

Serial 275
Planning Amendment Bill 2004
Dr Burns

**A BILL
for
AN ACT**

to amend the *Planning Act*



NORTHERN TERRITORY OF AUSTRALIA

PLANNING AMENDMENT ACT 2004

No. of 2004

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Planning Act*

[Assented to 2004]

[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Planning Amendment Act 2004*.

2. Commencement

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

3. Principal Act amended

This Act amends the *Planning Act*.

4. New section 2A

After section 2 –

insert

2A. Objects

(1) The objects of this Act are to plan for, and provide a framework of controls for, the orderly use and development of land.

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- (2) The objects are to be achieved by –
 - (a) strategic planning of land use and development and for the sustainable use of resources;
 - (b) strategic planning of transport corridors and other public infrastructure;
 - (c) effective controls and guidelines for the appropriate use of land, having regard to its capabilities and limitations;
 - (d) control of development to provide protection of the natural environment, including by sustainable use of land and water resources;
 - (e) minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development;
 - (f) ensuring, as far as possible, that planning reflects the wishes and needs of the community through appropriate public consultation and input in both the formulation and implementation of planning schemes; and
 - (g) fair and open decision making and appeals processes.

5. Amendment of section 3 (Interpretation)

- (1) Section 3(1), definitions of "commencement date", "development provisions", "incorporated document", "land use objective", "party", "Planning Scheme" and "zone" –

omit

- (2) Section 3(1) –

insert (in alphabetical order)

"alteration permit" means a permit granted and (if applicable) varied under Part 4, Division 3;

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

"appellant" has the meaning in section 118A(a);

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

"existing building" has the meaning in section 33(3);

"existing works" has the meaning in section 33(4);

"notice of determination" means a notice of determination served under section 53A;

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

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

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

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

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

- (3) Section 3(1), definition of "approved form" –

omit

by the Minister

substitute

under section 135A

- (4) Section 3(1), definitions of "covenant" and "covenant in gross" –

omit

Division 4 of Part 9

substitute

Part 9, Division 4

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- (5) Section 3(1), definition of "date of consent", paragraph (a) –
omit
53
substitute
54
- (6) Section 3(1), definition of "development", paragraph (c)(ii) –
omit
of
substitute
of native
- (7) Section 3(1), definition of "development permit" –
omit
53
substitute
54
- (8) Section 3(1), definitions of "easement" and "easement in gross" –
omit
Division 2 of Part 9
substitute
Part 9, Division 2
- (9) Section 3(1), definition of "existing use" –
omit
33
substitute
33(1) or (2)

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- (10) Section 3(1), definition of "former Act" –

omit

date

substitute

of this Act

- (11) Section 3(1), definition of "formula for calculation" –

omit

69(4)(d) or 70(3)

substitute

69(4)

- (12) Section 3(1), definition of "notice of refusal" –

omit

issued under section 53

substitute

served under section 53C

6. Amendment of section 4 (Meaning of "consent authority")

- (1) Section 4(2) –

omit

subsection (3)

substitute

subsections (3) and (5)

- (2) After section 4(4) –

insert

(5) If the Minister directs the Development Consent Authority under section 85(3), the Minister is the consent authority in relation to the particular development application to which the direction relates.

7. Repeal and substitution of Part 2

Part 2 –

repeal, substitute

PART 2 – PLANNING SCHEMES AND PROPOSALS

Division 1 – Planning schemes

7. Northern Territory Planning Scheme

(1) There is a Northern Territory Planning Scheme that applies in relation to the whole of the Territory except any area of land –

- (a) in relation to which another planning scheme applies; or
- (b) specified in the NT Planning Scheme as being excluded from the application of that Scheme.

(2) The NT Planning Scheme may refer to an area of land by describing the land or referring to a map or plan of the land.

8. Other specific planning schemes

(1) The Minister may, on the Minister's own initiative or following a request by a person or body, make a specific planning scheme that applies in relation to the area or areas of land described in the planning scheme or in a map to which the planning scheme refers.

(2) The Minister may, on the Minister's own initiative or following a request by a person or body, repeal a specific planning scheme.

(3) Divisions 2, 3, 4 and 5 apply in relation to the making or repeal of a specific planning scheme as if a reference in those Divisions to an amendment of a planning scheme were a reference to the making or repeal of a specific planning scheme.

(4) If the Minister makes or repeals a specific planning scheme on his or her own initiative, Divisions 3, 4 and 5 apply (with the necessary changes) in relation to that action as if the Minister had received a request for the specific planning scheme to be made or repealed.

9. Contents of planning scheme

- (1) A planning scheme may include any of the following:
 - (a) provisions that include statements of policy in respect of the use or development of land;

- (b) provisions that permit, prohibit, restrict or impose conditions on a use or development of land;
- (c) provisions that provide instructions, guidelines, or assessment criteria to assist the consent authority in assessing development applications;
- (d) other provisions in connection with planning for or control of the use or development of land;
- (e) other provisions that are necessary or convenient for giving effect to the planning scheme;
- (f) maps, plans, designs and diagrams.

(2) A provision of a planning scheme may apply in relation to all the land to which the planning scheme applies or may apply to a specified part of that land.

(3) A planning scheme may refer to, adopt or incorporate (with or without modification) a specified document, as in force at a particular time or as in force from time to time.

Division 2 – Amendments and requests for amendments of planning schemes

10. Meaning of declared class of amendments

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

11. Amendment of planning scheme generally

(1) The Minister may amend a planning scheme in accordance with this Part.

(2) To avoid doubt, the repeal and substitution of a planning scheme in its entirety is an amendment of the planning scheme.

(3) The Minister may declare in writing that, in the Minister's opinion, a class of amendments of a planning scheme is not so significant as to require exhibition.

12. Amendment of planning scheme on Minister's initiative

(1) The Minister may decide to amend a planning scheme on his or her own initiative as the Minister sees fit.

(2) If the Minister is satisfied the proposed amendment is within a declared class of amendments or is not so significant as to require exhibition, the Minister may –

- (a) amend the planning scheme without taking any further action under Division 3, 4 or 5;
- (b) give notice of the amendment in accordance with section 28; and
- (c) provide reasons for the amendment in accordance with section 29.

(3) In any other circumstances, Divisions 3, 4 and 5 apply in relation to the proposed amendment.

13. Request for amendment of planning scheme

(1) A person or body may, in writing, request the Minister to amend a planning scheme as proposed in the request.

(2) After considering the request, the Minister may –

- (a) if the Minister is satisfied the proposed amendment is within a declared class of amendments or is not so significant as to require exhibition –
 - (i) decide to amend the planning scheme without taking any further action under Division 3, 4 or 5;
 - (ii) amend the planning scheme as proposed;
 - (iii) give notice of the amendment in accordance with section 28; and
 - (iv) provide reasons for the amendment in accordance with section 29;
- (b) decide to continue consideration of the proposed amendment by placing it on exhibition; or
- (c) decide to refuse to amend the planning scheme as proposed.

(3) As soon as practicable after making the decision, the Minister must give written notice of the decision to the person or body who requested the proposed amendment.

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

Division 3 – Exhibition of proposals

14. Definitions

In this Division –

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

"proposal" means one of the following:

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

15. Period of exhibition of proposal

(1) Subject to subsection (2), the period of exhibition for a proposal is 28 days starting on the day the notice of the proposal is first published in a newspaper under section 17.

(2) The Minister may determine a longer period of exhibition for a particular proposal or class of proposals.

16. Notice relating to rezoning or grant of permit

(1) This section applies in relation to land that will be affected by one of the following proposals if carried out:

- (a) a proposal to amend a planning scheme by establishing or changing a zone;
- (b) a proposal to grant or vary an exceptional development permit.

(2) Subject to this section, on or before the first day of the period of exhibition for the proposal, the Minister must –

- (a) cause a notice to be served on the owner of the land; and
 - (b) cause to be placed on or in the vicinity of the land as many notices, in accordance with subsections (4) and (5), as the Minister considers appropriate.
- (3) Subsection (2) does not apply if the Minister considers –

- (a) it is impracticable to comply with the subsection because of the location of the land or the number of parcels of land; and
 - (b) it is reasonable to expect that all persons likely to be affected by the proposal will receive sufficient notice of it by means of the notice published in a newspaper under section 17.
- (4) A notice referred to in subsection (2)(b) must include the following information:
- (a) the current zone of the land;
 - (b) the zone proposed for the land or the activity that will, despite the zone of the land, be permitted under an exceptional development permit.
- (5) A notice referred to in subsection (2)(b) must be large enough and placed in such a position to enable a person with normal unimpaired eyesight to read it, without optical assistance, from the boundary of the public road nearest to the land.
- (6) A person must not remove a notice placed on land in accordance with this section until after the end of the period of exhibition for the proposal.

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

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

17. Publication of notice of proposal

- (1) The Minister must cause a notice containing the following information to be published in a newspaper circulating in the Territory or in the area to which the proposal relates:
- (a) that a proposal to amend a planning scheme, or to grant or vary an exceptional development permit, is to be placed on exhibition;
 - (b) each place where the proposal is to be placed on exhibition;
 - (c) the period of exhibition;
 - (d) the person or body to whom written submissions about the proposal may be made;
 - (e) a brief summary of the nature of the proposal.
- (2) If the proposal relates to establishing or changing a zone or to a grant or variation of an exceptional development permit, and the Minister

considers it to be practicable, the brief summary must include the following information:

- (a) the lot number, Section number or Portion number and, if applicable, the street address of the land;
- (b) the current zone of the land.
- (3) During the period of exhibition, the Minister must cause the notice to be published –
 - (a) a second time in a newspaper circulating in the Territory or in the area to which the proposal relates; and
 - (b) once in the *Gazette*.

18. Exhibition of details of proposal

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

(2) The notice placed on exhibition must include details of the proposal.

19. Notice to local authority if proposal relates to land in Division area

- (1) This section applies if –
 - (a) a proposal relates to land partly or entirely within a Division area; and
 - (b) the Division area is partly or entirely within a council area.
- (2) The Minister must notify the local authority for the council area of the proposal.
- (3) The notice must contain the information specified in the notice published under section 17 and an invitation to the local authority to make a submission about the proposal under section 22.

Division 4 – Submissions, consultation, hearings and reports about proposals

20. Definitions

In this Division –

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

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

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

"reporting body" has the meaning in section 21.

21. Reporting body

(1) The reporting body, in respect of a proposal, is the person or body who must perform the prescribed functions.

(2) If a proposal relates to land partly or entirely within one Division area, the Division for that area is the reporting body.

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

22. Submissions and hearing

(1) A person may, within the period during which a proposal is on exhibition, make a written submission about the proposal to the reporting body.

(2) If the reporting body receives any submissions, it must conduct a hearing in respect of those submissions and invite all persons who have made submissions to appear at the hearing and be heard in relation to the proposal.

(3) The hearing must be conducted with the minimum of formality and in a manner that ensures procedural fairness.

23. Directions by Minister relating to consultation

(1) If the Minister requires a reporting body to carry out consultation in addition to the other processes required by this Division, the Minister must in writing direct the reporting body to do so.

(2) The direction may include requirements about the persons with whom, and the manner in which, the consultation is to be carried out.

24. Reports

(1) After the reporting body has conducted a hearing in respect of submissions about a proposal, and carried out any consultation as directed by the

Minister, the reporting body must provide the Minister with the submissions and a written report about –

- (a) issues raised in the submissions;
- (b) issues raised at the hearing and during any consultation; and
- (c) any other matters the reporting body considers the Minister should take into account when considering the proposal.

(2) If no submissions are received by the reporting body, it must provide the Minister with a written report about issues raised during any consultation and any other matters it considers the Minister should take into account when considering the proposal.

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

Division 5 – Decisions about proposals

25. Proposal to amend planning scheme

(1) This section applies in relation to a proposal to amend a planning scheme in respect of which the Minister has received a report or reports under Division 4.

(2) After considering each report and, if applicable, any other matters the Minister is required by this Act to consider in relation to the proposal, the Minister must –

- (a) amend the planning scheme in accordance with the proposal;
- (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the subsequent actions required by virtue of section 27(3);
- (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, amend the planning scheme in accordance with the altered proposal; or
- (d) refuse to amend the planning scheme.

26. Proposal relating to exceptional development permit

(1) This section applies in relation to a proposal relating to a grant or variation of an exceptional development permit in respect of which the Minister has received a report or reports under Division 4.

(2) After considering each report and, if applicable, any other matters the Minister is required by this Act to consider in relation to the proposal, the Minister must take an action under section 40.

27. Exhibition of altered proposal

(1) This section applies in relation to an altered proposal only if the alteration is to the substance of the proposal and not merely to the format or style in which the proposal was placed on exhibition.

(2) If the Minister is satisfied an alteration is sufficiently extensive or significant to justify the exhibition of the altered proposal, the Minister must place it on exhibition.

(3) Subject to subsection (4), Divisions 3 and 4 and this Division apply in relation to the altered proposal as if the previous proposal had not been on exhibition.

(4) Section 16 applies in relation to an altered proposal only if the zone proposed for the land to which the altered proposal relates is different from the zone proposed in the previous proposal, as specified in the previous notice placed on or in the vicinity of the land under section 16(2)(b).

(5) In this section –

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

28. Notice of amendment

(1) After the Minister amends a planning scheme, the Minister must cause to be published in the *Gazette* a notice containing the following information:

- (a) a statement that the Minister has amended the planning scheme named in the notice;
- (b) any identifying number or title given to the amendment;
- (c) the place where copies of the amendment are available for purchase or inspection.

(2) An amendment of a planning scheme takes effect on the date the notice of the amendment is published in the *Gazette*.

(3) This section does not apply in relation to any action taken by the Minister under section 40.

29. Reasons for actions to be available to public

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

8. Repeal and substitution of Part 4

Part 4 –

repeal, substitute

PART 4 – EXISTING USES, EXISTING BUILDINGS, EXISTING WORKS AND RELATED PERMITS

Division 1 – Existing uses, existing buildings and existing works

33. Existing use, building and works

(1) For this Part, a use of land is an existing use if the following circumstances apply:

- (a) the use was being made immediately before the commencement of a planning scheme, or of an amendment of a planning scheme, relating to the land;
- (b) the use was lawful under this Act immediately before the commencement –
 - (i) as a use permitted without the consent of a consent authority; or
 - (ii) as a use permitted under a planning scheme only with the consent of the consent authority and to which the consent authority had consented;
- (c) the use would cease to be lawful after the commencement if not for this Part.

(2) Also, a use of land is an existing use for this Part if it is permitted only in accordance with an exceptional development permit.

(3) For this Part, a building is an existing building if the following circumstances apply:

- (a) the building was in existence immediately before the commencement of a planning scheme, or of an amendment of a planning scheme, relating to the land on which the building is situated;

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

34. Existing use protected

(1) Subject to subsection (2), a person does not contravene a planning scheme only by continuing an existing use after the commencement of a conflicting provision.

- (2) A person may continue an existing use only if –
 - (a) the use is restricted to the part of the land on which the use was being made immediately before the commencement of the conflicting provision; and
 - (b) the intensity of the use is not greater than the intensity of use immediately before the commencement of the conflicting provision.
- (3) In this section –

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

35. Existing works protected

(1) A person does not contravene a planning scheme only by continuing existing works (whether or not to completion) after the commencement of a conflicting provision if, immediately before the commencement –

- (a) the existing works were lawful under a permit, and the permit remains in force after the commencement; or
 - (b) the existing works were –
 - (i) otherwise lawful under this Act; and
 - (ii) substantially commenced.
- (2) Existing works to which this section refers and any building constructed as part of those works may be used for the purpose for which they were constructed.
- (3) Sections 57 and 59 do not apply to a development permit referred to in subsection (1).
- (4) In this section –
- "conflicting provision" means a provision of a planning scheme, or an amendment of a provision of a planning scheme, with which existing works conflict.

36. Repairs and maintenance of existing building etc. permitted

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

37. Abandonment of existing use

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

Division 2 – Exceptional development permits

38. Application for permit and variation of permit

- (1) A person may apply to the Minister for the grant of an exceptional development permit.
- (2) An exceptional development permit may permit any of the following in relation to land:

- (a) a development or use of the land, although the development or use would otherwise not be lawful under the relevant planning scheme;
- (b) a development or use of the land in substitution for an existing use, although the development or use would otherwise not be lawful under the relevant planning scheme;
- (c) a modification or alteration of an existing building or existing works that would have a result other than as referred to in section 43B(1) or (2);
- (d) the demolition and reconstruction of an existing building that is used for an existing use of the land.

(3) The owner of the land to which an exceptional development permit relates may apply for a variation of the permit.

(4) An application under this section must be in the approved form containing the applicant's proposal and accompanied by the prescribed fee.

39. Decision on receipt of application

(1) After receiving an application under section 38, the Minister may decide –

- (a) to place the proposal in the application on exhibition;
- (b) if the proposal in the application is for a variation of a permit – that the proposal is not so significant as to require exhibition; or
- (c) to refuse to grant or vary the exceptional development permit without placing the proposal in the application on exhibition.

(2) As soon as reasonably practicable after deciding to place a proposal on exhibition or to refuse to grant or vary the permit, the Minister must give the applicant written notice of the decision.

(3) If the Minister decides to place a proposal on exhibition, Part 2, Divisions 3, 4 and 5 apply in relation to the proposal.

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

(1) The Minister must not grant an exceptional development permit for a proposal relating to a development or use referred to in section 38(2)(a) unless the Minister is satisfied it is preferable to issue the permit than to amend the relevant planning scheme.

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(2) Subject to subsection (1), if a proposal for the grant of an exceptional development permit has been on exhibition and the Minister has considered the matters referred to in section 26(2), the Minister must –

- (a) grant a permit in accordance with the proposal;
- (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the further actions required by virtue of section 27(3);
- (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, grant a permit in accordance with the altered proposal; or
- (d) refuse to grant a permit.

(3) If a proposal for a variation of an exceptional development permit has been on exhibition and the Minister has considered the matters referred to in section 26(2), the Minister must –

- (a) vary the permit in accordance with the proposal;
- (b) alter the proposal and, if section 27(2) applies in relation to the altered proposal, place it on exhibition and take the actions required by virtue of section 27(3);
- (c) alter the proposal and, if section 27(2) does not apply in relation to the altered proposal, vary the permit in accordance with the altered proposal; or
- (d) refuse to vary the permit.

(4) If the Minister has decided under section 39 that a proposal to vary an exceptional development permit is not so significant as to require exhibition, the Minister must –

- (a) vary or refuse to vary the permit; or
- (b) alter the proposal and vary the permit in accordance with the altered proposal.

(5) An exceptional development permit may be granted or varied subject to the conditions the Minister thinks fit and specifies in the permit or variation.

(6) The Minister must give notice in the *Gazette* of a decision under this section.

(7) The notice must include the prescribed details.

41. Reasons for decision to be available to public

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

42. Matters to be taken into account when making decision

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

43. If proposal referred to in *Unit Titles Act*

If the Minister grants an exceptional development permit in relation to a proposal referred to in section 16 or 26ZI of the *Unit Titles Act*, the building to which the permit relates is taken to conform with the relevant planning scheme for the purposes of that section.

Division 3 – Alteration permits for existing buildings or existing works

43A. Application for alteration permit

(1) A person may apply to the consent authority for the grant of an alteration permit in relation to an existing building or existing works.

(2) The application must be in the approved form and accompanied by the prescribed fee.

43B. Grant or refusal to grant alteration permit

(1) The consent authority may issue an alteration permit only if –

- (a) the proposed alteration will not alter a measurable aspect of the existing building or existing works by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or
- (b) in the opinion of the consent authority, the proposed alteration is not conveniently measurable and will not materially affect the amenity of adjoining or nearby land or premises.

(2) Despite subsection (1)(a), an alteration permit must not be issued if it will allow an increase in the number of dwellings capable of separate occupancy.

(3) If the consent authority refuses to issue an alteration permit, the consent authority must give the applicant a statement of the reasons for the refusal.

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

(1) The consent authority may impose on an alteration permit the conditions it thinks fit and specifies in the alteration permit.

(2) The holder of the alteration permit may apply to the consent authority for a variation of the conditions of the permit.

(3) The application must be in the approved form and accompanied by the prescribed fee.

(4) The consent authority may vary the conditions of an alteration permit only if it is satisfied about the matters referred to in section 43B(1) and (2) in relation to the proposed variation.

9. Repeal of section 45

Section 45 –

repeal, substitute

45. When development permit taken to be issued

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

(a) the particular use was permitted on the land without the consent of the consent authority; and

(b) that particular use was being made of the land.

10. Amendment of section 46 (Development applications)

(1) After section 46(2) –

insert

(2A) An application under subsection (1) may be made by electronic transmission in the prescribed manner but must not be considered by the consent authority until the prescribed fee is paid.

(2) Section 46(3)(a) –

omit

the Planning Scheme insofar as it applies, if at all,

substitute

any planning scheme that applies

- (3) Section 46(4)(c)(i) –

omit, substitute

- (i) a proposed amendment of a planning scheme has been placed on exhibition; and

- (4) Section 46(4)(c)(ii) –

omit

Division 4 of Part 2

substitute

Part 2, Division 5

- (5) Section 46(5) –

omit

in writing the applicant

substitute

the applicant in writing

11. Repeal and substitution of section 50

Section 50 –

repeal, substitute

50. Evidence and information in relation to development application

(1) If a natural person or body corporate has made a submission in relation to a development application in accordance with section 49(1), the consent authority may invite the person or a representative of the body corporate to appear before it and give evidence in respect of the development application.

(2) If a local authority has made a submission in relation to a development application in accordance with section 49(2), the consent authority must invite a representative of the local authority to appear before it and give evidence in respect of the development application.

(3) The Minister, as the consent authority in relation to a development application, may in writing appoint a person or body to receive information in respect of the application from a person or representative referred to in subsection (1) or (2) and give the Minister a report on that information.

(4) If appropriate, the person or body may receive information in respect of the development application by telephone or other electronic means.

12. Amendment of section 51 (Matters to be taken into account)

(1) Section 51(a) –

omit

the Planning Scheme as it

substitute

any planning scheme that

(2) Section 51(b) –

omit

the Planning Scheme

substitute

such a planning scheme

(3) Section 51(b)(i) –

omit

being exhibited under Division 3 of Part 2

substitute

on exhibition under Part 2, Division 3

(4) Section 51(b)(ii) –

omit

determination has not been made under Division 4 of Part 2

substitute

decision has not been made under Part 2, Division 5

(5) Section 51(p) –

omit, substitute

(p) the public interest, including (if relevant) how the following matters are provided for in the application:

(i) community safety through crime prevention principles in design;

(ii) water safety;

(iii) access for persons with disabilities;

13. Amendment of section 52 (Consent only if development complies with planning scheme)

(1) Section 52(1)(a) –

omit

land use objective

substitute

planning scheme provision referred to in section 9(1)(a)

(2) Section 52(1)(b) and (2) –

omit

the development provisions

substitute

a planning scheme provision referred to in section 9(1)(b)

(3) Section 52(3) –

omit (all references)

land use objective

substitute

planning scheme provision referred to in section 9(1)(a)

14. Repeal and substitution of sections 53 and 54

Sections 53 and 54 –

repeal, substitute

53. Determination of development application

As soon as practicable after public consultation is completed in relation to a development application and the consent authority has considered the matters referred to in sections 51 and 52, the consent authority must determine to –

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

53A. Notice of determination

(1) This section applies in relation to a development application –

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

(2) As soon as practicable after determining the development application, the consent authority must serve a notice of determination –

- (a) on the applicant; and
- (b) on each person (including a local authority) who made a submission in relation to the development application in accordance with section 49.

(3) The notice of determination must be in the approved form, containing the following information:

- (a) the determination of the consent authority;
- (b) the reasons for the determination;
- (c) particulars about the rights of appeal under Part 9.

(4) If there is a local authority for the land to which the determination relates and the local authority did not make a submission in accordance with section 49, the consent authority must –

- (a) advise the local authority of the determination; and
- (b) provide the local authority with a copy of the reasons for the determination.

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

53B. Notice of consent

(1) This section applies in relation to a development application –

- (a) determined by the consent authority in accordance with section 53(a) or (b); and
- (b) in respect of which no submissions were made in accordance with section 49 or, if submissions were made, there is no right of appeal under section 117.

(2) As soon as practicable after determining the development application and issuing a development permit under section 54(1), the consent authority must serve a notice of consent –

- (a) on the applicant; and
- (b) on any person (including a local authority) who made a submission in relation to the development application in accordance with section 49.

(3) The notice of consent must be in the approved form, containing the following information:

- (a) the determination of the consent authority;
- (b) the reasons for the determination;
- (c) particulars about the right of appeal under Part 9 and, if applicable, the reasons why there is no right of appeal under section 117.

(4) If there is a local authority for the land to which the determination relates, the consent authority must –

- (a) advise the local authority of the determination; and
- (b) provide the local authority with a copy of the reasons for the determination.

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

53C. Notice of refusal

(1) As soon as practicable after a consent authority determines a development application in accordance with section 53(c), the consent authority must serve a notice of refusal –

- (a) on the applicant; and
- (b) on any person (including a local authority) who made a submission in relation to the development application in accordance with section 49.

(2) The notice of refusal must be in the approved form, containing the following information:

- (a) the determination of the consent authority;
- (b) the reasons for the determination;
- (c) particulars about the right of appeal under Part 9.

(3) If there is a local authority for the land to which the development application relates, the consent authority must –

- (a) advise the local authority of the determination; and
- (b) provide the local authority with a copy of the reasons for the determination.

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

54. Development permits

(1) Immediately after a consent authority determines a development application to which section 53B applies, it must issue a development permit to the applicant.

(2) A consent authority that has served a notice of determination on each person referred to in section 53A(2) must issue a development permit to the applicant –

- (a) if a person appeals under section 117 and, under section 130, the Appeals Tribunal orders the consent authority to issue a development permit – in accordance with the order; or

- (b) if no person appeals under section 117 – after the expiry of the period within which such an appeal must be made.
- (3) A development permit must be in the approved form.

15. Repeal and substitution of section 57

Section 57 –

repeal, substitute

57. Variation of conditions of permit

(1) The owner of land to which a development permit relates, or a person authorised by the owner, may at any time before the permit lapses apply to the consent authority for a variation of a condition of the permit.

(2) The application must be in the approved form and accompanied by the prescribed fee.

(3) The consent authority may, in writing, vary a condition of a development permit if –

- (a) the proposed variation will not alter a measurable aspect of the development by a margin greater than 5% and, in the opinion of the consent authority, will not materially affect the amenity of adjoining or nearby land or premises; or
- (b) in the opinion of the consent authority, the alteration resulting from the proposed variation is not conveniently measurable and the proposed variation will not materially affect the amenity of adjoining or nearby land or premises.

(4) Despite subsection (3)(a), a permit must not be varied if it will allow an increase in the number of dwellings capable of separate occupancy.

(5) If the consent authority refuses to vary a condition of a permit in accordance with an application, the consent authority must give to the applicant a statement of the consent authority's reasons for the refusal.

16. New section 59A

After section 59 in Part 5, Division 4 –

insert

59A. Lapse of permit on abandonment of permitted use

(1) This section applies in relation to the following development permits:

- (a) a development permit taken to be in force by virtue of section 45;
- (b) a development permit that remains in force by virtue of section 58(4).

(2) If a person discontinues a permitted use for a continuous period of not less than 12 months, the person is conclusively presumed to have abandoned the permitted use and the development permit is taken to have lapsed.

(3) Within 12 months after a permitted use is discontinued, an owner of the land or a person authorised in writing by the owner may apply to the consent authority in writing for an extension of the period referred to in subsection (2).

(4) The consent authority may determine the application by extending or refusing to extend the period during which the permitted use may be discontinued without a person being conclusively presumed to have abandoned the use.

(5) In this section –

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

17. Amendment of section 66 (Minister may revoke or modify permit)

(1) Section 66(4) –

omit, substitute

(4) As soon as practicable after receiving the report under section 144, the Minister must decide whether or not to revoke or modify the permit.

(2) Section 66(6) –

omit

determining

substitute

deciding

18. Amendment of section 69 (Content of contribution plan)

(1) Section 69(4)(d) and (e) –

omit, substitute

- (d) in relation to each type of infrastructure for which a contribution is required – a formula for calculating the contribution, determined having regard to prescribed types of information or estimations and descriptions or other information referred to in this section;
- (e) in relation to public car parking – a formula for calculating the contribution, determined having regard to –
 - (i) the value of the land necessary for an off-street car park in the policy area; and
 - (ii) the estimated cost of construction of public car parking spaces on that land, using the most appropriate or cost effective form of construction, whether ground level or multi-level and having regard to all the circumstances in the policy area; and
- (f) other prescribed information.

(2) Section 69(5) –

omit

subsection (4)(d)(i)

substitute

subsection (4)(d)

19. Repeal and substitution of section 70

Section 70 –

repeal, substitute

70. Contribution towards car parking

- (1) This section applies to a development in a policy area.
- (2) A planning scheme may require a particular type of development to provide for car parking as part of the development to meet the expected increased demand for car parking spaces in the policy area as a consequence of the development.

(3) If a planning scheme requires a certain number of car parking spaces to be provided as part of a development, the consent authority may determine, as a condition of the development permit, that a different number of car parking spaces may be provided or no car parking spaces need be provided.

(4) The consent authority must not make such a determination unless –

- (a) it has considered all the circumstances of the particular case; and
- (b) it is satisfied the intent of the planning scheme will still be fulfilled.

(5) If a condition of a development permit requires a certain number of car parking spaces to be provided as part of the development, the permit may include a condition that a contribution may be paid to the service authority for the policy area instead of providing a specified number of those parking spaces.

(6) The contribution payable to the service authority must be calculated in accordance with the formula contained in the contribution plan for the policy area.

20. Amendment of section 71 (Contribution payable)

(1) Section 71(1) –

omit, substitute

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

(2) Section 71(7) –

omit, substitute

(7) If a declaration has been made under section 73 or an order has been made under section 125(6) or 130(5), this section applies with the necessary changes in relation to the payment of an amount of contribution to which the declaration or order relates.

21. Amendment of section 75 (Use or development to comply with Act)

(1) Before section 75(1) –

insert

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

(2) Section 75(1) –

omit

all the words from and including "development" to and including "land."

substitute

planning scheme that applies to the land, except in accordance with a permit.

(3) Section 75(3)(a) –

omit

development permit

substitute

permit,

(4) Section 75(3)(b) –

omit

development

22. New section 75A

After section 75 –

insert

75A. Clearing native vegetation

(1) A person must not develop land by the clearing of native vegetation except in accordance with any of the following that applies in relation to the land:

- (a) a planning scheme;
- (b) an interim development control order;
- (c) a permit.

Penalty: If the offender is a natural person – 200 penalty units.

If the offender is a body corporate – 1 000 penalty units.

(2) Any one or more of the following persons may be prosecuted for an offence against subsection (1):

- (a) an owner of the land;
- (b) an occupier of the land;
- (c) a person apparently in charge of the clearing of native vegetation on the land.

(3) In a prosecution of a person for an offence against subsection (1), it is not a defence that the person had no knowledge of the requirements of a planning scheme, interim development control order or permit relating to the clearing of native vegetation on the land.

23. New section 78A

After section 78 in Part 7, Division 2 –

insert

78A. Time for commencing prosecution

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

24. Repeal and substitution of section 80

Section 80 –

repeal, substitute

80. Order to remedy contravention or failure

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

25. Amendment of section 81 (Onus of proof)

- (1) Section 81 –

omit

In an action, suit or

substitute

- (1) In a

(2) Section 81(a) –

omit

the Development Consent Authority

substitute

a consent authority

(3) Section 81(a) –

omit

prima facie

(4) Section 81(c) –

omit

action, suit or proceeding, to be sufficient evidence,

substitute

proceeding, to be sufficient evidence

(5) Section 81, at the end –

insert

(2) In a proceeding in respect of an offence against section 75A(1), an averment by or on behalf of the Minister or a consent authority that there was native vegetation on land at a specified date is prima facie evidence of the fact.

26. Amendment of section 85 (Minister may direct Authority)

(1) Section 85(1) –

omit, substitute

(1) The Minister may direct the Development Consent Authority generally or in respect of a particular matter other than –

- (a) the determination of a particular development application; or
- (b) the contents of any report or recommendation the Authority is required to provide under this Act.

- (2) Section 85(3) –

omit, substitute

(3) At any time before the Development Consent Authority has served a notice under section 53A, 53B or 53C in respect of a particular development application made to it, the Minister may direct the Development Consent Authority that the Minister is the consent authority in relation to the development application.

(4) If the Minister directs the Development Consent Authority under subsection (3), the Development Consent Authority must, as soon as practicable, forward to the Minister the particular development application and all submissions and other documents in relation to the application.

27. Amendment of section 89 (Appointment of members within council area)

- (1) Section 89(2) –

omit, substitute

(2) If an appointment is to be made under subsection (1)(a) –

- (a) the local authority may nominate to the Minister a person for appointment; or
- (b) if the Minister does not receive a nomination under paragraph (a) – the Minister must by notice in writing to the local authority request the local authority to nominate a person for appointment.

- (2) Section 89(3) –

omit

subsection (2)

substitute

subsection (2)(b)

- (3) Section 89(4)(a) –

omit

subsection (3)

substitute

subsection (2)(a) or (3)

- (4) Section 89(4)(b), after "authority" –

insert

under subsection (2)(a) or

28. Amendment of section 91 (Alternate members for local authority representatives)

- (1) Section 91(1) –

omit

appointed under section 89(1)(a) in relation to a Division

substitute

for a Division in office from time to time during the period of appointment of the alternate member

- (2) Section 91(2) –

omit, substitute

(2) If an appointment is to be made under subsection (1) –

(a) the local authority may nominate to the Minister a person for appointment; or

(b) if the Minister does not receive a nomination under paragraph (a) – the Minister must by notice in writing to the local authority request the local authority to nominate a person for appointment.

- (3) Section 91(3) –

omit

subsection (2)

substitute

subsection (2)(b)

- (4) Section 91(3) –

omit

in relation to a Division

- (5) Section 91(4)(a) –

omit

subsection (3)

substitute

subsection (2)(a) or (3)

- (6) Section 91(4)(b), after "authority" –

insert

under subsection (2)(a) or

29. Repeal and substitution of Part 9, Division 2

Part 9, Division 2 –

repeal, substitute

Division 2 – Determinations that may be appealed against

111. Appeal against refusal to issue development permit

(1) A person who made a development application under section 46 may appeal to the Appeals Tribunal against a determination of the consent authority under section 53(c) refusing to consent to the development proposed in the application.

(2) The appeal must be made within 28 days after the person is served with the notice of refusal under section 53C.

112. Appeal if consent authority does not determine application

(1) A person who made a development application under section 46 may appeal to the Appeals Tribunal –

(a) if, within 12 weeks after making the application, the person has not received notification under section 46(5) or been served with a notice under section 53A, 53B or 53C in respect of the application;

(b) if the person –

(i) has received notification under section 46(5) of the deferral of consideration of the application until a decision relating to a planning scheme is made under Part 2, Division 5; and

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

113. Appeal against refusal to extend period of development permit

(1) A person who made an application to a consent authority under section 59 may appeal to the Appeals Tribunal against a determination of the consent authority under that section other than in accordance with the application.

(2) The appeal must be made within 28 days after the person is given the statement of reasons for the determination under section 59(4).

114. Appeal against determination of development application

(1) A person who made a development application under section 46 may appeal to the Appeals Tribunal against a determination by the consent authority –

- (a) under section 53(b), to alter the proposed development in the application; or
- (b) under section 53(a) or (b), to impose a condition on the proposed development in the application or on the altered proposed development, including a condition referred to in section 70(3).

(2) The appeal must be made within 28 days after the person is served with a notice under section 53A or 53B in respect of the determination.

115. Appeal against refusal to refund or remit contribution

(1) A person who made an application to a service authority under section 73(3) may appeal to the Appeals Tribunal against a refusal under that section to refund or remit all or part of a contribution otherwise payable by the person under Part 6.

(2) An appeal under subsection (1) must be made within 28 days after the applicant is notified in writing of the refusal.

(3) If a service authority does not determine a person's application under section 73(3) within 12 weeks after receiving the application –

- (a) the service authority is taken to have refused to refund or remit any of the contribution otherwise payable by the person; and
- (b) the person may appeal to the Appeals Tribunal at any time after the expiry of those 12 weeks and before the matter is determined by the service authority.

(4) Despite subsection (3)(a), a service authority may actually determine the person's application at any time before the Appeals Tribunal determines the person's appeal made under subsection (3)(b).

(5) If the service authority actually determines the person's application in accordance with subsection (4) –

- (a) the person's appeal under subsection (3)(b) lapses;
- (b) all fees paid in respect of the lapsed appeal must be refunded;
- (c) the person may subsequently appeal under subsection (1) against an actual determination of the service authority refusing to refund or remit any contribution otherwise payable by the person; and
- (d) the Appeals Tribunal may, in any subsequent appeal, admit any evidence provided in respect of the lapsed appeal that is admissible in relation to the subsequent appeal.

116. Appeal against variation of condition of development permit

(1) A person who made an application under section 57 may appeal to the Appeals Tribunal against a determination of the consent authority under that section refusing to vary the condition in accordance with the application.

(2) The appeal must be made within 28 days after the person is given the statement of reasons for the determination under section 57(5).

117. Appeals by third parties in respect of development applications

(1) Subject to the Regulations, a person or local authority who made a submission in accordance with section 49 in relation to a development application may appeal to the Appeals Tribunal against a determination under section 53(a) or (b) –

- (a) to consent to the development, as proposed or as altered; or
- (b) to impose conditions on the proposed development or proposed altered development, including a condition referred to in section 70(3).

(2) The appeal must be made within 14 days after the person or local authority is served with the notice of determination in respect of the development application.

(3) A person or local authority must not appeal under this section for reasons of commercial competition.

(4) The Regulations may specify other circumstances under which there is no right to appeal under this section, including by reference to the type of development in conjunction with –

- (a) the zone of the land on which the development is to take place;

- (b) the zone of land adjacent to the land on which the development is to take place; or
- (b) the zone of land referred to in both paragraph (a) and (b).

Example for section 117 –

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

Division 2A – Determinations that may not be appealed against

117A. No appeal against certain determinations of Minister

(1) There is no right of appeal to the Appeals Tribunal against the determination of a development application by the Minister when he or she is the consent authority under section 4(5).

(2) The Minister may, by notice in the *Gazette*, declare that a right of appeal against a particular determination of the Minister as the consent authority, otherwise exercisable by a person under Division 2, is no longer exercisable by the person.

30. Amendment of section 118 (Notice of appeal etc.)

(1) Section 118(3) –

omit, substitute

(3) As soon as practicable after a notice of appeal is lodged, the Registrar must send a copy of the notice to each other party to the appeal.

(3A) If more than one appeal in respect of the same determination is made under section 117, the Registrar must ensure each appellant is sent a copy of –

- (a) the notice of appeal lodged by each other appellant under section 117; and
- (b) any notice of appeal lodged under section 114 in respect of the determination.

(2) Section 118(4) –

omit

the other

substitute

each other

- (3) After section 118(4) –

insert

(5) An appellant under section 117 may lodge further documents in support of the appeal not later than 14 days after the date of lodgment of the notice of appeal.

31. New section 118A

After section 118 –

insert

118A. Parties to appeal

Each of the following is a party to an appeal:

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

32. Amendment of section 120 (Authorities to provide information to Tribunal and appellant)

Section 120(1) –

omit

Development Consent Authority to provide to the Registrar and the appellant

substitute

consent authority to provide to the Registrar and each other party

33. Amendment of section 123 (Attendance at conference)

- (1) Section 123(3) and (4) –

omit

An applicant

substitute

A party

- (2) Section 123(4) –

omit

the applicant

substitute

the party

- (3) Section 123(5), after "section 115" –

insert

and subject to subsection (5A)

- (4) After section 123(5) –

insert

(5A) If the determination being appealed against was made by the Minister as the consent authority, the Minister must ensure that a person who is authorised in writing by the Minister to represent the Minister attends at the conference.

34. Amendment of section 125 (Compromise and settlement)

- (1) Section 125(4) –

omit

Development Consent Authority to take an action under Division 3 of Part 5

substitute

consent authority to take an action under Part 5, Division 3

- (2) Section 125(5) –

omit, substitute

(5) Part 5, Division 2 does not apply in relation to an action taken in accordance with an order under subsection (4).

35. Amendment of section 129 (Consideration of appeals by Tribunal)

- (1) Section 129(1)(a) –

omit

Development Consent Authority

substitute

consent authority

- (2) Section 129(1)(a) –

omit

decision

substitute

determination

- (3) Section 129(2)(b) –

omit

all the words after "section 49"

substitute

or gave evidence or information under section 50; or

- (4) Section 129(3)(b)(i) –

omit

both

substitute

all the

- (5) Section 129(3)(b)(ii) –

omit

one of the parties if the other party

substitute

less than all the parties if any of the other parties

- (6) After section 129(4) –

insert

(5) The Appeals Tribunal may consider and determine 2 or more appeals concurrently if the appeals relate to the same determination of the consent authority, even if the appeals have different grounds of appeal.

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

36. Repeal and substitution of section 130

Section 130 –

repeal, substitute

130. Determination of appeals

(1) The Appeals Tribunal must determine an appeal to which a notice given to the Registrar under section 127 relates.

(2) In determining an appeal, except an appeal under section 113 or 115, the Appeals Tribunal must take into account the matters specified in section 51.

(3) The Appeals Tribunal must not determine an appeal to permit a proposed development if –

(a) in its opinion, the development would be contrary to a provision of an applicable planning scheme referred to in section 9(1)(a); or

(b) the development would be contrary to a provision of an applicable planning scheme referred to in section 9(1)(b).

(4) The Appeals Tribunal must, in writing, determine an appeal against a determination of a consent authority by taking one of the following actions:

(a) confirming the determination of the consent authority;

- (b) in respect of an appeal under section 114 or 117 only – revoking the determination set out in the notice served under section 53A or 53B, substituting the determination of the Appeals Tribunal and ordering the consent authority to issue a development permit subject to any conditions the Appeals Tribunal thinks fit;
- (c) ordering the consent authority to issue or vary a development permit subject to any conditions the Appeals Tribunal thinks fit.
- (5) The Appeals Tribunal must determine an appeal under section 115 by ordering that –
 - (a) all or some contribution paid or payable by the appellant is to be refunded or remitted by the service authority; or
 - (b) no contribution paid or payable by the appellant is to be refunded or remitted by the service authority.
- (6) To avoid doubt, a determination of an appeal by the Appeals Tribunal is a review of the determination of the consent authority or service authority on its merits.
- (7) Also, the Appeals Tribunal may take action under subsection (4)(b) or (c) only if satisfied –
 - (a) the consent authority manifestly failed to take into account a matter referred to in section 51; or
 - (b) the determination of the consent authority would result in a planning outcome manifestly contrary to a provision of a planning scheme.

37. Amendment of section 132 (Powers of Appeal Tribunal)

- (1) Section 132 –

omit

may –

substitute

may do any of the following:

- (2) Section 132(b) –

omit

withdrawn; or

substitute

withdrawn;

- (3) After section 132(c) –

insert

- (d) order an appellant under section 117 to pay the costs of any other party if the Appeals Tribunal is satisfied the appeal has been made for reasons of commercial competition or is frivolous or vexatious.

38. Amendment of section 134 (Delegation by Minister)

Section 134, after "Act" –

insert

except the following:

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

39. New section 135A

After section 135 in Part 10, Division 1 –

insert

135A. Approved forms

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

40. Amendment of section 136 (Planning schemes to be available to public)

- (1) Section 136(1)(a) and (b) –

omit, substitute

- (a) each planning scheme;
- (b) all proposed amendments of a planning scheme that have been or are on exhibition;

- (2) Section 136(1)(d) –

omit

the Planning Scheme

substitute

a planning scheme

- (3) Section 136(3) –

omit

development provisions

substitute

provisions of a planning scheme

41. Repeal and substitution of sections 137 and 138

Sections 137 and 138 –

repeal, substitute

137. Certified copies of planning documents, permits etc.

(1) A person may apply to the Minister for a certified copy of any of the following:

- (a) a planning document, as in force at a specified date under a Planning Act;
- (b) a permit issued under a Planning Act;
- (c) any other document issued under a Planning Act.

(2) The application must be in the approved form and be accompanied by the prescribed fee.

(3) A copy certified under this section is admissible in a court, or before a body or person acting judicially, as evidence of the contents of the document of which it is a copy.

(4) In this section –

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

- (a) the *Planning Act 1979*;

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

"planning document" means any of the following:

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

138. Registers and plans for public inspection

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

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

42. Amendment of section 140 (Planning certificates)

- (1) Section 140(3)(b)(i) –

omit

land use objective, the development provisions

substitute

a provision of a planning scheme

- (2) Section 140(3)(b)(iv) –

omit

development permit or an exceptional development permit under Part 4

substitute

permit

- (3) Section 140(3)(v) –

omit, substitute

- (iv) if an application for a permit has been made but no permit or notice relating to the determination of the application has been issued or served – the nature of the application.

43. New section 144A

After section 144 –

insert

144A. Advisory committees

(1) The Minister may establish one or more advisory committees to advise the Minister on matters in connection with planning for or control of the use and development of land.

(2) The Minister may set the terms of reference for an advisory committee and appoint the members of the committee as the Minister sees fit.

(3) An advisory committee may be established to provide advice on a specific matter for a limited period of time or to provide ongoing advice.

44. Amendment of section 148 (Regulations)

- (1) Section 148 –

omit

The

substitute

- (1) The

- (2) Section 148, at the end –

insert

- (2) The Regulations may provide for any of the following:

- (a) offences against the Regulations to be regulatory offences;
- (b) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or the Regulations, the service of a notice relating to the payment of the

amount on a person alleged to have committed the offence and the particulars to be included in the notice.

45. Amendment of Part 11 heading

Heading to Part 11 –

omit

TRANSITIONALS

substitute

TRANSITIONAL MATTERS FOR *PLANNING ACT 1999*

46. Amendment of section 150 (Definitions)

Section 150 –

insert (in alphabetical order)

"commencement date" means the date of commencement of the *Planning Act 1999*;

47. New Part 12

After section 181 –

insert

PART 12 – TRANSITIONAL MATTERS FOR *PLANNING AMENDMENT ACT 2004*

Division 1 – Preliminary

182. Definitions

In this Part –

"amended", in relation to a specified provision, means as in force immediately after the commencement of the *Planning Amendment Act 2004*;

"commencement date" means the date of commencement of the *Planning Amendment Act 2004*;

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

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

Division 2 – Planning schemes

183. Northern Territory Planning Scheme continues in force

(1) The Planning Scheme continues in force as the NT Planning Scheme.

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

(3) All maps, plans, designs and diagrams included in the Planning Scheme continue in force as part of the NT Planning Scheme.

(4) All maps, plans, designs and diagrams referred to in the Planning Scheme continue to have effect in accordance with the NT Planning Scheme.

(5) This section does not apply in relation to the development provisions referred to in section 184.

184. Special planning scheme for town of Jabiru

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

Division 3 – Amendments of Northern Territory Planning Scheme

185. Meaning of proposed amendment

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

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

186. Application not decided before commencement date

(1) This section applies in relation to an amendment of the Planning Scheme –

- (a) proposed in an application made under former section 12; and
- (b) in respect of which the Minister has not, before the commencement date, made a decision under former section 14.

(2) For subsection (1), the Minister is taken not to have made a decision if the Minister –

- (a) under former section 14(1)(c) deferred consideration of the amendment as proposed; and
- (b) has not, immediately before the commencement date, made any further decision under former section 14.

(3) The Minister must make a decision in respect of the amendment in accordance with amended section 13 as if the amendment had been proposed in a request made under amended section 13(1).

187. Proposed amendment not exhibited before commencement date

(1) This section applies in relation to a proposed amendment in respect of which the Minister has not, immediately before the commencement date, determined the period of exhibition under former section 17.

(2) The proposed amendment is taken to be a proposal within the meaning of paragraph (a) or (c), as applicable, of the definition of "proposal" in amended section 14.

(3) Amended Part 2, Divisions 3, 4 and 5 apply in relation to the proposed amendment.

188. Proposed amendment requiring further actions under former Part 2

(1) This section applies in relation to a proposed amendment in respect of which –

- (a) the Minister has, under former section 17, determined the period of exhibition; and
- (b) immediately before the commencement date, further actions are required to be taken under former Part 2, Division 3.

(2) Former Part 2, Division 3 continues to apply in relation to the proposed amendment until all the actions required under that Division have been taken.

(3) After all the required actions have been taken, the Minister must take further action in relation to the proposed amendment under amended Part 2, Division 5 as if it were a proposal referred to in amended section 25(1).

189. Actions in determining application for proposed amendment

(1) This section applies in relation to a proposed amendment in respect of which –

- (a) all actions required to be taken under former Part 2, Division 3 have been taken; and
- (b) the Minister has not, before the commencement date, taken action under former section 25, 26 or 27.

(2) The Minister must take further action in relation to the proposed amendment under amended Part 2, Division 5 as if it were a proposal referred to in amended section 25(1).

Division 4 – Exceptional development permits

190. Meaning of proposal

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

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

191. Proposal not exhibited before commencement date

(1) This section applies in relation to a proposal in respect of which the Minister has not, immediately before the commencement date, determined the period of exhibition under former section 17.

(2) The proposal is taken to be a proposal within the meaning of paragraph (b) of the definition of "proposal" in amended section 14.

(3) Amended Part 2, Divisions 3, 4 and 5 apply in relation to the proposal.

192. Proposal requiring further actions under former Part 2

(1) This section applies in relation to a proposal in respect of which –

- (a) the Minister has, under former section 17, determined the period of exhibition; and
- (b) immediately before the commencement date, further actions are required to be taken under former Part 2, Division 3.

(2) Former Part 2, Division 3 continues to apply in relation to the proposal until all the actions required to be taken under that Division have been taken.

(3) After all those required actions have been taken, the Minister must take further action in relation to the proposal under amended Part 2, Division 5 as if it were a proposal referred to in amended section 26(1).

193. Actions in determining application for proposal

(1) This section applies in relation to a proposal in respect of which –

- (a) all actions required to be taken under former Part 2, Division 3 have been taken; and
- (b) the Minister has not, before the commencement day, granted or refused to grant an exceptional development permit or varied or refused to vary an exceptional development permit (as applicable).

(2) The Minister must take further action in relation to the proposal under amended Part 2, Division 5 and amended section 40 as if it were a proposal referred to in section 26(1).

Division 5 – Development applications and development permits

194. Application for development application

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

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

195. Direction in respect of particular development application

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

196. Application for variation of development permits

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

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

Division 6 – Miscellaneous

197. Alternate members for local authority representatives

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

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

198. Determination of appeals

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

Division 7 – Regulations

199. Regulations may contain savings or transitional provisions

(1) The Regulations may contain provisions of a savings or transitional nature consequent on the commencement of the *Planning Amendment Act 2004*.

(2) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as –

- (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or

Planning Amendment Act 2004

- (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.

(3) If a regulation made under this section is inconsistent with a provision of this Act or a provision of an Act specified in the regulation, the regulation prevails to the extent of the inconsistency.

48. Further amendments

The Schedule has effect.

SCHEDULE

Section 48

Provision	Amendment	
	omit	substitute
Section 31(1)	the Planning Scheme	a planning scheme
Section 31(2)(a)	development provision	specified provision of a planning scheme
Section 31(2)(b)	Part 6	Part 5
Section 32(1)	development provisions	planning scheme
Section 32(2)	the Planning Scheme (first reference)	a planning scheme
	the Planning Scheme (second reference)	the planning scheme
Section 44(a)	the development provisions allow	a provision of a planning scheme allows
Section 60(1)	the development provisions	a planning scheme
Section 60(2)	The development provisions	A planning scheme
Section 60(3)	the development provisions specify	a planning scheme specifies
	development provisions are to	planning scheme must
Section 60(4)	the development provisions	a planning scheme
Section 60(5)(a)	the development provisions require	a planning scheme requires
Section 60(5)(a)(ii)	development provisions	planning scheme

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Section 60(5)(b)	the development provisions require	a planning scheme requires
Section 76(1)(a)	development provisions that apply	planning scheme that applies
Section 76(1)	development provisions in relation to the land	planning scheme
Section 76(1)(d)	development provisions	planning scheme
Section 76(1)	development provisions.	planning scheme.
Section 76(3)(a)	that applies to the land	
Section 76(3)	development provisions in relation	planning scheme that applies
Section 78(3) and (4)	the whole subsection	
Section 98(1)	all the words after "appointed"	under section 89 or 91 on the nomination of a local authority
Section 127(3) and 128(1)	the other	each other
Section 128(2)	Development Consent Authority	consent authority
	the other	each other
Section 128(4)	Development Consent Authority	consent authority
	decision	determination
Section 139(2)	development	
Section 145	the development provisions or an interim development control order apply	a planning scheme or an interim development control order applies
	with the development provisions	with the planning scheme

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Section 162	works within the meaning of section 33	existing works
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ALTERATIONS TO SECTION HEADINGS

On the day on which the *Planning Act* is amended by this Act, in addition to any alteration to section headings indicated in the text of this Act, the headings to the sections specified in the table are altered as set out in the table.

Section	Alteration	
	omit	substitute
Section 32	Planning Scheme	planning scheme
Section 60	Development Provisions	Planning scheme