RECENT DEVELOPMENTS

Northern Territory

Discussion Draft of the Proposed *Planning Act* 1999.

Introduction

On 10 August 1999 the discussion draft of a new *Planning Act* 1999 was tabled in the Legislative Assembly by the Minister for Lands, Planning and Environment. The draft refines and updates the *Planning Act* 1993 that it proposes to repeal and replace. The objective is to bring about changes to the Northern Territory planning system by introducing several new concepts, refining administrative matters, and permitting a more efficient and appropriate appeals system.

The timetable for reform sees a *Planning Bill* 1999 being formally introduced into the Legislative Assembly after a period of consultation and review. The Bill will be debated in November, and from December onwards it is intended that Regulations will be prepared. Subject to legislative approval and assent by the Administrator, the Act and Regulations should be in force in 2000.

Environmental Planning under a Single NT Planning Scheme.

A key feature of the new legislation is that the NT will be covered by a single integrated Planning Scheme. This is intended to bring greater consistency in land use and development control while still permitting local variations.

There will be three components to the new Scheme: land use objectives (formal statements of land use policy), development provisions (equivalent to the current 'land use control plans and former 'planning instruments'), and incorporated documents (all those involved in the development, use and protection of land, such as guidelines). Each will have a statutory basis and represent Government land use policy. Existing documents will be saved and incorporated into the new Scheme.

All amendments to the Scheme must be publicly exhibited for a minimum period of 28 days, although the Minister will determine the process of consultation, and very minor amendments may be excluded. Where amendments relate to rezoning of a particular area of land, signs must be clearly placed. Notification must also appear in the local newspaper as under existing legislation.

The Minister may initiate amendments to the Scheme on his or her own initiative or in response to a written application from anyone. Reasons for the proposed amendment and other information must be provided. All submissions are likely to be referred to the Department of Lands, Planning and Environment for initial assessment and advice, although the proposed Act provides that the new Development Consent Authority may be asked to provide a report.

In considering amendments, the Minister must either reject the application, initiate amendment now or later, or take advantage of the 'exceptional development permit' procedure (discussed below). Recommendations may be made regarding the consultation process in each case, and in all cases the proponent must be notified of the course adopted. Proposed amendments must be published, and the Minister must consider whether a hearing is necessary if a submission has been made for this. If so, he or she must appoint a body or person to conduct the hearing and report to them. Provision is also made for consultants to be appointed where there are specialist issues or contentious matters. The Minister may decide that further consultation is necessary after exhibition of the proposal.

Deferred development proposals will be considered in the light of regular reviews of the NT Planning Scheme. Exceptional development permits may be issued over sites where development is not permitted under existing zoning, provided they are in line with the Scheme. This provides administrative flexibility where it would be unnecessary or inappropriate to change the zoning. As mentioned, applications for exceptional development permits are dealt with as amendments to the Scheme. Current provisions relating to 'existing use' are retained and tied in with these provisions, but these are in general assessed by the Development Consent Authority.

Development Control by a Development Consent Authority.

Under the proposed Act the Minister will be responsible for managing the NT Planning Scheme, and will make land use policy. The policy role of the current NT Planning Authority in initiating rezoning proposals will cease, and a new Development Consent Authority will be established to deal with development approval. It will initially consist of seven Divisions across the NT which correspond with the composition of the present NT Planning Authority. In cases where there is no Consent Authority, the Minister will be the Authority. This will comprise the majority of the NT, outside of the densely populated areas.

Land use objectives and development provisions will be binding on the Development Consent Authority, although in certain cases the Authority may refer proposals for consideration to the Minister where they fall outside the objectives. Incorporated documents must also be taken account of in determining development applications. These might consist of design guidelines, land use structure plans, concept plans or management plans.

Requirements for matters to be addressed in development applications have been expanded to reflect the Scheme, to integrate development assessment with the *Environmental Assessment Act,* to provide greater detail of land capability, and to ensure compliance with the *Building Act.* The Consent Authority may approve development that is inconsistent with policy objectives only if it obtains the Minister's approval. Applications must be determined as soon as practicable, or notices of refusal must be issued. Interim development control provisions are retained, which can prohibit certain types of development outright for up to 2 years. These have overriding status in relation to the Planning Scheme.

The Minister's present discretionary power to direct the NT Planning Authority in the determination of particular applications will be replaced by a 'call-in' power under the proposed Act. This will

enable the Minister to become the Consent Authority and exercise its powers. Any exercise of call-in powers must be tabled in the Legislative Assembly within 3 days of their use, with an explanation of why the powers were used.

Developer Contribution and Enforcement Provisions

Existing provisions regarding contributions have been carried forward, although new provisions have been added with regard to demand for payment and unpaid contributions. The latter become overriding statutory charges so they must be paid prior to further dealings with the land.

Land uses or developments must comply with the NT Planning Scheme, interim development control orders or a development permit. Notice to cease provisions have been carried forward but the criteria for service has been broadened so they may now be served on the land owner, occupier or the user or developer of the land.

Breaches may be investigated by entering land without notice to the owner or occupier. A search warrant or consent is required for entry to residential premises. Prosecutions may be commenced in the name of the Minister or the Development Consent Authority. Continuing offences incur a default penalty as well as a basic penalty.

Planning Appeals under the Lands and Mining Tribunal

The Lands and Mining Tribunal will be the Appeals Tribunal under the proposed Act, and the Registrar of the existing Tribunal will also act as the Registrar of Planning Appeals. Hearings are open to the public unless the Tribunal orders otherwise. Decisions must be made within 2 months of the appeal. The process is initiated by the Registrar, who receives appeals against determinations by the Development Consent Authority. Decisions of the Minister acting as the Authority continue to be unappealable. The basis includes refusal to issue a permit or non-determination of an application. Notices must be in the approved form.

A compulsory conference between the Chairman of the Development Consent Authority and the applicant is the first step in the proposed new appeals process. This will be mediated by a person appointed by the Tribunal. If the issue is resolved as a result, the Tribunal may make the appropriate order for amendment or reissue of the permit, or other action. If it is not successful, the decision can be reviewed by the Tribunal on the applicant's request. In this event, it will not be possible to change the grounds of the appeal. Submissions must be in writing, and the Tribunal will deliberate on written evidence. If it wishes to question a party, all parties must have the opportunity to be present.

Determinations must not conflict with the Planning Scheme, and reasons must be given. Once an appeal is lodged and until it is determined no development or use in accord with the permit being appealed is possible. A right of further appeal to the Supreme Court is only possible on a point of law. This must be made within 28 days.

Opposition to the Draft Act

The Local Government Association of the Northern Territory is urging Territorians to sign a petition objecting to the proposed legislation. It asks for three changes to the proposed Act:

The removal of over-riding ministerial powers to approve development applications;

The addition of a right to third party appeals; and

The empowerment of locally elected and accountable community representatives on the proposed Development Consent Authority.

Further Information and Submissions

An Information Paper has been released together with the discussion draft, and written submissions and comments are welcomed on both. These should be sent to:

The Project Officer, Planning Review,
Department of Lands, Planning and Environment,
GPO Box 1680,
DARWIN NT 0801.

Copies of documentation can be obtained from the above address or the Department website: <http://www.lpe.nt.gov.au>

Petition forms are available from the Local Government Association of the Northern Territory at GPO Box 4502, Darwin, NT 0801.

Simon Marsden