

Serial 267
Lake Bennett (Land Title) Bill 2004
Dr Toyne

A BILL for AN ACT

about the rights and interests of persons in certain land in the Lake Bennett
locality

NORTHERN TERRITORY OF AUSTRALIA
LAKE BENNETT (LAND TITLE) ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

about the rights and interests of persons in certain land in the Lake Bennett
locality

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Lake Bennett (Land Title) Act 2004*.

2. Commencement

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

3. Application of Act

This Act applies despite any other Act or law to the contrary.

4. Object of Act

The object of this Act is to facilitate the preparation and registration of instruments relating to lots in the Lake Bennett locality in accordance with the terms of compromise submitted by the Territory to the registered proprietors of the lots.

5. Definitions

In this Act, unless the contrary intention appears –

"additional unit" means a unit to which the development permit issued under section 21 applies;

"adjoining lots" means the following sections in the Hundred of Howard:

- (a) sections 92 to 97 (inclusive);
- (b) sections 99 to 110 (inclusive);

"building permit" means a building permit under the *Building Act*;

"commencement date" means the date this Act comes into operation;

"common property easement area" means the part of created section 1252 shaded on the plan in Schedule 3;

"complying pontoon" means a pontoon the construction of which is authorised under the development provisions stated in Schedule 5;

"created", for a lot, means a lot created by the Lake Bennett plan of subdivision or Lake Bennett units plan;

"development area" means the area that, under the development permit issued under section 21, may be further developed;

"existing unit" means a unit for which a certificate as to title is issued under Units Plan 97/026, other than unit 108;

"Lake Bennett locality" means the area of land to which the development provisions in Schedule 5 apply;

"Lake Bennett lots" means sections 244 and 245 in the Hundred of Howard;

"Lake Bennett plan of subdivision" has the meaning in section 9;

"Lake Bennett units plan" has the meaning in section 10;

"new unit" has the meaning in section 10(2)(a);

"Planning Minister" means the Minister administering the *Planning Act*;

"recreational easement" means a registered instrument of easement stated in Schedule 1;

"registration date" means the date the Registrar-General complies with section 13(2);

"resort owner" means the owner of created section 1253;

"restrictive covenant" means a registered instrument of covenant stated in Schedule 2.

6. Expressions defined in related legislation

If an expression used in this Act is defined in the *Land Title Act*, *Planning Act*, *Real Property (Unit Titles) Act* or *Unit Titles Act*, the expression has, as the context requires, the same meaning in this Act.

PART 2 – PREPARATION AND REGISTRATION OF INSTRUMENTS

7. Minister to prepare instruments

(1) The Minister must prepare the instruments necessary to achieve the object of this Act.

(2) Subsection (1) is not limited by another provision of this Part.

8. Minister may sign instrument

An instrument prepared under this Act is validly executed if signed by the Minister on behalf of any person.

9. Lake Bennett plan of subdivision

(1) The Lake Bennett plan of subdivision is plan of subdivision No. S2004/153 of the Lake Bennett lots prepared for this Act.

(2) The plan of subdivision creates sections 1252 to 1255 (inclusive).

10. Lake Bennett units plan

(1) The Lake Bennett units plan is the units plan of created section 1252 that is prepared for this Act and identified as such by certificate of the Registrar-General.

(2) The units plan creates –

- (a) a lot (a "new unit") for each existing unit;
- (b) a lot for the development area; and
- (c) common property.

(3) The units plan must include a schedule of unit entitlements certified by a valuer.

11. Preparation of easements to replace recreational easements

- (1) The Minister must prepare the following instruments of easement:
- (a) an easement that benefits each of the adjoining lots and created section 1254 and burdens the common property easement area;
 - (b) an easement that benefits each of the adjoining lots, each of the lots in created section 1252, created section 1253 and created section 1255 and burdens created section 1254;
 - (c) an easement that benefits each of the adjoining lots, each of the lots in created section 1252 and created section 1254 and burdens created section 1255.

(2) The benefit and burden under the easement mentioned in subsection (1)(a) must be in the terms stated in Schedule 3.

(3) The benefit and burden under each of the other easements mentioned in subsection (1) must be in the terms stated in Schedule 4.

12. Preparation of new service easements

(1) The Minister must prepare instruments of easement that benefit created section 1252 and burden created section 1255.

(2) The benefit and burden under the easements must be in the terms stated in Schedule 3, Part B to the *Law of Property Act* for providing sewerage, water supply and electricity to created section 1252.

13. Lodgment and registration of plans and easements

(1) The Minister must, as soon as practicable after the commencement date, lodge the following instruments:

- (a) the Lake Bennett plan of subdivision;
 - (b) the Lake Bennett units plan and schedule of unit entitlements certified by a valuer;
 - (c) the easements prepared under sections 11 and 12.
- (2) On lodgment of the instruments, the Registrar-General must –
- (a) cancel Units Plan 97/026;

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- (b) cancel the certificates as to title for the lots contained in the Lake Bennett lots;
 - (c) register the plan of subdivision;
 - (d) register the units plan and schedule of unit entitlements;
 - (e) register the extinguishment of the easements under section 14;
 - (f) issue new certificates as to title in accordance with section 15; and
 - (g) register the easements prepared under sections 11 and 12.
- (3) Without limiting section 3, subsection (2) applies even if –
- (a) the certificate as to title for a lot is not lodged with the plan of subdivision or units plan; or
 - (b) the holder of a registered interest in any of the lots has not consented to a cancellation, registration or issue of a certificate as to title under the subsection.
- (4) On registration under subsection (2) –
- (a) the plan of subdivision is taken to have been registered under the *Land Title Act*;
 - (b) the units plan is taken to have been registered under the *Real Property (Unit Titles) Act*; and
 - (c) the easements are taken to have been registered under the *Land Title Act*.

14. Recreational easements extinguished

On lodgment of the instruments mentioned in section 13(1), each recreational easement is extinguished.

15. Issue of certificates as to title

(1) The Registrar-General must issue certificates as to title for the created lots to the following persons as registered owners:

- (a) for created section 1252 – the body corporate constituted under the *Unit Titles Act* on registration of the Lake Bennett units plan;
- (b) for each new unit – the registered owner of the existing unit for which the new unit is created;

- (c) for the development area – the registered owner of unit 108 on Units Plan 97/026;
 - (d) for created sections 1253 and 1255 – the registered owner of section 245 in the Hundred of Howard;
 - (e) for created section 1254 – the registered owner of section 106 in the Hundred of Howard.
- (2) The certificate as to title for a lot –
- (a) must be issued subject to the same registered instruments applying to the lot immediately before the registration date; and
 - (b) is taken to have been issued under –
 - (i) for a lot created by the Lake Bennett plan of subdivision – the *Land Title Act*; or
 - (ii) for a lot created by the Lake Bennett units plan – the *Real Property (Unit Titles) Act*.
- (3) Subsection (2) has effect subject to sections 14 and 20.

16. Restriction on ownership of created sections 1253 and 1255

(1) The land comprising created sections 1253 and 1255 must be in the same ownership.

(2) The Minister must, under section 35 of the *Land Title Act*, lodge a memorandum for each of the lots for the restriction imposed under subsection (1).

17. Units plan of subdivision for additional units

The Registrar-General may, under the *Real Property (Units Titles) Act*, register a units plan of subdivision of the development area, or that area as further subdivided, without lodgment of –

- (a) the documents mentioned in section 9B(d) of that Act so far as it relates to a building existing before the commencement date for which a building certificate within the meaning of section 21B of the *Unit Titles Act* was not required; or
- (b) the documents mentioned in section 9B(e), (f) and (g) of that Act.

18. Effect of caveat, court order, writ of execution and statutory charge

The lodging (whether before or after the commencement date) of any of the following documents over any of the lots to which this Act applies does not

prevent the registration of an instrument affecting the lot that is prepared for this Act:

- (a) a caveat;
- (b) a request to register a court order or writ of execution;
- (c) a statutory charge.

PART 3 – PLANNING AND DEVELOPMENT PROVISIONS

19. Amendment of Planning Scheme

(1) The Planning Minister must amend the Northern Territory Planning Scheme by –

- (a) revoking the part of the development provisions of the Northern Territory Planning Scheme known as the Lake Bennett Area Plan 2000; and
- (b) making the development provisions for the Lake Bennett locality in Schedule 5.

(2) The Planning Minister must, as soon as practicable after the commencement date, publish notice in the *Gazette* of the amendment.

(3) On publication of the notice, the amendment is taken to have been made under the *Planning Act*.

20. Restrictive covenants extinguished

(1) On amendment of the Northern Territory Planning Scheme under section 19, each restrictive covenant is extinguished.

(2) The Registrar-General must register the extinguishment of the covenants.

21. Development permit for development area

(1) On registration of the Lake Bennett units plan, the Planning Minister must issue a development permit for the development area in the terms stated in Schedule 6.

(2) The development permit is taken to have been issued under the *Planning Act*.

22. Approval not required for certain building work

(1) This section applies if a building permit is required for building work for the construction of a complying pontoon on created section 1255.

(2) The approval of the owner of created section 1253 is not required for the issue of a building permit for the building work if the applicant for the permit is the owner of an adjoining lot, new unit or additional unit.

(3) In addition, the approval of the following persons under regulation 11(1)(b) of the Building Regulations is not required for the issue of a building permit for the building work:

- (a) if the applicant for the building permit is the owner of an adjoining lot – the owners of the other adjoining lots and the owners of created section 1253, the new units and additional units;
- (b) if the applicant for the building permit is the owner of created section 1253 – the owners of the adjoining lots, new units and additional units;
- (c) if the applicant for the building permit is the owner of a new unit – the owners of the other new units and the owners of the adjoining lots, created section 1253 and additional units;
- (d) if the applicant for the building permit is the owner of an additional unit – the owners of the other additional units and the owners of the adjoining lots, created section 1253 and new units.

23. Restriction on further development

(1) A further development of created section 1254 or 1255 or the common property easement area is not permitted other than for –

- (a) a complying pontoon; or
- (b) development that is reasonably necessary for works associated with providing communications, electricity, water, sewerage or other services.

(2) The Planning Minister must, under section 35 of the *Land Title Act*, lodge a memorandum for each of the lots for the restriction imposed under subsection (1).

PART 4 – MISCELLANEOUS PROVISIONS

24. Decision final

A decision of the Minister, Planning Minister or Registrar-General under this Act in relation to an instrument prepared for this Act cannot be –

- (a) challenged, reviewed, quashed or called into question on any grounds whatever before a court, tribunal, body or person in legal proceedings; or

- (b) restrained, removed or otherwise affected by an injunction or a proceeding in the nature of prohibition or mandamus.

25. Exemptions from fees and stamp duty

- (1) An instrument prepared for this Act is exempt from –
 - (a) the payment of fees prescribed for lodgment of instruments with the Registrar-General; and
 - (b) stamp duty under the *Stamp Duty Act*.

(2) Subsection (1) does not apply in relation to the preparation or registration of a units plan of subdivision for an additional unit.

26. Delegations

(1) The Minister may, in writing, delegate to the Chief Executive Officer of the Agency administering this Act the Minister's powers or functions under this Act.

(2) The Planning Minister may, in writing, delegate to the Chief Executive Officer of the Agency administering the *Planning Act* the Planning Minister's powers or functions under this Act.

27. Licence to take or use water

(1) On the commencement date, the licence to take or use surface water under the *Water Act* held by the resort owner is surrendered.

(2) The Controller of Water Resources within the meaning of the *Water Act* must issue a new licence to take or use surface water to the resort owner for 10 years.

(3) The new licence must be subject to the terms and conditions decided by the Planning Minister.

(4) On its issue, the new licence is taken to have been issued under the *Water Act*.

(5) However, the Controller of Water Resources –

- (a) must amend or modify the new licence or renewed licence in accordance with a direction of the Planning Minister; and
- (b) may amend or modify the new licence or renewed licence only with the Planning Minister's approval.

(6) In addition, a renewed licence must be subject to the terms and conditions decided by the Planning Minister.

(7) In this section –

"renewed licence" means –

- (a) a licence issued by way of renewal or replacement of the new licence; or
- (b) a licence issued by way of renewal or replacement of a licence mentioned in paragraph (a).

28. Acquisition on just terms

If, but for this section, property is acquired under this Act by the Territory other than on just terms –

- (a) the person from whom the property is acquired is entitled to receive just compensation for the acquisition; and
- (b) a court of competent jurisdiction may decide the amount of the compensation or make the orders necessary to ensure the compensation is on just terms.

29. Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters –

- (a) required or permitted to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may make provision about a matter for which –
- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the object of this Act; and
 - (b) this Act does not make provision or sufficient provision.
- (3) A regulation made under subsection (2) –
- (a) may provide for an exemption from compliance with a provision of another Act;
 - (b) may have retrospective operation to a date not earlier than the commencement date; and
 - (c) applies despite this or another Act to the contrary.

- (4) The Regulations may –
 - (a) make different provision in relation to –
 - (i) different persons or matters; or
 - (ii) different classes of persons or matters; or
 - (b) apply differently by reference to stated exceptions or factors.

PART 5 – TRANSITIONAL MATTERS FOR LAKE BENNETT (LAND TITLE) ACT 2004

30. Transitional provisions for body corporate

(1) The body corporate constituted under the *Unit Titles Act* under the name "The Proprietors – Units Plan No. 97/026" (the "former body corporate") is continued in existence by the body corporate constituted under the *Unit Titles Act* on registration of the Lake Bennett units plan (the "new body corporate").

- (2) Without limiting subsection (1) –
 - (a) the assets and liabilities of the former body corporate immediately before the commencement date vest in the new body corporate;
 - (b) any contracts entered into by or on behalf of the former body corporate and all guarantees, undertakings and securities given by or on behalf of the former body corporate, in force immediately before the commencement date, are taken to have been entered into or given by or to the new body corporate and may be enforced against or by the new body corporate;
 - (c) a proceeding that could have been started or continued by or against the former body corporate before the commencement date may be started or continued by or against the new body corporate; and
 - (d) anything else done under the *Unit Titles Act* by the former body corporate for the performance of its duties or functions, or the exercise of its powers, is taken to have been done by the new body corporate.

SCHEDULE 1

Section 5, definition of "recreational easement"

RECREATIONAL EASEMENTS

Registered easement number

366439

283686

281941

373401

279160

373401

372851

372851

284756

286904

307087

283681

281296

285776

269532

361510

284761

373401

369268

SCHEDULE 2

Section 5, definition of "restrictive covenant"

RESTRICTIVE COVENANTS

Registered restrictive covenant number

283685

281940

279161

422801

423449

412614

284755

286905

307086

283680

281292

284215

269531

361509

257750

423451

SCHEDULE 3

Section 11(2)

**CONDITIONS OF EASEMENTS – PART CREATED SECTION 1252
(COMMON PROPERTY)**

1. Each owner of the parcels of land receiving the benefit of the easement ("the Owners") and all persons from time to time authorised by any of the Owners have the right to enter on and use the land shaded in the attached plan ("the Common Property") for recreational purposes PROVIDED THAT the Common Property may be used only for such recreational purposes as are consistent with the quiet enjoyment of the Common Property by the owner of the Common Property and all other persons having the same right reserving nevertheless to the owner of the Common Property its employees agents and all persons from time to time authorised by it in common with the Owners and all persons from time to time authorised by the Owners and all persons having the like right free and uninterrupted passage across and use of the Common Property EXCEPT THAT this easement does not apply to those parts of the Common Property that at any time contain reasonably necessary service infrastructure (such as electricity, telephone, water, sewerage and similar) and the area reasonably necessary to install and maintain such service infrastructure.
2. Each of the Owners for the Owner and the Owner's successors in title covenants with the owner of the Common Property and its successors in title that the Owner and the Owner's successors in title will not do or suffer anything to be done on the Common Property if the Common Property or service infrastructure may be damaged or polluted or the use of the Common Property either by the Owner of the Common Property its employees agents and all persons from time to time authorised by it or by any other person with a like right to use the Common Property may be prejudicially interfered with.

SCHEDULE 4

Section 11(3)

**CONDITIONS OF EASEMENTS – CREATED SECTIONS 1254 AND 1255
(LAKE AND FORESHORE)**

1. Each owner of the parcels of land receiving the benefit of the easement ("the Owners") and all persons from time to time authorised by any of the Owners have the right to enter on and use the land burdened by the easement ("the lake and foreshore") for recreational purposes that do not interfere with the quiet enjoyment of the lake and foreshore by others PROVIDED THAT the lake and foreshore must not be used for recreational purposes that are inconsistent with the terms of the Licence to take or use surface water issued under the *Water Act* reserving nevertheless to the owner of the lake and foreshore its employees agents and all persons from time to time authorised by it in common with the Owners and all persons from time to time to authorised by the Owners and all other persons having the like right free and uninterrupted passage across the use of the lake and foreshore.
 2. Each of the Owners have the right to leave a boat on the lake for use by the Owner and persons authorised by the Owner.
 3. Each of the Owners (for so long as the Owner's land adjoins Chinner Road or section 1255) have the right to leave a pontoon (including a ramp), on the lake for use by the Owner and persons authorised by the Owner, in accordance with the Northern Territory Planning Scheme as it applies to the Lake Bennett locality, subject to the prior written approval of the owner of the lake and foreshore (which must not be unreasonably withheld) as to the specifications, construction, mooring and location of the pontoon. The owner of the pontoon must maintain the area within 3 m from any point of the pontoon (including the ramp) clear of vegetation at all times and must obtain and maintain public liability insurance with respect to any damage associated with the pontoon.
 4. Each of the Owners for the Owner and the Owner's successors in title covenants with the owner of the lake and foreshore and its successors in title that the Owner and the Owner's successors in title will not do or suffer anything to be done on the lake and foreshore if the lake and its retaining wall may be damaged or polluted or the use of the lake and foreshore either by the owner of the lake and foreshore its employees agents and all persons from time to time authorised by it or by any other persons with a like right to use the lake and foreshore may be prejudicially interfered with.
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SCHEDULE 5

Section 19

DEVELOPMENT PROVISIONS FOR LAKE BENNETT LOCALITY

PART 1 – PRELIMINARY

1. Contents of instrument

This instrument contains the development provisions that comprise the Planning Scheme as it applies to the Lake Bennett locality.

2. Definitions

In this instrument, unless the contrary intention appears –

"business sign" means a device using words, letters or images exhibited for the purpose of advertising, announcement or display restricted to the name of the business carried on and the nature of the services or goods available, on the land on which the sign is erected, and includes, if a number of persons are carrying on different businesses on that land, a sign identifying the place;

"caravan" includes –

- (a) a vehicle, registered or eligible for registration, within the meaning of the *Motor Vehicles Act* that is designed or adapted for human habitation; and
- (b) a tent;

"caravan park" means land used for the parking of caravans or the erection or placement and use of tents or cabins for the purpose of providing accommodation;

"car parking" means the parking of motor vehicles other than as an ancillary use of land;

"car parking area" means an area set aside or designated for the parking of 3 or more motor vehicles;

"car parking space" means a space designated for the parking of one motor vehicle;

"clearing of native vegetation" means the removal or destruction, by any means, of native vegetation, other than –

- (a) lopping a tree;

- (b) harvesting native vegetation planted for that purpose;
- (c) removal or destruction that occurs incidentally through the grazing of livestock; or
- (d) clearing firebreaks, fence lines and roads;

"consent" means the consent of the consent authority;

"demountable structure" means a building, including a transport container, that is wholly or substantially prefabricated and that is designed to be transported from site to site, but does not include a caravan or transportable module used in conjunction with an education establishment or as a construction site office;

"dependant unit" means a dwelling ancillary to and constructed on the same site as a single dwelling for the purpose of providing accommodation for a dependant of a resident of the single dwelling;

"domestic livestock" means any of the following:

- (a) a horse or other equine animal;
- (b) an ox, buffalo or other bovine animal;
- (c) a camel;

"dwelling" means a building, or part of a building, designed, constructed or adapted as a self-contained residence;

"floor area", in relation to a building, includes all wall thicknesses of the external walls and all roof areas used as floors, but does not include verandahs, balconies or areas set aside for car parking or access to car parking;

"home occupation" means an occupation or profession that is carried on in a dwelling or on the site of a dwelling, but does not include the use of a site as a medical consulting room;

"hostel" includes boarding houses, guest houses, lodging houses and other premises used to provide board or lodging with communal toilet, ablution, dining or cooking facilities, but does not include bed and breakfast accommodation, hotel or motel;

"hotel" means premises that require a licence under the *Liquor Act* and if, as a principal part of the business, alcoholic beverages are ordinarily sold to the public for consumption on the premises whether or not accommodation is provided for members of the

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public and whether or not meals are served, but does not include a motel or restaurant;

"Lake Bennett locality" means the area of land to which this instrument applies under clause 3;

"medical consulting room" means a room or suite of rooms on the site of a single dwelling for use as a medical practitioner, dentist or person associated with health care;

"motel" means premises wholly or principally used for the accommodation of travellers and the vehicles used by them, whether or not the building is also used to provide meals to the travellers or to members of the general public and whether or not the premises are licensed under the *Liquor Act*;

"multiple dwellings" means a building or group of buildings on a site that individually or collectively contain more than one dwelling but does not include a dependant unit;

"net floor area", in relation to a building, includes all the area between internal surfaces of external walls but does not include –

- (a) stairs, cleaners' cupboards, ablution facilities, lift shafts, escalators or tea rooms if tea rooms are provided as a standard facility in the building;
- (b) lobbies between lifts facing other lifts servicing the same floor;
- (c) areas set aside as public space or thoroughfares and not used exclusively by the occupiers of the building;
- (d) areas set aside as plant;
- (e) areas set aside for use of service or delivery vehicles; or
- (f) areas set aside for car parking or access;

"place of worship" means premises used as a church, chapel, mosque, temple, synagogue or place of religious instruction or worship or for the purpose of religious training;

"promotion sign" means a device using words, letters or images exhibited for the purpose of advertising, announcement or display that contains information relating to –

- (a) goods, services or products not provided, produced or sold;
or

(b) events or activities that are not carried on,

on the land or in the building on which the sign is constructed or erected;

"restaurant" means premises or part of a hotel or motel in which meals are served to the public, whether or not the premises provide a drive-through service or require a licence under the *Liquor Act*;

"shop" means premises used for the display and sale by retail, or for hire, of goods or services, but does not include a restaurant;

"single dwelling" means a building containing one dwelling only;

"site" means an area of land, whether consisting of one lot or more, the subject of an application to the consent authority;

"storey" means that part of a building –

(a) between floor levels; or

(b) if there is no floor above – between the floor level and ceiling.

3. Land to which instrument applies

The development provisions contained in this instrument apply to the area of land shown bounded by a black line on the map attached to this instrument.

4. Exceptions

(1) Unless specified, this instrument does not prevent any of the following:

(a) the use or development of any land –

(i) as a road; or

(ii) for sport and recreation;

(b) the construction, alteration, repair or maintenance of any of the following:

(i) facilities for the reticulation of water, sewage, gas, electricity or the transmission of telecommunications services other than, subject to clause 23, towers, aerials or masts for mobile telephone communications;

(ii) stormwater drains;

- (iii) roads;
- (c) the strengthening or restoration to a safe condition of a building or works;
- (d) the erection or display of a sign that is –
 - (i) a traffic control or driver advisory guide, service or similar device;
 - (ii) displayed by a government or local government agency under a statutory obligation;
 - (iii) on enclosed land or within a building and not readily visible from land outside the enclosure or building;
 - (iv) of a temporary nature used to advertise property that is available for rent, lease, sale, auction or inspection;
 - (v) displayed on or inside a vehicle, other than a vehicle that is adapted and exhibited primarily as an advertising sign;
 - (vi) an interpretive sign used for describing sites or items of historical or educational significance; or
 - (vii) a public safety advisory sign displayed by a government or local government agency;
- (e) the use of land under an extractive mineral permit issued under the *Mining Act* or authorisation under section 178(2) of that Act for a like purpose.

- (2) In subclause (1) –

"sport and recreation" does not include a use that involves commercial transactions, motor sports or activities that, because of the generation of noise or disturbance, will detrimentally affect the amenity of adjoining land.

5. Permitted, discretionary and prohibited development

(1) A use or development of land is permitted without consent if expressly specified in a provision of this instrument and if it complies with the provisions of any relevant clause.

(2) A use or development of land that does not comply with the provisions of one or more of the relevant clauses requires consent.

(3) Except in relation to an ancillary use or development of land, in considering whether to grant consent to a proposed development, the consent authority must consider the proposed use or development in its entirety.

(4) The performance criteria in Part 3 are the minimum standard of development but the consent authority may –

- (a) if it can be shown that there are special circumstances, consent to a use or development at variance with those standards; or
- (b) in consenting to a use or development, if in the opinion of the consent authority it is necessary to do so, require a higher standard than specified by the performance criteria in Part 3.

(5) If a proposed use or development of land is not described in the specific land use controls in Part 2, the use or development is prohibited.

6. Ancillary development

(1) If a use or development of land is permitted without consent, an ancillary use or development that would require consent if proposed as the primary use or development, is also permitted without consent provided it complies with the provisions of any relevant clauses.

(2) If an ancillary use or development of land would be prohibited if proposed as the primary use or development, the ancillary use or development is permitted only with consent.

7. Planning principles and framework

A use or development or proposed use or development of land in the Lake Bennett locality should –

- (a) contribute to a built, rural and natural environment supporting the diverse lifestyle and the social, cultural and economic development of the Territory promoting –
 - (i) housing choice;
 - (ii) public infrastructure; and
 - (iii) recreational and cultural opportunities;
- (b) contribute to the sustainable use and development of land and water resources so that the use and development of land is consistent with the principles of sustainable development and avoids or minimises the degradation of the environment or the pollution or over commitment of water resources;

- (c) promote rural building design which is climatically appropriate, energy efficient and contributes to the existing and future character and appearance of an area;
- (d) ensure development does not unreasonably intrude on or compromise the privacy of adjoining residential uses and ensures its own amenity is not prejudiced in the future;
- (e) assist in the conservation of areas and sites of environmental, cultural or heritage value as identified by the Territory;
- (f) facilitate the further development of the tourist industry capitalising on the Territory's aesthetic, natural and cultural heritage;
- (g) consider flood levels to minimise risk to life and property; and
- (h) value unimproved land for its inherent ecosystem functions in protecting native flora, fauna, soil and water resources.

PART 2 – SPECIFIC LAND USE CONTROLS

8. Sections 90 to 97, 99 to 110 and 1252 to 1255

(1) The purpose of this Part is to ensure development around Lake Bennett does not have a detrimental impact on the lake and that the rural character and amenity of the area is maintained.

(2) The use or development of sections 90 to 97(inclusive), 99 to 110 (inclusive) and 1252 to 1255 (inclusive) must be in accordance with the requirements of clauses 9 to 14 (inclusive).

(3) The performance criteria in Part 3 apply to development except for a conflict with a clause in this Part.

(4) In considering a proposed use or development the consent authority must consider –

- (a) any potential detrimental impact on the lake;
- (b) the extent to which the proposed use or development is appropriate to the land, taking into account the physical characteristics of the land including the visual impact of the proposal and the potential environmental impact of the proposal on the lake and water; and
- (c) whether services and infrastructure (including but not limited to water, sewerage, gas, electricity and roads) will be adequate to support the proposed use or development.

9. Sections 90 to 92

(1) Without consent, sections 90, 91 and 92 may be developed with a single dwelling on each section.

(2) With consent, sections 90, 91 and 92 may be developed for any other purpose that is in keeping with the rural character of the Lake Bennett locality.

(3) A use or development for a purpose specified in subclause (1) or (2) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
 - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
 - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

10. Sections 92 to 97, 99 to 110, 1252 to 1255

(1) The purpose of this clause is to allow each of the owners of the parcels of land receiving the benefit of a recreational easement over section 1255 to have a pontoon on the lake.

(2) Without consent, the owner of each of the following lots may, subject to the terms of the recreational easement, construct one pontoon on or partly on section 1255:

- (a) sections 92 to 97 (inclusive);
- (b) sections 99 to 110 (inclusive);
- (c) an existing or proposed unit on section 1252;
- (d) sections 1253 and 1254.

(3) In this clause –

"recreational easement" means an easement in the terms stated in Schedule 4 to the *Lake Bennett (Land Title) Act*.

11. Sections 93 to 97 and 99 to 110

(1) Without consent, sections 93 to 97 (inclusive) and 99 to 110 (inclusive) may be developed with a single dwelling on each section.

(2) With consent, sections 93 to 97 (inclusive) and 99 to 110 (inclusive) may be developed for the following purposes:

- (a) business sign;
- (b) dependant unit;
- (c) home occupation;
- (d) medical consulting room.

(3) A use or development for a purpose specified in subclause (1) or (2) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
 - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
 - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

12. Section 1252

(1) With consent, section 1252 may be used only for a condominium development for no more than 64 dwellings.

(2) A use or development for a purpose specified in subclause (1) is subject to the following conditions:

- (a) all development must be single storey;

- (b) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (c) domestic livestock must not be kept, exercised or trained on the land.

13. Section 1253

(1) With consent, section 1253 may be developed for the following purposes:

- (a) business sign;
- (b) caravan park;
- (c) hostel;
- (d) hotel;
- (e) motel;
- (f) multiple dwellings;
- (g) promotion sign;
- (h) restaurant;
- (i) shop.

(2) A use or development for a purpose specified in subclause (1) is subject to the following conditions:

- (a) all waste water and septic facilities must be sited at least 100 m from the full supply level of the lake, or outside its catchment, and designed so that no effluent flows into the lake;
- (b) domestic livestock must not be kept, exercised or trained on the land within 100 m of the full supply level of the lake;
- (c) the keeping, exercising or training of domestic livestock on the land must not –
 - (i) unreasonably contribute to the erosion or pollution of the land, adjoining land or the lake; or
 - (ii) cause detriment to the amenity of the Lake Bennett locality because of excessive noise, offensive odours, excessive dust or the attraction of flies or vermin.

14. Sections 1254 and 1255

(1) Sections 1254 and 1255 may be used only for recreational purposes but not for any activity that because of the generation of noise or disturbance will detrimentally affect the amenity of adjoining land.

(2) A development (including using a caravan or camping) is not permitted on section 1254 or 1255.

(3) A houseboat is not permitted on the lake.

(4) Domestic livestock must not be kept, exercised or trained on section 1254 or 1255.

PART 3 – PERFORMANCE CRITERIA

15. Subdivision lot sizes

(1) The purpose of this clause is to ensure lots will be of a size that will preserve the rural character of the Lake Bennett locality.

(2) Subdivision design must provide for lots 8 ha or larger with a minimum of one hectare of unconstrained land.

16. Height control

(1) The purpose of this clause is to ensure the height of buildings is consistent with development provided for in the Lake Bennett locality.

(2) The height of any point of a building (including a tiered or split level building) must be measured from ground level vertically below that point.

(3) A building, other than a flag pole, lightning rod, aerial or antenna, must not exceed a height of –

(a) for sections 90 to 97 (inclusive) and 99 to 110 (inclusive) and section 1253 – 8.5 m; or

(b) for section 1252 – 5 m.

17. Car parking requirements

(1) The purpose of this clause is to ensure sufficient off-street car parking, constructed to a standard and conveniently located, is provided to service the proposed use of a site.

Note to subsection (1) –

For many uses, the Building Code of Australia requires the provision of parking for people with disabilities.

(2) Subject to clause 18, if a use or development specified in Column 1 of the table to this clause is proposed, the number of car parking spaces (rounded up to the next whole number) required for that use or development must be calculated in accordance with the formula specified opposite in Column 2.

(3) If a use or development is proposed that is not listed in the table but requires consent, the consent authority must determine the number of car parking spaces required for that use or development.

TABLE

Column 1	Column 2
Use or development	Minimum number of car parking spaces required
Caravan park	1.1 for each caravan, cabin mobile home or tent site.
Hostel	1 plus – (a) 1 for each 5, or part of 5, guests; and (b) 1 for each staff member.
Hotel	(a) 16 for each 100 m ² , or part of 100 m ² , of net floor area used as a lounge bar or beer garden; (b) 50 for each 100 m ² , or part of 100 m ² , net floor area used as another bar; (c) 10 for a drive-in bottle shop for serving cars; (d) 1 for each guest suite or bedroom; and (e) 3 for each 100 m ² , or part of 100 m ² , used for dining.
Medical consulting rooms	1 (in addition to the 2 spaces required for the dwelling in which the rooms are located) plus 3 for each consulting room.
Motel	(a) 1 for each guest suite or bedroom; (b) 16 for each 100 m ² , or part of 100 m ² , of net floor area used as a lounge bar or beer garden; and (c) 3 for each 100 m ² , or part of 100 m ² , used for dining.
Multiple dwellings	(a) 2 for each dwelling; and (b) 1 for each 5, or part of 5, dwellings.

Restaurant	(a) 6 for each 100 m ² , or part of 100 m ² , of net floor area (including alfresco dining areas); and (b) 10 for each drive-through for serving cars.
Shop	6 for each 100 m ² , or part of 100 m ² , of net floor area.
Single dwelling	2

18. Car parking area layout

(1) The purpose of this clause is to ensure a car parking area is appropriately designed, constructed and maintained to service the proposed use of a site.

(2) A car parking area must be established, used and maintained for the purpose of parking vehicles only.

(3) A car parking area must –

- (a) be of a suitable gradient for safe and convenient parking;
- (b) be dust-suppressed or sealed and well drained;
- (c) be of functional design and provide separate access to every car parking space;
- (d) limit the number of access points to the road;
- (e) allow a vehicle to enter from and exit to a road in a forward gear;
- (f) maximise the sight lines for drivers entering or exiting the car parking area;
- (g) be not less than 3 m from a road, and the area between the car parking area and the road must be landscaped with suitable planting; and
- (h) have driveways with a minimum width of 6 m for two-way traffic flow or 3.5 m for one-way traffic flow.

19. Signs

(1) The purpose of this clause is to ensure business signs and promotion signs are of a size and location that minimises detriment to the amenity of the area.

- (2) A business sign or promotion sign on a site must not –
 - (a) exceed 3 m² in area; or
 - (b) the height of a building on the site.

20. Demountable structures

(1) The purpose of this clause is to ensure demountable structures do not detract from the visual amenity of an area.

- (2) Placement of a demountable structure on land requires consent.

21. Set back of buildings

(1) The purpose of this clause is to ensure buildings, including sheds, on certain land are sited so they do not detract from the streetscape or amenity of adjoining land.

(2) A building on land, other than on section 1252, must be set back at least 10 m from all boundaries.

22. Pontoons

(1) The purpose of this clause is to ensure pontoons are appropriately designed and constructed.

- (2) A pontoon must –
 - (a) not be larger than 4 m by 8 m with a ramp not exceeding 20 m; and
 - (b) be moored by way of a ramp that is permanently and securely fixed to land or a dwelling above the high water mark.

(3) The highest point of the pontoon must be no more than 600 mm above the water.

23. Mobile telephone telecommunications towers and infrastructure

(1) The purpose of this clause is to ensure the erection of mobile telecommunication towers and infrastructure does not unreasonably detract from the amenity of the Lake Bennett locality.

(2) Despite anything to the contrary in this instrument, towers, aeriels or masts for mobile telephone telecommunications may be developed only with consent.

24. Caravans

(1) The purpose of this clause is to restrict the use of caravans on certain land.

(2) Land, other than sections 1253, 1254 and 1255, may be used to provide accommodation in a caravan only if that caravan is the only caravan used as a residence on the site and is used –

- (a) as a temporary residence by the owner of the site;
- (b) by a dependant of a person occupying a single dwelling on the site;
- (c) temporarily by a bona fide visitor; or
- (d) by a bona fide caretaker of the land.

25. Dependant units

(1) The purpose of this clause is to ensure a dependant unit is ancillary to the single dwelling on a site.

(2) A building or part of a building may be used, constructed or modified for use as a dependant unit if –

- (a) the floor area of the dependant unit does not or will not exceed 50 m²;
- (b) it shares public utility services and an effluent disposal system with the single dwelling; and
- (c) there is or will be only one dependant unit on the site.

26. Home occupation

(1) The purpose of this clause is to ensure home occupations are established and operated in a manner that does not detract from the amenity of the Lake Bennett locality.

(2) A dwelling may be used for home occupation only if –

- (a) the occupation or profession is carried out only by persons residing in the dwelling;
- (b) the total of the floor area of the dwelling plus the other areas of the site that are used for the home occupation (including areas used temporarily) does not exceed 30 m²;

- (c) no greater demand or load is imposed on the services provided by a service authority than that ordinarily required in the Lake Bennett locality;
- (d) no sign is displayed, other than a business sign, that is not more than 0.5 m²;
- (e) no goods or equipment are visible from outside the site; and
- (f) not more than one vehicle kept on the site is used for the purposes of the home occupation.

(3) In this clause –

"home occupation" includes the care of up to 5 children in a dwelling including children who reside in the dwelling.

27. Medical consulting rooms

(1) The purpose of this clause is to ensure medical consulting rooms are established and operated in a manner that does not detract from the amenity of the Lake Bennett locality.

(2) A medical consulting room may be established and operated only if –

- (a) the service is carried out only by persons residing in the dwelling and not more than one person who does not reside in the dwelling;
- (b) the total area used for the medical consulting room (including areas used temporarily) does not exceed 30 m²;
- (c) no greater demand or load is imposed on the services provided by a service authority than that ordinarily required in the Lake Bennett locality; and
- (d) no sign is displayed other than a business sign that is not more than 0.5 m².

28. Clearing of native vegetation

(1) The purpose of this clause is to ensure clearing of native vegetation does not unreasonably contribute to environmental degradation of the Lake Bennett locality.

(2) This clause does not apply to the clearing of native vegetation required or controlled under an Act of the Commonwealth or the Territory.

- (3) The clearing of native vegetation must –
 - (a) avoid impacts on environmentally significant or sensitive vegetation;
 - (b) be based on land capability and suitability for the intended use;
 - (c) avoid impacts on waterways;
 - (d) avoid habitat fragmentation and impacts on native wildlife corridors; and
 - (e) avoid impacts on soils highly prone to erosion.
- (4) The clearing of native vegetation requires consent if more than one hectare in total is to be cleared, including a previously cleared area.
- (5) An application for the clearing of native vegetation must demonstrate consideration of the following:
 - (a) the presence of sensitive or significant vegetation communities including rainforest, vine thicket and close forest;
 - (b) the presence of an area of essential habitat within the meaning of the *Territory Parks and Wildlife Conservation Act*;
 - (c) the impact of the clearing on regional biodiversity;
 - (d) whether the clearing is necessary for the intended use;
 - (e) whether there is sufficient water for the intended use;
 - (f) whether the soils are suitable for the intended use;
 - (g) whether the slope is suitable for the intended use;
 - (h) the presence of permanent and seasonal water features, including billabongs and swamps;
 - (i) the retention of native vegetation adjacent to waterways;
 - (j) the retention of native vegetation buffers along boundaries;
 - (k) the retention of native vegetation corridors between remnant native vegetation;
 - (l) the presence of a heritage object, heritage place, archaeological object or archaeological site within the meaning of the *Heritage Conservation Act*.

Lake Bennett (Land Title) Act 2004

(6) In assessing an application for the clearing of native vegetation, the matters mentioned in subclause (5) must be taken into account.

SCHEDULE 6

Section 21

DEVELOPMENT PERMIT FOR DEVELOPMENT AREA

NORTHERN TERRITORY OF AUSTRALIA

Lake Bennett (Land Title) Act

DEVELOPMENT PERMIT

DP04/0022

DESCRIPTION OF LAND THE SUBJECT OF THE PERMIT

Lot No: section 1252
Town/Hundred: Hundred of Howard
Street Address: Chinner Road

Consent is granted, pursuant to the *Lake Bennett (Land Title) Act*, for the purpose of 64 dwellings representing up to 15 new dwellings in addition to the existing 49 dwellings, subject to the conditions in the Schedule, and for the reasons set out in the attached Statement of Reasons.

Minister for Lands and Planning

Date:

SCHEDULE OF CONDITIONS

Lake Bennett (Land Title) Act

DEVELOPMENT PERMIT

DP04/0022

1. All development on section 1252 is limited to a single storey.
2. Up to 15 new dwellings may be constructed on the eastern side of the lake on the areas identified by thick black lines on Drawing No. 04/5818/4 "Development Area Lake Bennett".
3. All new dwellings must provide a separation of at least 3 m between dwellings (proposed and existing) and a 5 m setback from the access driveway.
4. All new dwellings must be similar in style, height and building materials to the existing dwellings on units 17 to 54 (inclusive).
5. The floor level of any new dwelling must be a minimum of 200 mm above the one in one hundred year flood level.
6. All air conditioning condensers are to be appropriately screened from public view and located so as to minimise thermal and acoustic impacts on neighbouring properties to the satisfaction of the Minister for Lands and Planning.
7. The dwellings hereby permitted must be connected to the effluent disposal system that services the existing unit development to the satisfaction of the Department of Health and Community Services.
8. The dwellings hereby permitted must be connected to a reticulated potable water supply to the satisfaction of the Department of Health and Community Services.
9. Any developments on or adjacent to any easements on site must be carried out to the requirements and satisfaction of the relevant service authority.

Note:

Section 21 of the *Lake Bennett (Land Title) Act* states that a development permit issued under that Act is taken to have been issued under the *Planning Act*.

The *Planning Act* provides for a Base Period of Permit under section 3 subject to the provisions of sections 58 and 59. This permit will lapse 2 years from the date of issue.

Minister for Lands and Planning

Date:

STATEMENT OF REASONS FOR DETERMINATION

Lake Bennett (Land Title) Act

DEVELOPMENT PERMIT

DP04/0022

Reason

The permit allows for the development of up to 15 new dwellings on the eastern side of Lake Bennett in accordance with the terms of compromise submitted by the Territory to the registered proprietors of the lots.

Variations given

Not applicable

Minister for Lands and Planning

Date:

