



NORTHERN TERRITORY OF AUSTRALIA

No. 75 of 1983

AN ACT

To amend the *Planning Act*

[Assented to 28 November 1983]

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

1. SHORT TITLE

This Act may be cited as the *Planning Amendment Act 1983*.

2. COMMENCEMENT

The several sections of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

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

4. REPEAL OF SECTION 3

Section 3 of the Principal Act is repealed.

5. INTERPRETATION

Section 4 of the Principal Act is amended -

(a) by omitting from paragraph (b) of the definition of "consent authority" in sub-section (1) -

(i) "under Part VI" and substituting "under Part V"; and

(ii) "or (3)";

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- (b) by omitting from sub-section (1) the definition of "environmental impact statement" and substituting the following:

"'environmental impact statement' has the same meaning as in the Administrative Procedures made under the *Environmental Assessment Act*";

- (c) by omitting from the definition of "work" in sub-section (1) ", and includes" and substituting "other than";

- (d) by omitting from sub-section (2) "5 years" and substituting "12 years"; and

- (e) by omitting from sub-section (3) "5 years" (twice occurring) and substituting "12 years".

6. REPEAL OF SECTIONS 36 AND 37

Sections 36 and 37 of the Principal Act are repealed.

7. PREPARATION AND EXHIBITION OF DRAFT PLANNING INSTRUMENTS

Section 39(1) of the Principal Act is amended by omitting all words after "land".

8. REPEAL OF SECTIONS 40 AND 42

Sections 40 and 42 of the Principal Act are repealed.

9. REPEAL AND SUBSTITUTION

Section 43 of the Principal Act is repealed and the following substituted:

"43. CONSULTATION

"(1) The Authority shall, in preparing a draft planning instrument, consult with the persons, if any, with whom it has been directed under section 41 to consult, in relation to the contents of the instrument.

"(2) The Authority shall, in preparing a draft planning instrument, consider the views of the persons consulted under sub-section (1)."

10. REPEAL AND SUBSTITUTION

Sections 45 to 49 inclusive of the Principal Act are repealed and the following substituted:

"45. DRAFT PLANNING INSTRUMENTS TO BE EXHIBITED

"(1) Subject to sub-section (2), the Authority shall, as soon as practicable after a draft planning instrument is prepared under Division 2, exhibit, in

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accordance with this Division, the draft planning instrument.

"(2) The Authority shall not exhibit a draft planning instrument unless at the same time, and in the same manner, an explanatory document in relation to the instrument is also exhibited.

"47. METHOD OF EXHIBITION

"(1) A draft planning instrument required by section 45 to be exhibited shall be exhibited -

- (a) at such places in the area to which the instrument relates as the Authority thinks fit; and
- (b) where the instrument relates to land in a local area - at the office of the local authority for that area.

"(2) The Authority shall cause notice of the exhibition of a draft planning instrument to be published -

- (a) in the *Gazette*;
- (b) not less than twice in a newspaper circulating in the area to which the instrument relates; and
- (c) where prescribed, by affixing it to the land to which it relates in the manner, and at the expense of the person, prescribed.

"(3) Where a person requesting, under section 39(3), the Authority to prepare and exhibit a draft planning instrument in relation to land is not registered under the *Real Property Act* as the proprietor of the land, the Authority shall cause to be served on the registered proprietor of that land, at the expense of the applicant, a copy of the notice under sub-section (2) in respect of a draft planning instrument prepared as a result of that request.

"48. TIME OF EXHIBITION

"(1) Subject to sub-section (2), a draft planning instrument required by section 45 to be exhibited shall be exhibited for not less than 28 days.

"(2) The Minister may, by notice in writing to the Authority, require that a draft planning instrument be exhibited for such period longer than 28 days, but not exceeding 3 months, as he specifies in the notice, and the instrument shall be exhibited accordingly.

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"49. SUBMISSIONS

"Any person may, in the period during which it is exhibited under this Division, make a written submission to the Authority in relation to a draft planning instrument."

11. HEARINGS

Section 50(2) of the Principal Act is amended by omitting all words after "to be dealt with" and substituting "under this sub-section."

12. REPEAL OF DIVISION 4 OF PART III

Division 4 of Part III of the Principal Act is repealed.

13. REPEAL AND SUBSTITUTION

Section 59 of the Principal Act is repealed and the following substituted:

"59. SUBMISSION TO MINISTER

"As soon as practicable after the expiration of the period of exhibition under Division 3 of a draft planning instrument, the Authority shall submit to the Minister -

- (a) the draft planning instrument and the explanatory document required under section 45 to be exhibited with it; and
- (b) a report on -
 - (i) the draft planning instrument; and
 - (ii) the submissions, if any, made to it under section 49."

14. ACCEPTANCE BY MINISTER

Section 60 of the Principal Act is amended -

- (a) by omitting from sub-section (2) "may refer" and substituting "shall refer";
- (b) by omitting from sub-section (4) "sections 47 to 60 inclusive" and substituting "sections 47, 48, 49, 50, 59 and 60"; and
- (c) by omitting sub-section (5).

15. REPEAL OF SECTION 60A

Section 60A of the Principal Act is repealed.

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16. MINISTER TO MAKE PLANNING INSTRUMENT

Section 61 of the Principal Act is amended -

- (a) by omitting sub-section (1) and substituting the following:

"(1) Where the Minister accepts a draft planning instrument in relation to land, he may make a planning instrument in relation to that land.

"(1A) Notwithstanding that a draft planning instrument has not been prepared or submitted to him under this Part, the Minister may, in relation to land which is not included in a planning area or a local area in respect of which a local member has been appointed under section 11, if he is satisfied that it is expedient to do so, make a planning instrument."; and

- (b) by omitting from sub-section (2) all words before paragraph (a) and substituting:

"(2) The Minister shall cause a planning instrument made under this section to be notified in the *Gazette* and the instrument shall come into operation on -".

17. NOTICE OF PLANNING INSTRUMENT

Section 62 of the Principal Act is amended -

- (a) by omitting "of the commencement" (first occurring) and substituting "after the commencement"; and

- (b) by omitting paragraph (c) and substituting the following:

"(c) notify each person who made a submission under section 49 in relation to the relevant draft planning instrument; and".

18. COMPLIANCE WITH PLANNING INSTRUMENT

Section 63 of the Principal Act is amended by adding at the end the following:

"(2) In a prosecution for an offence against this section, an allegation in the complaint that the defendant was, on a particular date or during a particular period, carrying on or permitting to be carried on on land to which a planning instrument applied a particular activity, is prima facie evidence of the facts alleged."

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19. NEW PART

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

"PART IIIA - PLANNING AND DEVELOPMENT OBJECTIVES
OF THE TERRITORY

"66A. MINISTER MAY PUBLISH PLANNING AND DEVELOPMENT
OBJECTIVES OF THE TERRITORY

"(1) The Minister may, from time to time, publish, in such manner as he thinks fit, what, in his opinion, are the planning and development objectives of the Territory.

"(2) Where the Minister publishes, under sub-section (1), planning and development objectives of the Territory, he shall, as soon as practicable after that publication, provide a copy of those objectives to the consent authority and to the Appeals Committee."

20. RESTRICTION ON SUBDIVISIONS

Section 84 of the Principal Act is amended by omitting all words after "in accordance with" and substituting "a plan of survey approved under section 49(2) of the *Licensed Surveyors Act* by the Surveyor-General."

21. REPEAL AND SUBSTITUTION

Section 85 of the Principal Act is repealed and the following substituted:

"85. SUBDIVISION 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 in relation to a subdivision of land unless he is satisfied that consent under this Part has been given in relation to the subdivision and the subdivision work required under this Part to be carried out has been carried out in accordance with the requirements of the relevant consent authority or security to the satisfaction of the consent authority has been given for the due completion of that work and for the doing of work to correct any defects or deficiency in that work discovered within a reasonable time after the completion of the work where the requirements of the relevant consent authority so require.

"(2) Where a subdivision of land is the subject of a Crown lease which contains development conditions, the security referred to in sub-section (1) may, as the consent authority thinks fit, for the purposes of that sub-section, be the Crown lease."

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22. REPEAL OF DIVISION 3 OF PART V

Division 3 of Part V of the Principal Act is repealed.

23. MATTERS TO BE TAKEN INTO ACCOUNT

Section 93 of the Principal Act is amended by omitting paragraphs (u) and (v) and substituting the following:

"(u) the planning and development objectives of the Territory published under section 66A(1);".

24. DETERMINATIONS

Section 94 of the Principal Act is amended by omitting sub-sections (2) and (3).

25. APPEALS

Section 97 of the Principal Act is amended by omitting sub-section (3) and substituting the following:

"(3) A subdivision application which has not been determined under section 94 -

(a) within 12 weeks after having been lodged with the consent authority; or

(b) where, within that 12 weeks, the consent authority considers that an environmental impact statement in respect of the proposed subdivision is necessary and 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 proposed subdivision, or where that Minister directs under that Act that a draft environmental impact statement in respect of the proposed subdivision be prepared or receives or calls for a report under that Act to enable him to determine whether there is a need for such a statement to be prepared -

(i) within 12 weeks after the last day that that Minister may make comments, suggestions or recommendations, under clause 14 of those Administrative Procedures in respect of the proposed subdivision; or

(ii) where that Minister has been provided under clause 6 or 7 of those Administrative Procedures with a report and under clause 8(2)(b) of those Administrative Procedures he advises the consent authority

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that the administrative procedures are at an end in respect of the proposed subdivision - within 12 weeks after the consent authority receives that advice,

is deemed to have been refused."

26. REPEAL AND SUBSTITUTION

Section 99 of the Principal Act is repealed and the following substituted:

"99. EFFECT OF LODGING PLANS, &c.

"(1) In this section 'service authority' means the Territory, a council of a municipality constituted under the *Local Government Act*, the Northern Territory Electricity Commission established under the *Electricity Commission Act* or a statutory public authority of the Territory or the Commonwealth prescribed for the purposes of this section.

"(2) On the depositing, under section 101 of the *Real Property Act*, with the Registrar-General, and registration, of a plan of survey in relation to the subdivision of land which has been approved under section 49(2) of the *Licensed Surveyors Act* all land shown on the plan of survey as a road, street, passage, court, alley, thoroughfare, *cul-de-sac*, square, park, water or drainage reserve, reserve or other similar open space shall, 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, vest in the service authority specified, and for the purpose indicated, in the plan of survey.

"(3) On the registration of a plan of survey as referred to in sub-section (2), the Registrar-General shall make such entries in the Register Book kept by him under the *Real Property Act*, relating to the land affected, as he thinks fit, to record -

- (a) the fact that the plan of survey has been deposited and registered; or
- (b) the vesting under sub-section (2) of the land.

"(4) Every road, street, passage, court, alley, thoroughfare or *cul-de-sac* vested under sub-section (2) shall be a road within the meaning and for the purposes of the *Control of Roads Act*.

"(5) Land vested under sub-section (2) in the Territory, other than land referred to in sub-section (4), shall be deemed to be land reserved under section 103 of the *Crown Lands Act* for the purpose indicated in the plan of survey.

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"(6) A plan of survey referred to in sub-section (2) 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.

"(7) Where a plan of survey referred to in sub-section (2) indicates an intended easement in favour of a specified service authority and describes it by a description in Schedule 2 or in a regulation made for the purposes of this section then, on the registration of the plan of subdivision as referred to in sub-section (2) -

(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.

"(8) 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 Book kept by him under the *Real Property Act* as he thinks fit, to evidence the easement.

"(9) 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 2 or a regulation made for the purposes of this section, shall be deemed not to be a fixture to the land for the purpose of giving the proprietor of the land a proprietary interest in it.

"(10) A service authority which is the proprietor of an easement referred to in this section may allow any other person, himself or by his agents, servants or workmen, to enter on and do anything on the land to which the easement relates 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."

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27. CONSENTS TO LAPSE

Section 101(2) of the Principal Act is amended by omitting all words after paragraph (a) and substituting the following:

"(b) in any case, if the plan of subdivision in respect of which the consent was given is approved under section 49(2) of the *Licensed Surveyors Act* by the Surveyor-General,

within 2 years after the date of consent unless certificates of title for each of the allotments in the subdivision have not been issued under the *Real Property Act* before the expiration of 4 years after the date of consent, in which case the consent shall lapse at the expiration of that 4 year period."

28. REPEAL OF DIVISION 2 OF PART VI

Division 2 of Part VI of the Principal Act is repealed.

29. MATTERS TO BE TAKEN INTO ACCOUNT

Section 110 of the Principal Act is amended -

(a) by omitting from sub-section (1) paragraphs (g) and (h) and substituting the following:

"(g) the planning and development objectives of the Territory published under section 66A(1);"; and

(b) by omitting sub-section (2).

30. DETERMINATIONS

Section 112 of the Principal Act is amended by omitting sub-sections (2) and (3).

31. APPEALS

Section 114 of the Principal Act is amended by omitting sub-section (3) and substituting the following:

"(3) A development application which has not been determined under section 112 -

(a) within 12 weeks after having been lodged with the consent authority; or

(b) where, within that 12 weeks, the consent authority considers that an environmental impact statement in respect of the proposed development is necessary and under clause 4 of the Administrative Procedures made under the *Environmental*

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Assessment Act notifies the Minister responsible for the administration of that Act of the proposed development, or where that Minister directs under that Act that a draft environmental impact statement in respect of the proposed development be prepared or receives or calls for a report under that Act to enable him to determine whether there is a need for such a statement to be prepared -

- (i) within 12 weeks after the last day that that Minister may make comments, suggestions or recommendations, under clause 14 of those Administrative Procedures in respect of that proposed development; or
- (ii) where that Minister has been provided under clause 6 or 7 of those Administrative Procedures with a report and under clause 8(2)(b) of those Administrative Procedures he advises the consent authority that those Administrative Procedures are at an end in respect of the proposed development - within 12 weeks after the consent authority receives that advice,

is deemed to have been refused."

32. REMOVAL FROM OFFICE

Section 124(2)(b) of the Principal Act is amended by omitting "section 7(2) of the *Mental Defectives Act*" and substituting "section 13(1) of the *Mental Health Act*".

33. REPEAL AND SUBSTITUTION

Section 131 of the Principal Act is repealed and the following substituted:

"131. DEFINITION

"In this Division, 'appellant' means a person who lodges an appeal under section 97(2) or 114(2)."

34. REPEAL AND SUBSTITUTION

Section 133 of the Principal Act is repealed and the following substituted:

"133. SERVICE OF NOTICES OF APPEAL

"The Chairman of the Appeals Committee shall cause notice of an appeal to be served on the consent authority whose determination is the subject of the appeal."

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35. NEW SECTION

The Principal Act is amended by inserting after section 141 the following:

"141A. PRELIMINARY CONFERENCE

"(1) Subject to sub-section (3), the Chairman shall, as soon as practicable after a notice of appeal has been lodged under section 132, fix a date, time and place for a preliminary conference between -

- (a) the appellant; and
- (b) the consent authority,

and give to each of them notice of the date, time and place so fixed.

"(2) The Chairman shall preside at a preliminary conference under this section.

"(3) The Chairman may dispense with the need for a preliminary conference under this section if he is of the opinion that no useful purpose would be served by a conference before the hearing of the appeal.

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

"(5) Subject to sub-section (6), evidence of anything said or done in the course of a conference under this section is inadmissible in proceedings before the Appeals Committee except by consent of all parties to the proceedings.

"(6) The Chairman shall report to the Appeals Committee on whether a compromise or settlement was reached at a preliminary conference under this section and, if so, the terms of the compromise or settlement, and the Appeals Committee may, without further inquiry, make such determination as is necessary to give effect to the compromise or settlement and the determination so made shall be deemed to be the final decision of the consent authority whose decision was the subject of the appeal.

"(7) Where no compromise or settlement is reached at a preliminary conference under this section, the Chairman may at the conference make such orders in relation to the hearing of the appeal as a member conducting a preliminary hearing under section 143 may make."

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36. REPEAL AND SUBSTITUTION

Section 142 of the Principal Act is repealed and the following substituted:

"142. FIXING OF PRELIMINARY HEARINGS

"(1) Where the Chairman decides under section 141A(3) to dispense with a preliminary conference, as soon as practicable after he so decides, he shall fix a date, time and place for a preliminary hearing by a member of the Appeals Committee.

"(2) The Chairman shall cause notice of the preliminary hearing of an appeal to be given to -

- (a) the appellant; and
- (b) the consent authority."

37. POWERS OF APPEALS COMMITTEE

Section 146 of the Principal Act is amended by inserting after "(h) permits" the words ", subject to section 146A".

38. NEW SECTION

The Principal Act is amended by inserting after section 146 the following:

"146A. MINISTER HAS RIGHT OF APPEARANCE AT APPEAL, &c.

"(1) The Appeals Committee shall, where requested to do so by the Minister, permit the Minister to appear as a party to an appeal to give evidence in respect of the planning and development objectives of the Territory, if any, published under section 66A(1) and evidence as to how, in his opinion, those objectives relate to the matter the subject of the appeal.

"(2) Where, under sub-section (1), the Minister has given evidence in an appeal, the Appeals Committee shall, in determining under section 147 the appeal, act within the confines of the planning and development objectives of the Territory, referred to in that sub-section, as stated in that evidence."

39. SERVICE OF INSTRUMENTS OF DETERMINATION

Section 149 of the Principal Act is amended by omitting paragraphs (a), (b) and (c) and substituting the following:

- "(a) the consent authority; and
- (b) the appellant,".

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40. REGULATIONS

Section 165(1) of the Principal Act is amended by inserting after paragraph (c) the following:

"(d) the circumstances and manner in which, and the person at whose expense, a notice of a draft planning instrument may be affixed to land to which the instrument relates;

(da) prescribing types of easements for the purposes of section 99 and the purposes and powers in relation to those easements;"

41. REPEALS

Sections 173 to 178 inclusive, 180, 180A and 180B of the Principal Act are repealed.

42. SCHEDULE

The Schedule to the Principal Act is amended -

(a) by omitting the heading "SCHEDULE" and substituting the following:

"SCHEDULES

"SCHEDULE 1"; and

(b) by adding at the end the following:

"SCHEDULE 2

Section 99

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.

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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 effluents 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;

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- (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);
 - (c) without limiting the generality hereof, to erect on a portion of the land so designated in the plan, to a height not exceeding 4 metres, or such other height as is shown in the plan, from the surface of the land, poles, equipment for transforming electricity and incidental or ancillary works (including such walls or other structures as the proprietor of the easement considers necessary);
 - (d) to break the surface of, dig, open up and use the land for the purposes of the easement or exercising these powers;
 - (e) to inspect, repair, alter, remove and replace works referred to in these powers; and
 - (f) 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

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- (ii) on the surface of the land, incidental or ancillary works for the transmission of telecommunication services (including, without limiting the generality of the foregoing, 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.

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Powers

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

43. TRANSITIONAL

Where before the commencement of the relevant section of this Act an application or submission had been made which, at the commencement of that section had not been fully disposed of or considered, or a proceeding had commenced, to which an amendment effected by the relevant section would, but for this section, apply, that application or submission shall continue to have effect or proceeding may be continued, and any action may be taken as a result of its so continuing (including action on the disposal of the application, the consideration of the submission or the conclusion of the proceeding) as if that relevant section had never commenced.

