

# PLANNING AMENDMENT BILL 2012

## SERIAL NO. 6

### LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR LANDS, PLANNING AND THE ENVIRONMENT

#### EXPLANATORY STATEMENT

##### **General Outline**

This Bill amends the *Planning Act* to establish an independent Planning Commission.

The Commission's primary function is to prepare integrated strategic plans, guidelines and assessment criteria for inclusion in the NT Planning Scheme. The Bill specifies that the Commission will undertake community engagement in the preparation of the integrated strategic plans, guidelines and assessment criteria.

A secondary role for the Commission is to advise the Minister on significant development proposals. The Bill describes a significant development proposal as one that would have a significant impact on the strategic planning in the Territory or may have a significant impact on the natural environment or existing amenity.

The role of the Development Consent Authority (DCA) remains unchanged.

Membership of the Commission includes a Chairperson, the Chairman of the DCA, the Chairperson of the Heritage Council, the Chairperson of the NT EPA and a representative of the Local Government Association.

##### **Notes on Clauses**

###### **Clause 1      Short Title**

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Planning Amendment Act 2012*.

###### **Clause 2      Commencement**

This clause provides for the commencement of the Act on a day fixed by the Administrator and notified by publication in the Gazette.

### **Clause 3 Act amended**

This clause specifies that this Bill amends the *Planning Act*.

### **Clause 4 Section 3 amended**

Definitions have been included to reflect the amendments by this Bill.

### **Clause 5 Part 2, Division 2A inserted**

#### **Division 2A Plans, Guidelines and assessment criteria prepared by Commission**

Part 2 of the *Planning Act* deals with planning schemes. Division 2 in Part 2 deals with amendments and requests for amendments of a planning scheme. This clause inserts proposed Division 2A in Part 2. It deals with integrated strategic plans, guidelines and assessment criteria prepared by the Commission for inclusion in the NT Planning Scheme (proposed section 13A).

This should be read in conjunction with proposed section 81B which outlines the Commission's functions including the preparation of integrated strategic plans, guidelines and assessment criteria for inclusion in the NT Planning Scheme. Proposed section 81B(d) states that the Commission will undertake community consultation before preparing these plans.

Once the Commission has developed integrated strategic plans, guidelines or assessment criteria, the Minister must follow the standard procedures for dealing with a proposed planning scheme amendment (proposed section 13B) ie public exhibition, with notices in the newspaper, a sign on the site and a reporting body hearing.

### **Clause 6 Section 46 amended**

Section 46 of the *Planning Act* has been redrafted to accommodate a new provision, proposed section 46(40)(d) to allow for deferral of an application that is considered to be a significant development proposal and the Commission has not given the Minister a significant development report in relation to the proposal.

### **Clause 7 Part 5, Division 2A inserted**

#### **Division 2A Development application relating to significant development proposal**

Part 5 of the *Planning Act* deals with development permits. Division 1 deals with development permits generally and Division 2 deals with the notification and consultation of development applications. This clause inserts proposed Division 2A which deals with development applications relating to significant

development proposals.

### **50A Significant development proposal**

A significant development proposal is described in proposed section 50A in terms of it requiring a development permit and having a significant impact on the strategic planning of the Territory or on the natural environment or existing amenity.

Section 2A of the *Planning Act* outlines the objects of the Act which are to plan for and provide a framework of controls for the orderly use and development of land. Section 2A(2) states that the objects are to be achieved by:

- (a) strategic planning of land use and development and for the sustainable use of resources; and
- (b) strategic planning of transport corridors and other public infrastructure.

Proposed section 50A(3) is a standard provision that will allow for the inclusion in the Planning Regulations of more criteria for determining whether a development is a significant development proposal. This might occur soon or at a later stage as matters are identified.

### **50B Significant development report**

Proposed section 50B describes a significant development report. It is anticipated that in most cases the Minister would request a report early in the development process, before a development application has been lodged (proposed section 50B(5)).

Once the report has been requested, the Commission is obliged to prepare it as soon as practicable (proposed section 50B(2)) taking into account the strategic planning objectives of the *Planning Act* and potential impact from the development (proposed section 50B(3)). The Commission should also consider whether any Crown land would be suitable for the proposed development.

### **50C When significant development report may be requested**

Proposed section 50C deals with the situation where:

- a development application has been made;
- the consent authority considers the proposed development may be a significant development proposal; and
- the Commission has not given the Minister a report in relation to the proposal.

This situation is considered unlikely because most significant development would have been identified before the development application has been lodged.

Section 82 of the *Planning Act* establishes the Development Consent Authority (DCA). Divisions of the DCA determine development applications within their Division area. Outside of these areas, the Minister is the consent authority (section 4 of the *Planning Act*). There are seven Division areas generally associated with the larger population centres, Alice Springs, Batchelor, Darwin, Katherine, Litchfield, Palmerston and Tennant Creek.

If the DCA is the consent authority, the DCA must refer the development application to the Minister (proposed section 50C(3)). If the Minister does not consider the development to be a significant development proposal, then the Minister returns the development application to the DCA to deal with in the usual way.

If the Minister considers the development is a significant development proposal the Minister has the option to:

- become the consent authority by directing the DCA that this will be the case; and/or
- request a significant development report (proposed section 50C(5)).

If after considering the significant development report, the Minister is of the opinion that the development is a significant development proposal, the Minister may then:

- decide to become the consent authority by directing the DCA under section 85(3) (proposed section 50C(7)(a)); or
- give the report to the DCA and direct the DCA to determine the application (proposed section 50C(7)(b)).

#### **50D Consideration of significant development report**

If a significant development report has been given to a consent authority (either the Minister or the DCA), the report must be taken into account before determining the application.

#### **Clause 8 Part 5, Division 3A inserted**

#### **Division 3A Determination by Minister of application relating to significant development proposal**

Part 5 of the *Planning Act* deals with development permits. Division 1 deals with development permits generally, Division 2 deals with the notification and consultation of development applications and Division 3 deals with the determination of an application. This clause inserts proposed Division 3A into Part 5.

A significant development proposal must go through the usual development application process with a sign on the land, notice in the newspaper, 14 day exhibition, referral to service authorities and so on.

Proposed Division 3A deals with the situation where the Minister is the consent authority for a significant development proposal and the Minister makes a decision contrary to the Commission's advice (proposed section 57A). In this circumstance, the Minister must include the details of the advice and the reasons why the advice has not been followed in the reasons for the determination under sections 53A(3), 53B(3) or 53C(2).

The Minister must also table the reasons in the Legislative Assembly within 6 sitting days of making the determination (proposed section 57B).

Section 53 relates to the determination of a development application. As soon as practicable after considering a development application, the consent authority (either the Minister or the DCA) must determine to consent, alter and consent or refuse to consent to the proposed development.

Section 53A relates to a notice of determination where submissions were made during the public consultation period and those submitters have a right of appeal. Section 53A(3) requires that the notice of determination include reasons for the determination.

Section 53B relates to a notice of consent where no submissions were made during the public consultation period or, if submissions were made, there is no right of appeal. Section 53B(3) requires that the notice of consent include reasons for the determination.

Section 53C relates to a notice of refusal. Section 53C(2) requires that the notice of refusal include reasons for the determination.

## **Clause 9      Part 7A inserted**

### **Part 7A      Planning Commission**

#### **Division 1      Establishment of Commission and related matters**

This clause inserts proposed Part 7A. Division 1 deals with the establishment, functions, powers, independence and staff of the Commission.

#### **81A      Establishment**

Proposed section 81A specifies that this Bill establishes the Planning Commission.

#### **81B      Functions**

Proposed section 81B outlines the functions of the Commission and includes reviewing the NT Planning Scheme at regular intervals (section 81B(a)). Reviewing the planning scheme may involve a complete review or may involve a review of specific requirements like the car parking requirements or the building setback requirements.

The Commission is required to undertake community consultation before preparing integrated strategic plans, guidelines and assessment criteria (proposed section 81B(d)).

Once the Commission has developed integrated strategic plans, guidelines or assessment criteria, the Minister must follow the standard procedures for dealing with a proposed planning scheme amendment (proposed section 13B) ie exhibition with notices in the newspaper and a sign on the site and a reporting body hearing.

The Commission is required to provide advice to the Minister or the DCA or both about matters within the objects of the *Planning Act* (proposed section 81B(e)). The objects of the Act are to plan for, and provide a framework of controls for, the orderly use and development of land (section 2A). Section 2A(2) states that 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.

Proposed section 81B(g) requires the Commission to conduct research about future land use and development in the Territory, taking into account projected economic, social and demographic changes. A successful planning system facilitates sustainable economic growth, protects environmental, cultural and heritage assets and connects people and place. It underpins the provision of adequate and affordable housing and employment, fosters urban renewal and integrates land use with infrastructure provision. The Commission will play an important role in ensuring that the planning system in the Northern Territory provides a framework that delivers these things.

Proposed section 81B(h) allows the Minister to identify and confer on the Commission other functions with the intent of achieving the objects of the Act. This is a 'catch all' provision to pick up matters which may relate to a specific circumstance or may not yet be identified.

### **81C Powers**

Proposed section 81C establishes the Planning Commission's source of power to carry out its functions including the ability to engage persons with appropriate qualifications and expertise to assist it.

### **81D Independence**

The effect of this provision is that the Commission is independent of Government.

### **81E Staff and facilities**

The Chief Executive of the Department of Lands, Planning and the Environment is responsible for providing the Commission with staff and facilities. Staff of the Commission will be public servants subject to the direction of the chairperson (section 81E(2)) only and not individual members of the Commission. It is anticipated that the Commission will be fully appointed and staffed in early 2013.

## **Division 2 Membership of Commission**

Proposed Part 7A Division 2 deals with the Commission membership arrangements.

### **81F Constitution and appointment of members**

Proposed section 81F outlines the constitution and appointment of members of the Commission. The inclusion of the Chairs of the Development Consent Authority, the Heritage Council and the Environment Protection Authority in the Commission, will provide for a greater shared understanding of the aspirations of the Planning System in delivering outcomes which reflect the objects of the *Planning Act*.

### **81G Duration and conditions of appointment**

Proposed section 81G deals with the duration and conditions of appointment of members, other than the Chairman of the DCA, the chairperson of the Heritage Council or the chairperson of the NT EPA. The DCA membership details are included in Part 8 Division 2 of the *Planning Act*. The duration and

conditions of appointment for the chairperson of the Heritage Council and the NT EPA are included in their respective legislation (eg the *Heritage Act* and the *Northern Territory Environment Protection Authority Act*.)

#### **81H           Vacation of office**

Proposed section 81H deals with the ceasing of membership of the Commission, other than for the Chairman of the DCA, the chairperson of the Heritage Council or the chairperson of the NT EPA and ensures no break in the continuity of its functions due to normal vacancies that occur from time to time.

#### **81J           Termination of appointment**

Proposed section 81J deals with circumstances of mandatory and discretionary termination of members other than the Chairman of the DCA, the chairperson of the Heritage Council or the chairperson of the NT EPA. Section 100 of the *Planning Act* deals with the termination of appointment of DCA members including the DCA Chairman. Termination of the chairperson of the Heritage Council and the NT EPA are included in their respective pieces of legislation.

### **Division 3   Procedures for particular functions**

Proposed Part 7A Division 3 deals with the Commission procedures for integrated strategic plans, community consultation and significant development reports.

#### **81K           Integrated strategic plans**

Proposed section 81K describes the primary function of the Commission which is to prepare integrated strategic plans. This section sets out examples of types of strategic plans. Proposed section 81K(3) sets out examples of matters that the Commission may include in master plans. These matters are broad ranging, including housing, transportation, economic development, the environment, open space and conservation because the intent is for an integrated approach to strategic planning.

If supported, the strategic plans developed by the Commission would result in amendments to the NT Planning Scheme under Part 2 of the *Planning Act*. This will ensure that there is better integration of strategic planning policies with the NT Planning Scheme. This addresses an area of need previously highlighted by the Property Council of Australia in both their 2010 and 2012 Development Assessment Report Cards.

#### **81L           Community consultation**

Proposed section 81L allows the Commission some flexibility in engaging in community consultation so that it can be tailored to meet the needs of the affected stakeholders.

#### **81M           Preparation of significant development report**

Proposed section 81M specifies that the Chairman of the DCA may only take part in the preparation of a significant development report where there is no conflict of interest ie where the Minister is the consent authority. This will ensure the Chairman of the DCA does not have a conflict of interest if s/he later determines an application relating to the significant development.

## **Division 4      General Procedures**

Proposed Part 7A Division 4 deals with the Commission's meeting procedures.

Proposed sections 81N to 81T relate to the conduct of Commission business. The Commission may set its own meeting procedures. For instance, it might decide that members could attend meetings by telephone or video link or its method of keeping accurate records may be by keeping a recording or by written minuting of the meeting.

The Commission is to meet as often as necessary, but at least four times a year; for the chairperson to preside, and for members to appoint another of their number as chair if the chairperson is absent; and for the quorum to be a majority of members, with decisions by majority and a casting vote for the chairperson. Commission members and former members are protected from liability if they are acting in good faith carrying out work of the Commission (proposed section 81Z).

Proposed sections 81U and 81V deal with potential conflicts of interest by Commission members. If a member has a personal interest in a matter to be considered by the Commission, the member must outline the nature and extent of the interest to all members and the interest must be recorded in the minutes. The member must not take part in any deliberation of the Commission about the matter.

Proposed section 81W prevents a challenge to a decision made by a member of the Commission under the *Planning Act* or any other Act, in a capacity other than as a member of the Commission, if the only basis for the challenge is that the member has taken part in a deliberation or decision of the Commission about the same subject matter.

Proposed section 81X allows the Commission to establish committees to advise it on matters related to any of the Commissions functions.

Proposed section 81X(3) specifies that the Chairman of the DCA must not participate in the Commission's consideration of a significant development proposal or the preparation of a significant development report unless the Minister is the consent authority. This will ensure the Chairman of the DCA does not have a conflict of interest if s/he later determines an application relating to the significant development.

## **Division 5      Other Matters**

Proposed Part 7A Division 5 deals with other matters including the annual report, protection from liability and confidentiality of information.

Proposed section 81Y requires the Commission to prepare and give the Minister an annual report. The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving the report.

## **Clause 10     Section 112**

Section 112 of the *Planning Act* has been redrafted to accommodate the new provision, proposed section 112(1)(ba) to allow for an appeal for a development that is considered to be a significant development proposal where:

- the DCA is the consent authority or the Minister is the consent authority only because there is no Division of the DCA;
- the Commission has given the Minister a significant development report in relation to the proposed development and the Minister has given it to the DCA (if the DCA is the consent authority); and
- twelve weeks have elapsed since the relevant consent authority was provided with a copy of the report (completion of the procedures outlined in proposed section 50C).

The *Planning Act* states that twelve weeks is the time limit for a consent authority to determine an application and is the basis for an appeal of a development proposal that is not considered to be a significant development proposal.

It should be noted that where the Minister has decided to direct the DCA under section 85(3) that the Minister is the consent authority, the applicant has no right of appeal (section 117A of the *Planning Act*). Where the Minister is a consent authority under other circumstances, section 117A(2) of the *Planning Act* allows the Minister by notice in the Gazette to declare that there is no right of appeal.

If the Minister makes a decision that is contrary to the advice of the Commission, the Minister must table the reasons in the Legislative Assembly within 6 sitting days of making the determination (proposed section 57B).