limiting the power that it may have under any other law in force in the Territory, the service authority -
  - (i) shall have the use and benefit of the easement for the purposes; and
  - (ii) has for itself and its agents, servants and workmen all the powers,

specified in that Schedule or that regulation, as the case may be, in relation to that easement.

(6) Where, by virtue of this section, land is the subject of an easement, the Registrar-General shall make such entries in relation to the land in the Register kept under the *Real Property Act* as he or she thinks fit, to evidence the easement.

(7) A pipe, duct, wire, pole or other thing attached to or constructed on land which, by virtue of this section, is subject to an easement and which was so attached or constructed for or in relation to a relevant purpose described in Schedule 1 or a regulation made for the purposes of this section, is deemed not 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 which is the proprietor of an easement referred to in this section may allow any other person, himself or herself or by his or her agents, servants 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, and the proprietor of the land shall not hinder or obstruct a person entering on or doing anything on the land in pursuance of the authority of the service authority.

### *Division 8 - Revocation and Modification of Permits*

#### 66. REVOCATION OR MODIFICATION OF PERMIT

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

## *Planning*

(2) The Minister shall not revoke or modify a development permit unless the Minister has -

- (a) served notice in writing, in the approved form, on the owner of the land in respect of which the permit was issued or, where a person was authorised under section 49, that person, of the proposal to revoke or modify the permit;
- (b) directed the Planning Authority to carry out an inquiry under section 120; and
- (c) considered the report furnished under that section.

(3) Before making its report, the Planning Authority or person appointed under section 120(2) to conduct the inquiry shall give the person to whom the development permit was issued an opportunity to be heard.

(4) The Minister shall revoke or modify the permit, or determine not to revoke or modify the permit, as soon as practicable after receiving a report furnished under section 120.

(5) Subject to subsections (7) and (8), a person served with notice under subsection (2)(a) shall not continue any use or development of the land which is only permitted under the permit referred to in the notice.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

(6) The Minister shall, after determining -

- (a) to revoke or modify a permit; or
- (b) not to revoke or modify a permit,

notify the holder of the permit of his or her decision in such manner and form as the Minister thinks fit.

(7) After receiving notice under subsection (6) that the Minister has modified a permit, an applicant shall not continue a use or development permitted under the permit except under and in accordance with the permit as modified.

Penalty: In the case of a natural person - \$10,000 and \$200 for each day during which the offence continues;

## *Planning*

In the case of a corporation - \$50,000 and \$1000 for each day during which the offence continues.

(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 8 - NORTHERN TERRITORY PLANNING AUTHORITY

#### *Division 1 - Northern Territory Planning Authority*

#### 67. PLANNING AUTHORITY

(1) There is hereby established an authority by the name of the Northern Territory Planning Authority.

(2) The Planning Authority, in the performance of its functions and the exercise of its powers, is subject to the directions of the Minister, except in relation to the contents of any report or recommendation it is required to provide under this Act.

(3) The Minister may direct the Planning Authority -

(a) generally; or

(b) in respect of a particular matter,

and the Planning Authority shall comply with the direction.

(4) Where the Minister directs the Planning Authority as to the determination of a particular development application, he or she shall table in the Legislative Assembly, within 3 sitting days of the Legislative Assembly after the day on which the direction was given -

(a) a summary of the application to which the direction relates;

(b) the terms of the direction; and

(c) the reasons for the direction.

#### 68. FUNCTIONS AND POWERS

(1) The functions of the Planning Authority are -

(a) where it is nominated as the consent authority in a control plan or an interim development control order, the functions of a consent authority under this Act, including, subject to

## *Planning*

a land use objective, if any, or a direction by the Minister, the determining of policy in respect of the implementation of the control plan or interim development control order;

- (b) to advise or make recommendations to the Minister on the administration of this Act; and
- (c) such other functions as are conferred or imposed on it by or under this or any other Act.

(2) The Planning Authority has such powers as are necessary or convenient for, or incidental to, the performance of its functions or the exercise of its powers.

### 69. DELEGATION

(1) The Planning 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, other than this power of delegation.

(2) Where a committee formed under this Act consists only of members of the Planning Authority, the Authority may delegate to it any of its powers and functions under this Act, other than this power of delegation.

(3) A power or function delegated under this section, when exercised or performed by the delegate, is, for the purposes of this Act, deemed to have been exercised or performed by the Planning Authority.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Planning Authority.

## *Division 2 - Membership*

### 70. MEMBERSHIP

(1) The Planning Authority shall consist of -

- (a) the Chairman;
- (b) 2 Deputy Chairmen; and
- (c) 3 local members appointed by the Minister under section 71 or 72, as the case may be, in respect of each control plan.

(2) The Minister may, in writing, appoint -

- (a) the Chairman; and

## *Planning*

(b) 2 Deputy Chairmen,

to the Planning Authority.

(3) The Minister may, in writing, appoint a member of the Planning Authority to act as the Chairman during any period or all periods when the Chairman is absent from the Territory, unable to act as the Chairman or is unable to attend a particular meeting or meeting of a class of meetings or during a vacancy in the office.

### 71. MEMBERS WITHIN AREA OF LOCAL AUTHORITY

(1) Subject to subsection (4), where all or part of the area of land to which a control plan relates is within the jurisdiction of a local authority and the Minister is not the consent authority, the Minister shall appoint 3 persons nominated under subsection (3) by the local authority to be local members in respect of the control plan.

(2) Where an appointment referred to in subsection (1) is to be made, the Minister shall, in writing, request the local authority to nominate in writing a number of persons exceeding by 2 the number of positions to be filled under that subsection, from whom the Minister shall make the appointment.

(3) A local authority to which a request has been made under subsection (2) shall -

- (a) advertise that a position as a local member has become vacant and request nominations for the positions from the public within such period, ending not earlier than 14 days after the date specified in the advertisement, as the local authority thinks fit and specifies in the advertisement;
- (b) at the expiration of the period specified in the advertisement, assess the suitability of the persons nominated; and
- (c) nominate to the Minister in accordance with subsection (2), such persons as it thinks fit, which nomination may include, but is not limited to, persons nominated under paragraph (b).

(4) Where the local authority has not, within 42 days after the date of receipt of a request under subsection (2), nominated the required number of persons under subsection (3), the Minister shall appoint such persons as he or she thinks fit to fill the vacancies.

## *Planning*

### 72. MEMBERS OUTSIDE AREA OF LOCAL AUTHORITY

Where no part of the area of land to which a control plan relates is situated within the jurisdiction of a local authority and the Minister is not the consent authority, the Minister shall appoint such 3 persons as he or she thinks fit to be the local members of the Planning Authority in respect of the control plan.

### 73. TERM OF OFFICE

(1) Subject to this Act, a member holds office for 2 years and is eligible for reappointment.

(2) Where a member is appointed under section 71(1) and the next election (other than a by-election) for the local authority by which he or she was nominated is held not later than 2 years after the date of his or her appointment, the member holds office until the expiration of 3 months after the declaration of the polls for the election.

### 74. ALTERNATE MEMBERS

(1) Subject to this section, the Minister may, at any time, appoint a person to be an alternate member to act from time to time in the office of a member, other than the Chairman or a Deputy Chairman, prevented by illness, absence, the operation of section 78 or other cause considered sufficient by the Chairman, from performing the member's duties of office.

(2) Section 71 applies to the appointment of an alternate member for a member appointed under that section, as if the alternate member were to be appointed under that section.

(3) Section 72 applies to the appointment of an alternate member for a member referred to in that section, as if the alternate member were to be appointed under that section.

(4) An alternate member holds office for the same period as the period for which the person in relation to whom he or she was nominated to be an alternate member holds office.

(5) A person may be the alternate member for more than one member of the Authority, but shall not act in the place of more than one member at any meeting of the Authority.

### 75. VACANCY NOT TO INVALIDATE

The performance of a function or exercise of a power by the Planning Authority is not invalid by reason only of there being a vacancy in its membership.



## *Planning*

### 76. DEFECTS NOT TO INVALIDATE

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.

### 77. RESIGNATION OF MEMBERS

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

### 78. DISCLOSURE OF INTEREST

(1) A member who has -

- (a) subject to section 79(1), a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Planning Authority otherwise than 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,

shall, 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 Planning Authority.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Planning Authority and, unless the Chairman otherwise determines, the member -

- (a) shall 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; and
- (b) shall be disregarded for the purpose of constituting a quorum of,

the Planning Authority in relation to the matter.

(3) A member who is a member of a local authority shall not be regarded as having a prima facie interest or relationship for the purposes of this section by reason only of that person being a member of a local authority.

## *Planning*

(4) For the purpose of the making of a determination under subsection (2) by the Chairman in relation to a member who has made a disclosure under subsection (1), the member with the interest in the matter to which the disclosure relates shall not -

- (a) be present during the deliberations of the Planning Authority for the purpose of making the determination; or
- (b) take part in the making by the Planning Authority of the determination.

Penalty: \$5,000.

### 79. DIRECT OR INDIRECT INTERESTS IN COMPANIES

- (1) For the purposes of section 78, a member who -
  - (a) is a member of the governing body of, or is a substantial shareholder within the meaning of section 708 of the Corporations Law in; or
  - (b) has a relevant interest within the meaning of paragraph (a) of the definition of "relevant interest" in the Corporations Law in,

a company which has a direct or indirect interest in a matter shall be regarded as having a direct or indirect interest in the matter.

(2) For the purposes of section 78, 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 shall be regarded as having an interest in the matter.

### 80. 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) is absent, except by leave of the Chairman, from 3 consecutive meetings -
    - (i) of the consent authority of which he or she is a member; or
    - (ii) of the Planning Authority which he or she was nominated or requested to attend; or

## *Planning*

- (b) 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 shall terminate the appointment of the member.

(3) The Minister shall 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 which nominated him or her under section 71; and
  - (ii) has, since his or her appointment, ceased to hold office as a member of the local authority which nominated him or her under section 71; and
- (b) if the local authority which nominated him or her under section 71 has requested that his or her appointment under that section be terminated.

## *Division 3 - Procedure*

### 81. CONSTITUTION OF AUTHORITY FOR PURPOSE OF MEETING

At a meeting of the Planning Authority to consider a matter relating to a control plan, the Authority shall be constituted by 3 local members in respect of the control plan and either -

- (a) the Chairman and one Deputy Chairman nominated by the Chairman; or
- (b) where the Chairman is unable or unwilling for any reason to be present, the 2 Deputy Chairmen.

### 82. MEETINGS OF AUTHORITY

(1) The Chairman shall call such meetings of the Planning Authority as are necessary for the performance of its functions and the exercise of its powers.

(2) The Chairman shall, within 28 days after receiving a written notice, signed by not less than 2 members, requiring a meeting of the Planning Authority or of the Planning Authority as consent authority to be held, call a meeting of the Authority or of the Planning Authority as consent authority, as the case may be.

## *Planning*

- (3) At a meeting of the Planning Authority -
  - (a) 3 members constitute a quorum;
  - (b) the Chairman, if present, shall preside but in the absence of the Chairman -
    - (i) a Deputy Chairman appointed by the Chairman to act as the Chairman for the purposes of the meeting; or
    - (ii) where the Chairman has not appointed a Deputy Chairman under subparagraph (i), a Deputy Chairman elected by the members present at the meeting to act as Chairman; or
    - (iii) where only one Deputy Chairman attends, that person,shall preside over the meeting and may exercise the powers and shall perform the functions of the Chairman for the meeting;
  - (c) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to his or her deliberative vote, a casting vote; and
  - (d) the procedure for -
    - (i) calling meetings; and
    - (ii) the conduct of meetings,of the Planning Authority and of committees of the Planning Authority shall be as determined from time to time by the Chairman, or, in the absence of such a determination in respect of a particular matter, shall be as determined by the person presiding over a particular meeting.

### 83. MEETINGS TO BE OPEN

- (1) A meeting or part of a meeting of the Planning Authority -
  - (a) while submissions in respect of a proposed control plan or a draft control plan amendment are being taken, but not while the deliberations in respect of such a plan or amendment are taking place; or

## *Planning*

- (b) in respect of such other matters as the Minister directs,

shall be open to the public.

(2) Subject to subsection (1), the Chairman may direct that all or part of a particular meeting or a meeting of a class of meeting of the Planning Authority is open to the public.

(3) Notwithstanding subsections (1) and (2), where, in the opinion of the Chairman -

- (a) information disclosed or likely to be disclosed at a meeting of the Planning Authority in respect of a particular matter should be treated as confidential; or
- (b) the absence of the public from a meeting of the Planning Authority 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 and it shall be closed accordingly.

### 84. MINUTES

The Planning Authority shall cause minutes to be kept of all meetings of the Planning Authority and of its committees.

### 85. COMMITTEES

(1) The Planning Authority may establish one or more committees for the purposes of advising the Authority on matters related to planning or for the purpose of performing functions delegated to it or them under section 69, or for both purposes.

(2) A person may be appointed to a committee of the Planning Authority whether or not he or she is a member of the Authority.

### 86. PROTECTION OF MEMBERS AND WITNESSES

(1) No action or proceeding, civil or criminal, shall lie against a member or person acting with the authority of the Planning 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

## *Planning*

(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 Planning Authority has the same protection and immunity as a witness in proceedings before the Supreme Court.

### 87. CONTEMPT

(1) A person shall not, during a meeting of the Planning 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.

Penalty: \$5,000 or imprisonment for 6 months.

(2) Where a person has, in the opinion of the Chairman, committed an offence against this section during a meeting of the Planning Authority, the Chairman may eject him or her from the meeting.

(3) A person ejected from a meeting under subsection (2) shall not return to the meeting from which he or she was ejected.

Penalty: \$5,000 or imprisonment for 6 months.

### 88. CONFIDENTIALITY

A member or a person appointed to a committee shall 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) 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

## *Planning*

(e) the information -

- (i) is authorised by the Chairman or the Minister for disclosure or is of a type of information authorised by the Chairman or the Minister for disclosure;
- (ii) is disclosed at a meeting, other than a public meeting, of a local authority; and
- (iii) except as authorised under subparagraph (i) does not relate to a direction or other communication between the Minister and the Planning Authority.

Penalty: \$5,000 or imprisonment for 6 months.

### PART 9 - APPEALS

#### *Division 1 - Establishment of Planning Appeals Tribunal*

#### 89. PLANNING APPEALS TRIBUNAL

There is hereby established a tribunal by the name of the Planning Appeals Tribunal.

#### 90. APPEALS TRIBUNAL MEMBERS

(1) The Minister may, in writing, appoint such persons as he or she thinks fit (including persons nominated under subsection (3)), having, in his or her opinion, the relevant experience or professional qualifications, to be members of the Appeals Tribunal.

(2) The Minister may request nominations from the Local Government Association incorporated under the *Local Government Act* of persons to be appointed as members of the Appeals Tribunal.

(3) The Local Government Association may, after receiving a request from the Minister under subsection (2), nominate a person to be a member of the Appeals Tribunal.

#### 91. PRESIDENT AND DEPUTY PRESIDENT

(1) The Minister shall, in writing, appoint -

- (a) a member of the Appeals Tribunal who is a qualified legal practitioner, to be its President; and

## *Planning*

- (b) another member of the Appeal Tribunal to be its Deputy President.

(2) The Deputy President has and may perform all the functions and exercise all the powers of the President during the absence or inability to act of the President.

- (3) Where -

- (a) the President and Deputy President will both be absent or unable to act - the President; or
- (b) the President is absent or unable to act and the Deputy President will be absent or unable to act - the Deputy President,

may nominate a member of the Appeals Tribunal to perform the functions or exercise the powers of the President and the member may do so accordingly.

### 92. TERM OF OFFICE

(1) Subject to this Part, a member of the Appeals Tribunal holds office for 5 years and is eligible for reappointment.

(2) Where a matter has been part-heard by the Appeals Tribunal comprising or including a member whose term of appointment expires before the matter is finally disposed of, the appointment of the member shall be extended for the purposes of and for the period necessary for -

- (a) completing all further hearings; and
- (b) making a decision,

in respect of the matter.

### 93. REMOVAL FROM OFFICE

(1) The Minister may terminate the appointment of a member of the Appeals Tribunal for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of a member if the member 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.



## *Planning*

### 94. RESIGNATION OF MEMBERS

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

### 95. DISCLOSURE OF INTEREST

- (1) A member of the Appeals Tribunal who -
  - (a) subject to section 96, has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Appeals Tribunal otherwise than 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 a party to an appeal within the meaning of section 98, 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 appeal,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest to the Appeals Tribunal.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Appeals Tribunal and, unless the person presiding otherwise determines, the member shall not, after the disclosure, while he or she has that interest, be present during or take part in any deliberation, decision or determination of the Appeals Tribunal in relation to the matter.

(3) For the purpose of the making of a determination under subsection (2) in relation to a member who has made a disclosure under subsection (1), the member with the interest in the matter to which the disclosure relates shall not -

- (a) be present during the deliberations of the Appeals Tribunal for the purpose of making the determination; or
- (b) take part in the making by the Appeals Tribunal of the determination.

## *Planning*

### 96. DIRECT OR INDIRECT INTERESTS IN COMPANIES

For the purposes of section 95, a member of the Appeals Tribunal who -

- (a) is a member of the governing body of, or is a substantial shareholder within the meaning of section 708 of the Corporations Law in; or
- (b) has a relevant interest within the meaning of paragraph (a) of the definition of "relevant interest" in the Corporations Law in,

a company which has a direct or indirect interest in a matter shall be regarded as having a direct or indirect interest in the matter.

### 97. PROTECTION OF MEMBERS

No action or proceeding, civil or criminal, shall lie against a member of the Appeals Tribunal for or in respect of an act or thing done or omitted to be done in good faith -

- (a) by the member in his or her capacity as a member of the Appeals Tribunal; or
- (b) by the Appeals Tribunal,

in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

## *Division 2 - Appeals*

### 98. INTERPRETATION AND APPLICATION

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

"appellant" means a person who lodges an appeal under section 99;

"applicant" means a person who makes a development application or an application under section 57 or 58;

"determination" means a determination under section 52, 57 or 58 and includes a failure by a consent authority to determine an application, which failure may be appealed against as if a determination had been made to refuse consent in pursuance of section 99(2) or (3);

## *Planning*

"party", in relation to an appeal, means the applicant and the members of a consent authority against whose determination or failure to make a determination the appeal is lodged and, where an appeal is lodged in pursuance of section 99(4), a service authority.

- (2) This Part does not apply to -
  - (a) a determination made by the Minister as the consent authority; or
  - (b) a determination, or that part of a determination, made under section 52, 57 or 58 by a consent authority other than the Minister, in accordance with a direction of the Minister referred to in section 67(4) or section 9(2)(b)(ii).

### 99. APPLICANT MAY APPEAL

- (1) An applicant -
  - (a) aggrieved by a determination, other than a determination referred to in paragraph (c), may - within 28 days after service of the statement of the reasons for the determination under section 52(2), 57 or 58; or
  - (b) aggrieved by a condition of a permit which may be appealed against in pursuance of subsection (4) may - within 28 days from the issue of the development permit or the statement of reasons for the determination, if any, under section 52(2), 57 or 58; or
  - (c) may, where the failure of a consent authority to determine an application may be appealed against in pursuance of subsection (2) or (3) as if a determination had been made to refuse to consent to the application - at any time before the matter is determined by the consent authority,

appeal to the Appeals Tribunal against the determination by lodging with the Tribunal a notice of appeal.

- (2) Where -
  - (a) an applicant has not received a development permit or a notice of refusal in respect of a development application within 12 weeks after the development application was made; or

## *Planning*

- (b) the consent authority, under clause 4 of the Administrative Procedures made under the Environmental Assessment Act, notifies the Minister responsible for the administration of that Act of the development application and the applicant has not received a development permit or a notice of refusal in respect of a development application within 12 weeks after the last day that an administrative action has been or may be taken under that Act,

the applicant may appeal to the Appeals Tribunal as if the consent authority had made a determination to refuse to consent to the application.

(3) Where a person who made an application under section 57 or 58 has not been notified of a determination, if any, by the consent authority in respect of the application within 12 weeks after the application was lodged, the failure of the consent authority to determine the application may be appealed against by the person who made the application as if a determination had been made to refuse to consent to the application.

(4) A person may appeal against a condition deemed by section 29(1) to be imposed on a development permit issued to him or her, on the grounds that a refund or remittance of all or part of a contribution otherwise payable should have been made to him or her under section 32(d) in the special circumstances of his or her case, and where this is a ground for appeal specified in the notice of appeal the service authority which made the contribution plan in relation to which the condition is deemed to be imposed is joined as a party to the appeal.

(5) The lodging of an appeal under this Part shall not prevent the consent authority against whose determination the appeal was lodged from making a determination in respect of the application under section 52, 57 or 58 at any time before the determination of the appeal by the Appeals Tribunal and where such a determination is made by the consent authority -

- (a) the first appeal lodged under this section lapses;
- (b) all fees paid in respect of the first appeal shall be refunded;
- (c) subject to this Part, a person may make a subsequent appeal ("the subsequent appeal") against the determination of the consent authority in accordance with this Part; and

## *Planning*

- (d) the Appeals Tribunal may admit such evidence provided in respect of the first appeal as is admissible in accordance with this Part in relation to the subsequent appeal.

### 100. NOTICES OF APPEAL

(1) A notice of appeal shall be in the approved form accompanied by the prescribed fee and shall state the name of the appellant, details of the development application in respect of which the appeal is lodged and the grounds for the appeal.

(2) The appellant shall cause a copy of a notice of appeal to be served on the consent authority against whose determination the appeal is lodged or, where a service authority is joined as a party by section 99(4), on the service authority.

### 101. APPEAL

(1) An appeal under this Part shall be by way of a rehearing.

(2) Where an appeal is lodged other than in respect of a condition which may be appealed against in pursuance of section 99(4), submissions and evidence in respect of only the following matters may be admitted for the consideration of the Appeals Tribunal at an appeal under this Part:

- (a) matters before the consent authority when it made its determination; and
- (b) matters that were in existence before the consent authority made its determination and which could not have been discovered before the making of the determination by reasonable diligence on the part of the party seeking to admit them.

### 102. CONSTITUTION OF APPEALS TRIBUNAL TO HEAR APPEAL

(1) The President shall, after a preliminary conference or a preliminary hearing under this Part, nominate 3 members of the Appeals Tribunal, one of whom may be the President, who shall, subject to this section, constitute the Appeals Tribunal for the purpose of determining the matter.

(2) Where the President is not nominated for the purposes of subsection (1), the President shall nominate one of the members of the Appeals Tribunal nominated under that subsection to preside over the appeal and that member shall preside accordingly.

## *Planning*

(3) Notwithstanding subsection (1), the Appeals Tribunal may be constituted by 2 of the members nominated under subsection (1) where the third member is unable, whether by illness, the operation of this Act or any other reason considered satisfactory by the President, to continue to act as a member for the purpose of determining a matter.

(4) If all parties to an appeal agree, the Appeals Tribunal may consist of one member of the Appeals Tribunal only.

### 103. DETERMINATION BY APPEALS TRIBUNAL

(1) The Appeals Tribunal shall hear and determine each appeal made to it under this Part.

(2) The Appeals Tribunal shall not make a determination except in respect of a ground for appeal specified in the notice of appeal or altered in accordance with section 110(e).

(3) The Appeals Tribunal, for the purposes of hearing and determining an appeal in respect of a development application other than -

- (a) an appeal in pursuance of section 99(4); or
- (b) an appeal in respect of an application under section 57 or 58,

shall take into account the matters specified in section 51.

(4) The Appeals Tribunal shall not make a determination which, in its opinion, conflicts with a land use objective relating to the land in respect of which the determination is made unless the Minister agrees, in writing, to it making such a determination.

(5) Subject to subsection (6), the Appeals Tribunal shall, in writing, determine an appeal by -

- (a) confirming the determination of the consent authority;
- (b) altering the determination of the consent authority; or
- (c) substituting its own determination for that of the consent authority,

against whose determination the appeal is lodged and may -

- (d) except in respect of an appeal in respect of an application under section 57 or 58, revoke a development permit issued by the consent authority;

## *Planning*

(e) order the consent authority to issue or amend a development permit; and/or

(f) specify the conditions, if any, to which the issue or amendment of the development permit under paragraph (e) is subject.

(6) Where an appeal is lodged in pursuance of section 99(4), the Appeals Tribunal may determine the appeal only by determining that -

(a) all or some contribution paid or payable by the appellant is to be refunded or remitted; or

(b) no contribution paid or payable by the appellant is to be refunded or remitted,

and where it determines that all or some contribution should be refunded or remitted, the amount determined to be payable is deemed to be a condition of the permit in substitution for the condition which would otherwise be deemed to be imposed on the permit under section 29.

(7) The Appeals Tribunal shall give written reasons for, and maintain a record of, its determinations.

(8) The Appeals Tribunal shall 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 (7).

(9) The Appeals Tribunal shall cause to be served on the parties a copy of the determination and its reasons for making the determination.

(10) A determination of the Appeals Tribunal, other than a determination under subsection (6) is deemed to be -

(a) the final decision of the consent authority against whose determination the appeal was lodged; or

(b) where the determination is made in respect of a condition which may be appealed against in pursuance of section 99(4), the final decision under section 32(d) of the service authority joined as a party to the appeal in accordance with section 99(4).

(11) A consent authority or a service authority shall comply with an order of the Appeals Tribunal.

## *Planning*

### *Division 3 - Proceedings*

#### 104. PUBLIC HEARINGS

Unless the President otherwise directs in a particular case, proceedings of the Tribunal are open to the public.

#### 105. PRACTICE AND PROCEDURE

(1) The Appeals Tribunal -

(a) is not bound by the rules of evidence but may inform itself on a matter in such manner as it thinks fit; and

(b) is not bound to act in a formal manner and shall act without regard to legal forms and technicalities.

(2) Subject to this Division, the practice and procedure relating to the hearing of an appeal under this Part shall be -

(a) as prescribed; or

(b) if none is prescribed - as determined by the President.

#### 106. PRELIMINARY CONFERENCE

(1) Subject to subsection (3), the President shall, as soon as practicable after a notice of appeal has been lodged under section 99, fix a date, time and place for a preliminary conference between the parties and give to each of them notice in writing of the date, time and place so fixed.

(2) The President shall preside at a preliminary conference.

(3) The President may dispense with a preliminary conference if he or she is of the opinion that no useful purpose would be served by it.

(4) A party may be represented at a preliminary conference by a legal practitioner or an agent and a compromise or settlement to which the legal practitioner or agent agrees at the conference shall be binding on the party for whom he or she appears.

(5) Subject to subsection (6), evidence of anything said or done in the course of a preliminary conference is not admissible in proceedings before the Appeals Tribunal, except by consent of both parties.



## *Planning*

(6) The President shall report to the Appeals Tribunal on whether a compromise or settlement was reached at a preliminary conference and, if so, the terms of the compromise or settlement.

(7) The Appeals Tribunal may, without further inquiry, make such determination as is necessary to give effect to a compromise or settlement referred to in subsection (6).

(8) Where no compromise or settlement is reached at a preliminary conference, the President may, at the conference, make such orders relating to the hearing of the appeal as he or she thinks fit.

### 107. FIXING OF PRELIMINARY HEARINGS

(1) As soon as practicable after the President decides under section 106(3) to dispense with a preliminary conference, he or she shall fix a date, time and place for a preliminary hearing by a member of the Appeals Tribunal.

(2) The President shall cause notice in writing of the preliminary hearing of an appeal to be given to the parties.

### 108. PRELIMINARY HEARINGS

(1) The member presiding over a preliminary hearing may, at the preliminary hearing, make such orders as he or she considers necessary for the expeditious hearing of the appeal.

(2) Without limiting the generality of subsection (1), orders which may be made under that subsection include orders for or in relation to -

- (a) public notification of the date, time and place for the hearing of the appeal;
- (b) 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; and
- (c) further preliminary hearings.

### 109. PUBLIC NOTICE OF HEARING

If -

- (a) the member presiding over a preliminary hearing makes an order under section 108(2)(a); or

## *Planning*

- (b) the President makes an order under section 106(8),

for the public notification of the hearing of an appeal, the appellant shall cause to be published not less than twice in a period of 2 weeks in a newspaper circulating in the area in which the land the subject of the appeal is situated, a notice specifying -

- (c) the date, time and place fixed for a further preliminary hearing, if any; and
- (d) the date, time and place fixed for the hearing of the appeal.

### 110. POWERS OF APPEALS TRIBUNAL

The Appeals Tribunal may -

- (a) if at the time and place appointed for the hearing of an appeal the appellant does not appear - dismiss the appeal;
- (b) if at the time and place appointed for the hearing of an appeal the appellant does, but another party does not, appear - commence and conclude the hearing of the appeal and determine the matter in the absence of that other party;
- (c) if all the parties to an appeal consent, determine the matter in the absence of the parties, having regard to documentary evidence and written submissions exchanged by the parties and lodged with the Tribunal;
- (d) adjourn the hearing of an appeal for such period as it thinks fit;
- (e) permit, on such terms as it thinks fit, an appellant to alter the grounds of his or her appeal;
- (f) permit an appeal to be withdrawn;
- (g) permit a party to cross-examine a witness or other party who gives evidence in the appeal;
- (h) permit a person who has made a submission under section 50(3) or any other person to appear and give evidence before it; or
- (j) appoint one or more of the members of the Appeals Tribunal to make an inquiry or an inspection which appears to be necessary or expedient for the purposes of an appeal or proceeding.

## *Planning*

### 111. SUMMONSES

- (1) The President may issue an order requiring -
  - (a) the attendance of a person before the Appeals Tribunal; or
  - (b) the production to the Appeals Tribunal of documents specified in the order which are in the possession or control of a person.
- (2) An order under subsection (1) shall be -
  - (a) in the approved form; and
  - (b) served personally or by leaving the order with a person, apparently over the age of 15 years, at the usual place of residence or business of the person on whom service is to be effected.
- (3) A person shall not refuse or fail to comply with an order served on him or her under subsection (2)(b).

Penalty: In the case of a natural person - \$5,000 or imprisonment for 6 months;

In the case of a corporation - \$25,000.

### 112. REPRESENTATION

- (1) A person may appear personally before the Appeals Tribunal or be represented by a legal practitioner or an agent.
- (2) A legal practitioner or agent appearing before the Appeals Tribunal has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings before the Supreme Court.

### 113. SWORN EVIDENCE

- (1) A person appearing before the Appeals Tribunal to give evidence shall, if required by the member presiding over the Appeal to give sworn evidence, take an oath or make an affirmation.
- (2) The member presiding over an Appeal may -
  - (a) administer an oath or affirmation to a person appearing to give evidence before the Appeals Tribunal; and
  - (b) require a person appearing to give evidence to answer a question.

## *Planning*

(3) Subject to subsection (4), a person shall not refuse or fail to comply with a requirement under subsection (1) or (2)(b).

Penalty: \$5,000 or imprisonment for 6 months.

(4) A witness appearing before the Appeals Tribunal has the same protection and immunity as a witness in proceedings before the Supreme Court.

### 114. CONTEMPT

(1) A person shall not -

- (a) insult a member of the Appeals Tribunal in or in relation to the exercise of the member's powers or functions as a member;
- (b) interrupt a proceeding of the Appeals Tribunal;  
or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Penalty: \$5,000 or imprisonment for 6 months.

(2) Where a person has, in the opinion of the member presiding over an Appeal, committed an offence against this section during a meeting of the Appeals Tribunal, the member may eject him or her from the meeting.

(3) A person ejected from a meeting under subsection (2) shall not return to the meeting from which he or she was ejected.

Penalty: \$5,000 or imprisonment for 6 months.

### 115. 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) shall 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 - Planning Certificates*

### 116. PLANNING CERTIFICATES

(1) A person may -

- (a) apply in the approved form accompanied by the prescribed fee to the consent authority; or

## *Planning*

- (b) apply to a person authorised in writing by the consent authority,

for a certificate under this section, and where the application is made to a consent authority, it shall, and where it is made to an authorised person, he or she may, issue a certificate accordingly.

(2) A certificate issued under this Division is prima facie evidence of the facts certified in it.

- (3) A certificate under this section shall -

- (a) be in the approved form; and

- (b) show, in relation to the land in respect of which it is issued -

- (i) whether a land use objective, a control plan 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 its use;

- (iii) where 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) where a development permit is in force, the nature of the development permit; and

- (v) where a development application has been made but no development permit or statement of the reasons for the determination in respect of it has been issued, the nature of the application,

on the day on which the certificate is issued.

(4) 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 notwithstanding that all stages of the development permitted under the development permit have not been completed in relation to the balance of that land, if a condition of the permit referred to in section 54 permits the development the subject of the application to be completed in stages.

## *Planning*

### 117. 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 116, 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 116 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 Planning Authority in respect of a certificate referred to in this section is a claim against the Territory, and the *Claims by and against the Government Act* applies accordingly.

### *Division 2 - General*

### 118. REGISTERS

Each consent authority shall retain and keep available for public inspection during normal office hours -

- (a) a copy of each plan of subdivision or consolidation approved by it;
- (b) a register of all development permits issued by it; and
- (c) a register of all determinations by the Appeals Tribunal in respect of appeals against determinations of the consent authority.

### 119. SERVICE OF NOTICES, &c.

(1) Except where 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 Law.

## *Planning*

(2) A notice under, or arising out of a breach of, this Act or a condition of a development 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.

### 120. INQUIRIES

(1) The Planning Authority shall, when directed by the Minister, conduct inquiries for purposes connected with the administration of this Act.

(2) The Planning Authority may appoint a person to conduct an inquiry required of it under subsection (1).

(3) The *Inquiries Act* applies to and in relation to an inquiry under this section as if the Planning Authority 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 Planning Authority or the person appointed under subsection (2), as the case may be, shall furnish a report to the Minister setting out the results of an inquiry in pursuance of this section.

### 121. PROSECUTION AND PENALTIES

(1) A prosecution under this Act may be brought in the name of the Planning Authority.

(2) The Planning Authority may authorise a person to bring a prosecution referred to in subsection (1).

(3) A person who, but for this section, would not be entitled to take proceedings for or with respect to enforcing or securing the observance of a provision of or under this Act in his or her own name may take such proceedings in his or her own name with the leave of the Supreme Court.

(4) The Supreme Court may grant leave to take proceedings referred to in subsection (3) on such terms and conditions as it thinks fit, including terms and conditions requiring the person seeking leave to deposit with the Supreme Court such amount of money as the Court thinks fit as security -

(a) for costs; or

(b) for such damages as the person against whom the proceedings are proposed to be taken may suffer by reason of the proceedings, if the person taking the proceedings does not obtain the relief sought in the proceedings.

## *Planning*

(5) In addition to any other relief which may be granted in proceedings for enforcing or securing the observance of a provision of or under this Act, the Supreme Court may order a person who has contravened or failed to comply with the provision to do such work to remedy the contravention or failure as it specifies.

### 122. COMPENSATION FOR ABORTIVE EXPENDITURE

(1) A person who has incurred expenditure relying on a development permit, which expenditure 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, shall 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, shall be read as a reference to the date of service of notice of revocation or modification of a consent under section 66;
- (c) to compensation under that Act, shall be read as a reference to compensation under subsection (1); and
- (d) to Schedule 2 to that Act, shall be disregarded.

### 123. 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.

### 124. ONUS OF PROOF

In an action, suit or proceeding under this Act -

- (a) an averment by or on behalf of the Planning Authority that land is Crown land, reserved or dedicated land, land held under lease or occupied under licence or agreement, or that a person is authorised to take proceedings, to do



## Planning

an act or perform a duty, or sue for the recovery of a penalty or other money under this Act, is prima facie 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 shall, in all matters relating to the action, suit or proceeding, be sufficient evidence, without production of original records and without the personal attendance of the Surveyor-General or proof of his or her signature.

### 125. 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 shall be on just terms.

### 126. ACTIONS NOT TO BE INVALIDATED

An action taken by the Planning Authority, the Minister or the Appeals Tribunal shall not be 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.

### 127. REGULATIONS

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 Planning Authority, the Appeals Tribunal or any other person;

## *Planning*

- (d) prescribing the manner in which fees or payments prescribed shall be calculated or paid;
- (e) prescribing types of easements for the purposes of section 65 and the purposes of, and powers in relation to, those easements;
- (f) providing for the inspection of instruments required to be kept under section 36 and of the registers required to be kept under section 118;
- (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 a fine of \$100, for offences against the Regulations.

### PART 11 - REPEAL AND TRANSITIONAL

#### 128. REPEAL

The Acts specified in Schedule 2 are repealed.

#### 129. DEFINITIONS

In this Part, unless the contrary intention appears -

"draft planning instrument" means a draft planning instrument 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;

"former Appeals Committee" means the Planning Appeals Committee within the meaning of the former Act;

"planning instrument" means a planning instrument within the meaning of the former Act.

#### 130. PLANNING AUTHORITY TO REPLACE FORMER AUTHORITY

On and from the commencement date -

- (a) all real and personal property that, immediately before that date, was vested in the former Authority shall vest in the Territory;

### *Planning*

- (b) all money and liquidated and unliquidated claims that, immediately before that date, were payable to or recoverable by the former Authority shall be money and liquidated and unliquidated claims payable to or recoverable by the Territory;
- (c) all proceedings in a court commenced before that date by the former Authority and pending immediately before that day are deemed to be proceedings pending on that date by the Territory and may be continued in the name of the Planning Authority and all proceedings so commenced by any person against the former Authority and pending immediately before that date are deemed 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 deemed 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 shall 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 shall be liquidated and unliquidated claims, as the case may be, for which the Territory shall be liable.

## *Planning*

### 131. REFERENCES IN OTHER ACTS, &c.

A reference in -

- (a) any other Act;
- (b) an instrument of a legislative or administrative character (an instrument appointing a person as a member of the former Authority excepted); or
- (c) another document, whether of the same or of a different kind,

to the former Authority shall be a reference to the Planning Authority.

### 132. SAVING OF ACTIONS

Any 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 shall, 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, is deemed to have been done or omitted to be done by, to or in respect of the Planning Authority, as the case may be.

### 133. SAVING OF PLANNING OBJECTIVES

A planning and development objective of the Territory published under section 66A of the former Act is deemed to be a land use objective made under section 8 of this Act but section 9(1) does not apply to such an objective.

### 134. SAVING OF DRAFT PLANNING INSTRUMENTS

(1) Where a request or direction under section 39 of the former Act has been made to the former Authority but a draft planning instrument has not, before the commencement date, commenced exhibition under the former Act, the provisions of this Act apply as if the request or direction were made under Part 4 of this Act to the consent authority in respect of the land to which the request relates.

(2) Where a draft planning instrument has been exhibited for part only of the period required by or under section 48 of the former Act -

- (a) the consent authority in respect of the land to which the instrument relates shall be the consent authority in respect of the instrument;
- (b) the consent authority may, as it thinks fit, exhibit or continue to exhibit the instrument for the period for which exhibition would have been required by or under the former Act; and

## *Planning*

- (c) an instrument exhibited in accordance with paragraph (b) is deemed to be a proposed control plan or draft control plan amendment, as the case may be, exhibited in accordance with this Act.

(3) Where a draft planning instrument has, under the former Act, completed the exhibition period required by or under section 48 of that Act but has not been made a planning instrument under that Act -

- (a) the consent authority in respect of the land to which the instrument relates shall be the consent authority in respect of the instrument;
- (b) a submission made to the former Authority under section 49 of the former Act is deemed to have been made to the consent authority;
- (c) the former Authority may -
  - (i) where a matter has been part-heard under section 50 of the former Act, complete the hearing; and/or
  - (ii) prepare and deliver to the Minister a report on a hearing under section 59 of the former Act;
- (d) a submission to the Minister under section 59 of the former Act is deemed to be a report submitted under section 23 of this Act; and
- (e) the instrument is deemed to be a proposed control plan or draft control plan amendment, as the case may be, exhibited in accordance with this Act.

### 135. SAVING OF PLANNING INSTRUMENTS

(1) A planning instrument made under the former Act or deemed under the former Act to be a planning instrument and in force immediately before the commencement date is deemed to be a control plan or a control plan amendment, as the case may be, made under this Act and may be amended or repealed by a control plan or control plan amendment and enforced accordingly.

(2) A planning instrument deemed to be a control plan or a control plan amendment, as the case may be, under subsection (1) shall continue to apply in respect of the land to which it applied immediately before the commencement date, until an amendment is made to the plan under this Act in respect of the area of land to which it is to apply.

## *Planning*

(3) Regulation 5 and Schedule 3 of the Planning Regulations in force immediately before the commencement date shall continue in existence as if they were made under this Act and as if the reference in regulation 5 to section 4 were a reference to section 3(1) of this Act, but may be repealed or amended by Regulations made under this Act.

### 136. SAVING OF DETERMINATIONS UNDER DIVISION 1 OF PART IV OF FORMER ACT

(1) A determination under section 72 of the former Act continues in force for the period specified in the determination.

(2) Where an application was, before the commencement date, received under section 71 of the former Act, but was not determined under section 72 of that Act, it is deemed to be an application made under section 47 of this Act.

### 137. SAVING OF CONSENTS

(1) A consent granted under section 94 or section 112 of the former Act is deemed to be a development permit granted under this Act and to be subject to the conditions, if any, specified in the instrument of determination relating to the consent granted under the former Act.

(2) Where a consent was granted under the former Act, the instrument of determination issued under the former Act in respect of the consent is deemed to be a development permit issued under this Act.

### 138. SAVING OF INSTRUMENTS OF DETERMINATION

(1) An instrument of determination issued under section 95 or section 113 of the former Act is, subject to this section, deemed to be a statement of the reasons for the determination in respect of a particular matter, for the purposes of this Act.

(2) An instrument of determination issued under section 95 or section 113 of the former Act by the Minister as the consent authority is not a statement of the reasons for the determination in respect of a particular matter for the purposes of section 100 of this Act and may not be the subject of an appeal.

(3) A final decision of the former Appeals Committee by virtue of section 147 of the former Act is not subject to an appeal under section 99 of this Act.

## *Planning*

(4) A consent that was, immediately before the commencement date, continuing in force by virtue of the operation of section 172 of the former Act, is deemed to be a consent given subject to the conditions, if any, deemed under section 172 of the former Act to be imposed on the determination.

(5) A person shall not lodge a notice of appeal relating to an instrument of determination referred to in this section after the expiration of 28 days after the date of the consent.

(6) The date of a consent referred to in subsection (5) is the date on which the approval or consent, as the case may be, was given under the former Act.

### 139. SAVING OF NOTICES

(1) A notice issued by the Minister under section 155 of the former Act continues in force, and may be enforced, as if it were a notice issued under section 66(2)(a) of this Act.

(2) Without affecting the limitation period to which a claim is subject under the *Limitation Act*, section 122 of this Act applies in respect of a person who had a right to receive compensation under section 157 of the former Act as if the right had accrued under this Act.

### 140. SAVING OF INQUIRIES

(1) Subject to this section, an inquiry commenced under section 154 of the former Act is deemed to be an inquiry under section 120 of this Act.

(2) Where -

- (a) the former Authority was directed to conduct an inquiry under section 154 of the former Act, the former Authority shall continue in existence for the purpose of reporting to the Minister in respect of the inquiry; or
- (b) a person other than the former Authority was appointed to conduct an inquiry under section 154 of the former Act, he or she shall complete the inquiry and report to the Minister in accordance with section 120(4) (with the necessary changes) of this Act.

### 141. PLANNING AUTHORITY TO KEEP RECORDS OF FORMER AUTHORITY

The Planning Authority shall retain all records and minutes that the former Planning Authority was required to keep under the former Act.

## *Planning*

### 142. MAINTENANCE OF REGISTERS

Where, immediately before the commencement date, a register was kept under section 161 of the former Act in relation to land to which a control plan under this Act applies, the consent authority in respect of the control plan shall maintain the register in accordance with section 118 of this Act.

### 143. SAVING OF CERTIFICATES, &c.

A certificate issued under the former Act is deemed to be a certificate issued under this Act and a certified copy or extract issued under the former Act is deemed to be a certified copy or extract issued under this Act.

### 144. TRUST ACCOUNTS

Money held in a trust account under section 65A of the former Act is deemed to be money held in a trust account under section 31(2) of this Act and money held in that account shall be used under and in accordance with this Act.

### 145. SAVING OF CAR PARKING SCHEMES

Where an area of land was, before the commencement date, a policy area within the meaning of the Planning (Parking Space Contributions) Regulations made under the former Act -

- (a) that area is deemed to be a policy area within the meaning of Division 5 of Part 4 of this Act;
- (b) the method of calculating the amount of a contribution determined under the former Act in respect of the area is deemed to be a formula for contribution referred to in Division 5 of Part 4 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 65A of the former Act shall continue to be debts or money due or payable to and claims recoverable by the local authority and any money so paid after the commencement date is deemed to be money received under section 31(2) of this Act and shall be dealt with in accordance with that section; and
- (d) a rate of interest payable determined under section 65A of the former Act, or a decision to remit or refund money, shall continue in force until revoked, by resolution, by the local authority.



## *Planning*

### 146. DEVELOPMENT APPLICATIONS LODGED UNDER FORMER ACT

(1) Where -

- (a) an application was made to the former consent authority under section 87 or section 104 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 consent authority to whom the application was made shall continue in existence for the purposes of determining the application and -

- (d) in the case of an application under section 87 of the former Act - Part V; or
- (e) in the case of an application under section 104 of the former Act - Part VI,

of the former Act shall apply, in each case as if the Part had not been repealed by this Act.

(2) Where an application was made to the former consent authority under section 87 or section 104 of the former Act but a hearing in respect of the application has not commenced under the former Act - Part 7 of this Act shall apply as if the application had been made under section 49 of this Act.

(3) Where -

- (a) a development application was made to the former consent authority under section 104 of the former Act;
- (b) a hearing was not commenced under the former Act; and
- (c) a determination in respect of the application was not made before the commencement date,

the application is deemed to be an application made to the consent authority under section 49 of this Act.

### 147. APPLICATIONS TO APPEALS COMMITTEE UNDER FORMER ACT

(1) Where a notice of appeal within the meaning of the former Act was lodged with the former Appeals Committee and a hearing (other than a preliminary hearing) in respect of the matter was held before the commencement date -

## Planning

- (a) the former Appeals Committee; and
- (b) the former consent authority whose determination is the subject of the notice of appeal,

shall continue in existence for the purpose of determining the matter and Part VII of the former Act shall apply as if the Act had not been repealed by this Act.

(2) Where a notice of appeal within the meaning of the former Act was lodged with the former Appeals Committee 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 shall be the consent authority for the purposes of the appeal; and
- (b) this Act applies as if the application for appeal had been lodged with the Appeals Tribunal under this Act.

(3) A preliminary conference held under the former Act is deemed to be a preliminary conference held under section 106 of this Act and an order made at a preliminary hearing under the former Act shall continue in force as if it were an order made at a preliminary hearing under section 108 of this Act.

(4) Where a person had, immediately before the commencement date, a right of appeal to the former Appeals Committee under the former Act but had not lodged a notice of appeal under and within the meaning of the former Act before the commencement date -

- (a) a notice of appeal may be lodged under and in accordance with Division 2 of Part 9 this Act as if the determination of the former consent authority were a determination under this Act; and
- (b) the former consent authority under the former Act whose determination is the subject of the appeal is deemed to be the consent authority in respect of the land to which the request relates for the purposes of determining the appeal.

### 148. SAVING OF DETERMINATIONS OF FORMER APPEALS COMMITTEE

Without affecting the limitation period to which a claim is subject under the *Limitation Act*, a determination of the former Appeals Committee under section 147 of the former Act continues in existence as if it was made under section 103 of this Act.

## *Planning*

### 149. 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.

### 150. 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 such Regulations as he or she considers necessary or convenient to be made, notwithstanding that, but for this section, he or she may not have the power to make such Regulations.

(2) The power given by subsection (1) may only be exercised within one year after the commencement date but a regulation made under this section shall remain in force until repealed under this Act.

(3) Regulations made under this section may be made retrospective to the commencement date or any date after that commencement date and shall have force accordingly.

(4) To the extent that the provisions of the Regulations made under this section are inconsistent with the Principal Act or a provision of an Act specified in the Regulations, the Regulations shall prevail.

---

## SCHEDULE 1

### Section 65

#### Easements

##### Description

Sewerage easement.

##### Purpose

Supplying or conveying to, through or across the land a sewerage service.

##### Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

## *Planning*

### Description

Water supply easement.

### Purpose

Supplying or conveying to, through or across the land a water service.

### Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

---

### Description

Drainage easement.

### Purpose

Draining water, sewerage or other effluent from, through or across the land.

### Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining drains or drainage pipes for the purposes of the easement and of using and maintaining such drains and pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

---

### Description

Electricity supply easement.

### Purpose

Supplying or conveying to, through or across the land an electricity service.

### Power

For the purposes of the easement -

- (a) to enter on and pass, either with or without motor or other vehicles, along or over the land;

## *Planning*

(b) to construct and lay -

- (i) under the surface of the land, ducts, pipes, conductors, cables, wires and other works; and
- (ii) on the surface of the land, incidental or ancillary works for the transmission of electricity (including, without limiting the generality of the foregoing, manholes and cable markers),

including but not limited to the construction on a portion of the land so designated in the plan poles, equipment for transforming electricity and incidental or ancillary works (including such walls or other structures as the proprietor of the easement considers necessary) to a height not exceeding the height shown in the plan, from the surface of the land;

- (c) to break the surface of, dig, open up and use the land for the purposes of the easement or exercising these powers;
  - (d) to inspect, repair, alter, remove and replace works referred to in these powers; and
  - (e) to transmit electricity by means of any such works.
- 

## Description

Electronic communications easement.

## Purpose

Supply or convey to, through or across the land a communications service by electronic means.

## Power

For the purposes of the easement -

- (a) to enter on and pass, either with or without motor or other vehicles, along or over the land;
- (b) to construct and lay -
  - (i) under the surface of the land, ducts, pipes, conductors, cables, wires and other works; and

## *Planning*

- (ii) on the surface of the land, incidental or ancillary works for the transmission of telecommunication services (including, but not limited to, manholes and cable markers);
  - (c) to break the surface of, dig, open up and use the land for any of the purposes of the easement or exercising these powers; and
  - (d) to inspect, repair, alter, remove and replace any works referred to in these powers.
- 

### Description

Energy supply easement.

### Purpose

Supplying or conveying to, through or across the land gas, liquid fuels or water or other liquids in such a form or state as to be capable of conveying energy.

### Power

To break the surface of, dig, open up and use the land for the purpose of laying down, fixing, taking up, repairing, relaying or examining pipes for the purposes of the easement and of using and maintaining those pipes, and to enter the land at any time (if necessary with vehicles and equipment) for the purposes of the easement or exercising these powers.

---

### Description

General service easement.

### Purpose

All of the purposes of -

- (a) a sewerage easement;
- (b) a water supply easement;
- (c) a drainage easement;
- (d) an electricity supply easement;
- (e) an electronic communications easement; and
- (f) an energy supply easement.

## *Planning*

### **Powers**

All of the powers in this Schedule relating to the purposes of the easement.

---

### **SCHEDULE 2**

**Section 128**

#### **REPEALED ACTS**

---

<i>Planning Act 1979</i>	No. 48, 1979
<i>Planning Act (No. 2) 1979</i>	No. 116, 1979
<i>Planning Act 1980</i>	No. 24, 1980
<i>Planning Amendment Act 1982</i>	No. 27, 1982
<i>Planning Amendment Act 1983</i>	No. 75, 1983
<i>Planning (Validation) Act 1984</i>	No. 38, 1984
<i>Planning Amendment Act 1985</i>	No. 67, 1985
<i>Planning Amendment Act 1987</i>	No. 19, 1987
<i>Planning Amendment Act 1989</i>	No. 77, 1989
<i>Planning Amendment Act 1992</i>	No. 64, 1992

---