



# PLANNING REFORM PHASE 1

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# PRIORITY REFORMS

*Building Confidence through Better  
Planning for the Northern Territory*



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## Introduction

The release of a consultation paper in October 2017 was the first step in the process of Building Confidence through Better Planning for the Northern Territory. The consultation paper outlined how the Northern Territory planning system operates and introduced the six principles intended to underpin reform of the system. The aim of the initial consultation was to identify opportunities to reform the planning system so it delivers high quality developments and the outcomes the community expects.

In response to feedback from the first round of consultation, the Government has released:

- A **Directions Paper** to give a simple, accessible explanation of the Government's strategy to deliver planning reform and introduces the two phases through which reform will be developed and delivered.
- This **Phase 1 Priority Reforms** paper to give a more detailed technical explanation of issues to be addressed in Phase 1 and the reforms proposed to be developed and implemented to address the first tranche of the issues of concern identified by the consultation.

Government is seeking the view of all stakeholders on the strategy identified in the Directions Paper and the specific initiatives suggested in this paper.

## Background

The *Planning Act* has been in effect since early 1993. A major amendment in 2005 introduced the framework for a single consolidated Northern Territory Planning Scheme (NTPS). The introduction of the NTPS in 2007 integrated 40 separate documents into a scheme covering all zoned land in the Territory (except Jabiru).

Since that time both the Act and the Scheme have been subject to numerous amendments.

The creation of the Northern Territory Planning Commission (NTPC) in 2012 increased the focus on the importance of strategic planning in guiding growth. A range of other amendments and administrative changes have improved components of the system and access to planning information.

This review reflects the recognition that improvements can always be made. A holistic approach to the review of the planning system is intended to give the community confidence that the system will deliver outcomes that support the needs of Territorians both now and into the future. Reforms will include a range of changes to the legislation, regulations, and the NTPS and new information resources and administrative processes.

## Scope

Planning reform is intended to address the operation and effectiveness of the *Planning Act*, the NTPS and associated administrative and decision making processes. The objective of this paper is to identify those issues comprising Phase 1 of the reform, explain the reasons for the issues and identify potential reforms or actions to address them. These reforms will also provide a framework for further reforms as part of Phase 2.

## List of Acronyms

<b>DA</b>	Development Application
<b>DAS</b>	Development Assessment Services
<b>DCA</b>	Development Consent Authority
<b>DIPL</b>	Department of Infrastructure, Planning and Logistics
<b>EDP</b>	Exceptional Development Permit
<b>NT</b>	Northern Territory
<b>NTG</b>	Northern Territory Government
<b>NTCAT</b>	Northern Territory Civil and Administrative Tribunal
<b>NTPC</b>	Northern Territory Planning Commission
<b>NTPS</b>	Northern Territory Planning Scheme

## 1. Strategic Land Use Planning and the NTPS

Consultation acknowledged that strategic planning in the Territory is improving, and this is a move in the right direction. The NT planning system is also considered to be relatively simple and effective compared to other jurisdictions in Australia. However, the need to clarify the planning system and better coordinate the various components of the NTPS was also raised.

The increasing focus on a strategic approach to planning is not unique to the Territory. The challenge for all jurisdictions is to streamline processes while reinforcing the role of strategic plans to facilitate holistic and informed consideration of environmental, social and economic issues.

The following reforms identify opportunities to restructure the Act and Scheme to make it clear how the planning system works, what matters inform decisions and to reinforce the role of policy in influencing those decisions. This is supported by reforms to the way in which information is made available and communicated to all stakeholders.

### 1.1. Demystify the role and processes of the NTPC.

The Act establishes the NTPC as an independent body and identifies its functions, including to consult with the community and to prepare integrated strategic plans, guidelines and assessment criteria for inclusion in the NTPS. As well as developing strategic planning policy, the Commission has a role in holding public hearings and reporting to the Minister on public feedback in relation to proposed planning scheme amendments. The Commission has no decision making powers under the Act.

While generally supportive of strategic planning by the Commission, a number of comments and submissions suggested that consultation could be improved and, in particular, that consultation across strategic planning projects needs to be better coordinated. More broadly, it seemed the role of the Commission and the factors that influence the development of planning policy were poorly understood by the community, contributing to lack of confidence in planning processes.

Some respondents felt that the Commission should not conduct hearings for proposed policy that they developed, and there was also a suggestion that this role should revert to the DCA to ensure local government involvement. Hearings on proposed planning scheme amendments will continue to be held by and reported on by the Commission to ensure it is aware of issues raised to inform future development of overarching strategic planning objectives. This approach also recognises that the Act already specifically provides for local government involvement in the planning scheme amendment process.

This reform focuses on improving community understanding and the transparency of the NTPC's functions, particularly in relation to community consultation. This is complemented by reforms seeking to clarify the structure of the planning system and reinforce the role of policy (1.3 - 1.6), improvements to the planning scheme amendment process (1.7), and improved access to information on the planning system and processes more generally (1.2).

Actions under this reform are to:

- 1.1.1 *Amend the Act to require the NTPC to have a publicly available community engagement charter including performance outcomes.*
- 1.1.2 *Make reports from the NTPC to the Minister publicly available.*
- 1.1.3 *Improve coordination of information about NTPC projects across the Commission and NT Government websites to increase awareness of the status these projects and their role in informing decisions.*

## 1.2. Improve the clarity and availability of information about the NT planning system, particularly amendments to the scheme including the rezoning of land

The community confidence in the planning system and ability to participate meaningfully in planning processes is impacted by a lack of transparency as well as misunderstandings around the operation of the NT planning system. A lack of information or difficulty accessing or interpreting the available information was an issue recognised by all sectors of the community including both frequent and occasional participants in planning processes.

This reform seeks to improve information on the NT planning system and make this information more accessible. This includes use of language and media that considers target audiences, particularly noting the different levels of expertise, understanding and information needed by frequent participants in the NT planning system (such as industry professionals) compared to those who are new to planning.

This reform relates to reform 2.1 which seeks to improve information on development application processes, as well as improvement and development of online systems proposed to take place in Phase 2. This will also support changes to the *Planning Act* and NTPS proposed through reforms 1.3 – 1.7 that clarify the fundamental structure of the NT planning system and the importance of policy.

Actions under this reform are to:

- 1.2.1. *Review and simplify the user guide to the NTPS to reflect the importance of policy.*
- 1.2.2. *Develop and improve guidance notes for industry professionals that assist in interpretation of various clauses of the NTPS, and in particular new or changed provisions.*
- 1.2.3. *Develop ‘plain English’ factsheets and similar information resources to clarify how the NT planning system is structured, and the powers, roles and responsibilities of key agencies under the Act.*
- 1.2.4. *Review and simplify guides for making a planning scheme amendment or concurrent application, and for providing submissions to these processes.*
- 1.2.5. *Develop an online glossary of planning terms and acronyms that can be added to over time to help the public understand more technical documents and applications.*

## 1.3. Establishing principles to advance the purposes of the Act

Through consultation it is clear there is confusion about how the planning system operates and what considerations guide planning and decision making. Some submissions made specific suggestions about objectives that should be included while others suggested that the planning system should be less prescriptive and more outcomes-focused.

Part 1 – Preliminary of the *Planning Act* establishes the purpose of the Act, the overarching objects and a number of mechanisms to achieve the objects but does not define a clear framework for planning processes and policies nor does it assign decision making roles.

Revision of Part 1 of the Act will clarify the function of the Act to guide the fair, transparent and accountable operation of the overall planning system. This will ensure transparency in decision making and provide the community with greater confidence that decisions are advancing achievement of the objectives of the Act.

Action under this reform is to:

- 1.3.1. *Revise Part 1 of the Act to establish:*

- *an expanded purpose of the Act to clearly establish the broad range of considerations that should guide the planning system;*
- *a clear structure for the planning system procedures, and decision-making roles and responsibilities; and*
- *overarching directions to advance the purpose of the Act in a way that promotes the fair, transparent and accountable operation of the planning system.*

#### 1.4. Definition of a Planning Scheme

Section 9 of the *Planning Act* lists potential components of a planning scheme including policy statements; provisions that permit, prohibit restrict or impose condition on the use and development of land; and maps, designs or diagrams. The various components of the scheme are given power to inform decisions by other sections of the Act (in particular section 52). The vague nature of the descriptions of the components of a scheme, however, is limiting the effectiveness of policy and the achievement of good development outcomes.

The NTPC, the independent body established by the Act and tasked with strategic planning for the Territory, has suggested that strengthening the role of policy will be fundamental to achieving the Government's goals for reform of the planning system. The Commission has identified a number of reforms to underpin the importance of policy including a simpler and more clearly defined structure of the components of a Scheme.

Revision of section 9 and consequential amendment to section 52 of the Act will respond to the community's support for a consistent decision making framework and reinforce the status of policy.

Action under this reform is to:

##### 1.4.1. Review section 9 of the Act to clarify that a planning scheme can include:

- *Strategic land use policies to guide all decisions in relation to future land use and development;*
- *Zones that permit (with or without consent) or prohibit development within the context of strategic land use policies;*
- *Performance criteria applicable to a use or zone and inform the manner in which a use or development may be undertaken; and*
- *Guideline documents that assist in the interpretation of the planning scheme.*

#### 1.5. Clarify the scope for the policy hierarchy within the NTPS

The NTPS presents policy in a number of ways including:

- Territory and region-specific Land Use Frameworks and Planning Principles (Part 2)
- Area Plans (Part 8)
- Policy and Guideline documents (Schedules 2 and 3)
- Zone purpose statements (Part 3)
- Development provision purpose statements (Parts 4 and 5).

As the NTPC works with the community to prepare land use policies to improve development outcomes in the Territory, a hierarchy of plans is emerging – notably, regional land use plans that establish overarching directions and cascading subregional land use plans and area plans that provide further detail for smaller localities. This hierarchy is broadly acknowledged in the policy documents themselves, but is not identified in the Scheme or the Act.

Presenting a hierarchy of policy, which mirrors the hierarchy of plans being prepared by the NTPC, within a reformatted Part 2 of the Scheme will strengthen the role of policy in guiding future development and decision making.

The proposed changes also respond to community concerns that the increasing use of Specific Use (SU) Zones and Exceptional Development Permits (EDPs) by developers to facilitate relatively minor variations to development provisions is eroding the integrity of the Scheme. By increasing the role of policy to guide decision making, more innovative proposals or site specific variations can be accommodated without the need for ad hoc amendments to the Scheme or EDPs.

Action under this reform is to:

- 1.5.1. *Amend the NTPS to consolidate policy currently in Part 2, Part 8 and Schedule 2 within a new Part 2.*

## 1.6. Strengthen the linkages between strategic planning and development assessment

A consistent theme from consultation was that decision making needs to be better informed and consider social, environmental and economic issues holistically and within a local context to deliver better development outcomes. There was concern that the exercise of discretion was too “tick the box” and that decisions are being made without a view to delivering good planning outcomes that reflect community aspirations documented in policy.

The Act and Scheme do establish a role for policy in informing decision making but the provisions that guide the consideration of policy are often ambiguous and sometimes conflict. Relevant provisions and associated issues are summarised below.

Section 52 of the Act establishes that the DCA must not consent to a development that is contrary to policy, as referred to under section 9(1)(a), without approval from the Minister. Current application of this section can lead to the “tick the box” approach to assessments and decisions.

Clause 2.5 of the NTPS also describes the parameters around the exercise of discretion by the consent authority and only requires consideration of Parts 4 and 5 of the Scheme. It does not specify the need for the consent authority to consider policy within Part 2, Part 3, Part 8 and Schedule 2. Amendment will clarify that any policy may inform decisions.

Clauses of the NTPS relevant to how policy guides development decisions include:

- clause 1.2 – establishes that provisions of Part 3 (Zones) prevail over Part 8 (area plans) in the event of an inconsistency;
- clause 2.7 - requires the consent authority to consider policies in Part 8 or Schedule 2;
- clause 2.2 4(c) - provides for the granting of consent for development that does not accord with the provisions of the scheme.

When considered together, clauses 1.2, 2.7 and 2.2 4(c) suggest that:

- area plans cannot permit a use that would be unlawful under a Zone; and
- area plans can prevail over development provisions (in Parts 4 and 5); but
- subclause 2 of 2.7 creates confusion over the role of policy by suggesting policy, which is in fact part of the scheme, is overridden by the planning scheme where there is an inconsistency

Furthermore, while zones prevail over area plans and development provisions, zone purpose statements (contained within Part 3) are not clearly identified as a consideration in the exercise of discretion.

Review of clauses 1.2, 2.2 4(c), 2.5, and 2.7 in association with reforms 1.4 and 1.5 which restructure the planning scheme will reinforce the importance of policy.

This will contribute to better consideration of overall planning implications in decision making and better development outcomes. The proposed amendments below should be considered in the context of potential amendments discussed at 1.4 and 1.5. Actions under this reform are to:

- 1.6.1. *Amend section 52 of the Act to reflect its intended purpose - to require that the DCA may grant consent to a development that is contrary to a policy in the NTPS only if the Minister gives approval.*
- 1.6.2. *Amend clause 2.5 of the NTPS to clarify that in considering an application for consent, in addition to the existing matters to be considered, the consent authority must also consider the identified purpose of the zone and policy in proposed Part 2 of the Scheme.*
- 1.6.3. *Amend clause 2.7 of the NTPS to clarify that interpretation of the Scheme must have regard to the policy in proposed Part 2.*
- 1.6.4. *Include an introduction to the proposed Part 2 to clarify that interpretation of provisions in Parts 4 and 5 must be consistent with applicable policies in Part 2.*

### 1.7. More robust planning scheme amendment processes

Community concern about the transparency, openness and accountability of the planning system underpins the overall reform. Consultation has clarified that some of this concern results from a lack of criteria and guidelines for decision making, particularly in relation to the Minister's role.

The overwhelming suggestion for improving the transparency and accountability within the system was to document matters the Minister considers when making decisions in relation to proposals to amend the NTPS. It is noted that some respondents also suggested that the Minister should not be responsible for making rezoning decisions; however, limiting the Minister's powers is not currently being considered.

Part 2 of the *Planning Act* establishes the legislative basis for the making and amending of planning schemes. There is considerable detail around the processes associated with exhibition and the subsequent reporting on matters raised during exhibition. There is, however, nothing to guide a person or body making a request to amend the scheme, nothing to guide the Minister in considering such a request, and no criteria for the Minister to consider when initiating an amendment on his or her own initiative.

The Minister has a responsibility to make a decision based on the merits of a proposal. The establishment of clear and detailed criteria to guide the Minister's decisions will improve transparency and accountability by improving applicants' and submitters' understanding of what matters were considered and how these influenced the reasons for a decision. This approach also has the potential to draw attention to the purpose of the *Planning Act* and to reinforce the significant role of policy in informing decisions.

Concern was also raised about the lack of timeframes for the Minister to make a decision and the uncertainty created by the open ended deferral of proposals to amend the scheme. Given that planning scheme amendments represent changes of policy often requiring detailed and complex investigations, prescribed timeframes would be difficult to accommodate. A formal legislative framework around the deferral of consideration of proposed planning scheme amendments would, however, improve the transparency of the system.

Actions under this reform are to:

#### 1.7.1 *Revise Part 2 of the Act to establish:*

- *criteria to inform the Minister's consideration of a proposal to amend the planning scheme with reference to the overall objectives of the Act and to policy within the NTPS;*

- *matters to be addressed when lodging an application to the Minister to amend the Scheme;*
- *requirements for public exhibition of a proposal to amend the NTPS in line with changes proposed for development applications (Reform 2.4);*
- *a formal mechanism for deferral of consideration of either an initial request to the Minister to amend the scheme or a decision about an exhibited proposed amendment; and*
- *the opportunity to lapse an application in the event there is no response from a proponent to a request for further information.*

### 1.8. Improved integration of planning and infrastructure

Land use plans establish a framework for future development, including consideration of existing infrastructure capacity and identification of future infrastructure needs to support growth. However, land use plans do not provide detailed guidance on how infrastructure will be constructed or paid for. Current provisions within the *Planning Act* around developer contributions also lack the depth to coordinate infrastructure provision.

Consultation acknowledged the benefits of strategic land use plans but emphasised the need to better integrate provision and funding of infrastructure with land use planning. In particular, a lack of necessary headworks infrastructure to support further growth is often a significant hurdle for developers. Without direction on the provision of these headworks, developers and residents lack the confidence to predict the timing and ability to proceed with development opportunities identified in a land use plan.

Preparation of infrastructure plans to support land use plans would provide the detail needed to coordinate delivery of necessary infrastructure by the responsible agencies in an efficient, cost effective and logical manner. Infrastructure contribution plans would further aid the achievement of this through equitable management of contributions from private developers.

Actions under this reform are to:

- 1.8.1. *Review Part 6 of the Act to establish a process to facilitate the development of infrastructure plans and infrastructure contribution plans.*
- 1.8.2. *Develop guidelines / principles to support the preparation, format and content of infrastructure plans and infrastructure contribution plans.*

## 2. Development Assessment and Application Processes

The NT development assessment process is consistently ranked by industry as the best performing in Australia reflecting relatively fast processing times and for having a single consolidated planning scheme with easy to interpret clauses and definitions. However, feedback during consultation was that there is the need to increase genuine participation by the community in the development assessment process whilst at the same time enabling responsible development in a timely manner. An extensive review of best practice development assessment processes has identified a number of reform areas that would improve community understanding, enshrine genuine participation and build confidence that development proposals are appropriately assessed.

### 2.1. Improve information on development assessment processes

The need to improve the available information about development assessment processes was highlighted through direct comments as well as feedback from submissions. Overall there is limited understanding of the planning system amongst the general community. Specific issues included difficulties accessing DCA reports and reasons for decisions, and the need for flexible options for those who cannot attend DCA meetings during business hours.

This reform focuses on improvements to information about development assessment processes and links with other reforms to make it easier for all members of the community to understand and navigate the planning system and associated decision making processes. Evolution through Phase 2 reforms will further support the use of interlinked, online resources that can be accessed through mobile devices.

Actions under this reform are to:

- 2.1.1. *Revise and make it easier to find factsheets and guides on development application processes.*
- 2.1.2. *Develop new factsheets for making submissions and other processes for community involvement.*
- 2.1.3. *Improve online access to DCA reports and decisions.*

### 2.2. Pre application consultation by applicants

During the consultation process, concerns were raised by the community that the mandatory public exhibition period of 14 days for development applications and 28 days for concurrent applications provides insufficient time for the community to consider the proposal and to put forward their concerns. In particular, many concerns related to developments with potential for significant impacts on amenity or the environment.

This reform responds in part to these concerns by requiring applications for development likely to have high impacts on amenity to undergo mandatory pre application community consultation. This will provide greater opportunity for the community to provide upfront input into proposals.

Actions under this reform are to:

- 2.2.1. *Introduce a requirement that a new category of development, 'High Impact Development', undergo mandatory pre application community consultation to inform the community of a proposal. This also includes concurrent applications proposing a High Impact Development. This will better ensure communities are informed about development proposals and have an opportunity to contribute their views before a formal planning application is submitted. This process also provides the proponent with the opportunity to mitigate negative impacts where possible, address community misunderstandings and address any community issues.*

- 2.2.2. *Develop and introduce a new Schedule to the Regulations that prescribes the types of development subject to the pre application consultation requirements.*
- 2.2.3. *The applicant would be responsible for public notification of the proposal and conducting any consultation activities.*
- 2.2.4. *The applicant would be required to include a consultation report outlining the consultation undertaken, the issues raised by the community, and how these issues have been considered in the formal planning application.*
- 2.2.5. *The application, once lodged, would still undergo the existing public exhibition process and the community can still lodge submissions.*

### 2.3. Simplify notification requirements for minor developments

Public notification requirements for development applications currently consist of placement of an advertisement in the newspaper and erection of a sign on the property or, for minor types of development, limited neighbour notification by written notice.

The community raised concerns during the consultation process that notification of proposals was insufficient, particularly at the local community level. Industry concerns were that full public notification of minor developments was excessive as broader public interest is unlikely and that a simpler application process for minor waivers to development provisions should be introduced.

This reform responds to both concerns by expanding the notification of minor developments at a local community level and removing the need for their newspaper advertisement. The types of applications subject to these requirements have also been broadened in recognition of industry concerns and their low potential for public interest beyond the local community. The introduction of a streamlined application process for waivers to provisions will form part of the Phase 2 reforms.

Actions under this reform are to:

- 2.3.1. *Introduce a new category of public notification, 'local notification', for minor development applications (i.e. reduced front setback for carport) to include neighbour notification and sign only. Neighbour notification to be increased to include all adjoining property owners.*
- 2.3.2. *Applicant is responsible for the printing and erection of sign, plus neighbour notification.*
- 2.3.3. *Local notification is proposed to apply for the following application types:*
  - *additions or alterations to a single dwelling with a reduced setback to any boundary. (i.e. Carports, sheds, shade sails etc.)*
  - *single dwellings with a reduced setback to any boundary*
  - *single dwellings with non-compliant private open space*
  - *single dwellings within a defined flood zone*
  - *additions or alterations to an existing multiple dwelling unit*
  - *shed addition to existing multiple dwellings with reduced setbacks*
  - *additions to existing warehouse with reduced setbacks*
  - *multiple dwellings in a single storey building within Zone MD.*

### 2.4. Update requirements for signs placed on land

The existing development proposal signage provides limited information to inform the community of the detail of the development. The provision of additional information on the sign in a format that is easily understood and compatible with hand held devices such as

mobile phones would encourage community input and reduce objections based on misunderstanding of specifics.

Actions under this reform are to:

- 2.4.1. *Enhance the specifications for signs to include more visual information to identify key aspects of the proposal such as height, site coverage and setbacks to boundaries.*
- 2.4.2. *Explore the use of QR codes or similar technology to allow the public to link to details of a development proposal via a hand held device.*
- 2.4.3. *Applicant to be responsible for printing and erection of signage.*

## **2.5. Expand the role of electronic services for development notifications and formal correspondence**

Revision of the requirements for the service of documents and their transmission electronically will facilitate the use of online systems. The existing use of onsite signage and newspaper advertisements to advise of proposed developments provides only limited exposure to a community that is increasingly using digital media as the primary means of communication.

Public submissions generally supported the greater use of technology to improve community access to information about the planning system and development proposals. However, some sectors of the community have limited access or familiarity with electronic systems and information will continue to be available in traditional print format.

Actions under this reform are to:

- 2.5.1. *Amend the Act to enable the use of electronic services for the service of notices and other documents. The use of newspaper advertisements for statutory notices to be revised to provide for the option of future transition to electronic services.*
- 2.5.2. *Explore the potential to use platforms such as Facebook or mobile applications to display information about development proposals.*
- 2.5.3. *Allows the public to register to receive email alerts about development proposals in their neighbourhood or postcode.*

## **2.6. Promote contact between Planning Officer and submitters on development applications**

Community confidence in the planning system is negatively impacted by the existing assessment processes for development applications, particularly in relation to insufficient recognition of issues raised in submissions in assessment reports. The perception is that DCA decisions give little weight to submissions.

Improving engagement with submitters will ensure that community views are valued and will improve community understanding about what issues are considered when making decisions.

Action under this reform is to:

- 2.6.1. *Introduce a new assessment process requiring Planning Officers to contact submitters to clarify their concerns and to discuss how they will be assessed against the provisions of the Scheme. This will enshrine genuine community participation in the consideration of development applications and strengthen the relationship between the community and the assessment process.*

## 2.7. Facilitate post exhibition / pre determination conferences between applicants and submitters

Submissions during consultation raised that there is currently no process that allows applicants and submitters to informally discuss proposals prior to the public hearing held by the DCA. Voicing issues at the DCA hearing is considered by many to be too late in the process to allow genuine consideration of their concerns. Service authority and industry submissions raised similar concerns and suggested that an opportunity to resolve issues prior to the DCA meeting would be beneficial.

Improved consultation between applicants and service authorities around technical requirements will also assist in clarifying the scope of conditions on development permits.

Actions under this reform are to:

- 2.7.1. *Introduce that planning officers offer to convene a voluntary meeting between applicants and submitters following public exhibition to provide opportunity for the parties to discuss any concerns and to identify possible solutions. The outcomes of the meeting are to be included in the assessment report prepared for the DCA.*
- 2.7.2. *Introduce that planning officers convene a meeting between the proponent and service authorities upon request to help to resolve technical issues prior to the DCA meeting.*

## 2.8. Reform the Development Consent Authority

The DCA is the public face of the decision making process. A recurring theme during community consultation was that members of the DCA were not adequately skilled or trained to perform their duties and that “major” reform of the DCA was required to improve community confidence.

The community's confidence that the correct decisions are being made will be enhanced if members have appropriate skills, and meetings are conducted in a way that values community participation and demonstrates proper consideration of the issues.

Actions under this reform are to:

- 2.8.1. *Rename the Development Consent Authority the “Development Control Authority” to better reflect its role in assessing development proposals against the Planning Scheme.*
- 2.8.2. *Introduce new requirements for appointment of specialist members to provide expertise in relevant fields.*
- 2.8.3. *Deliver training and ongoing professional development for DCA members.*
- 2.8.4. *Introduce new requirements for the Chair of the DCA to be legally qualified, in order to prevent errors of law being made.*
- 2.8.5. *Clarify the role of local government nominated members on the DCA and the process for their appointment and termination.*
- 2.8.6. *Introduce a DCA member Code of Conduct.*
- 2.8.7. *Introduce the requirement for the DCA to provide an annual report for the Minister to table in the Legislative Assembly.*
- 2.8.8. *The DCA to establish procedures to better disseminate decisions following meetings and to record voting by individual members in the minutes.*
- 2.8.9. *Clarify that the assessment reports are provided by the Department to the DCA and are only one of the matters considered by the DCA in making its decision.*

### 3. Review of Decisions

The ability for a third party to appeal decisions in relation to development applications (aka rights of third party application for review) was introduced in the NT in 2005. This allowed, for the first time, the ability for third parties to seek independent review of a decision to grant a development application subject to a number of qualifying criteria. This right only applies to a specified classes of development applications. Criteria included that the location of the development must be in a residential zone or immediately adjacent, and the person seeking review must have made a valid submission during the exhibition period of the development proposal.

The challenge for the NT is to strike a balance between the rights of applicants to apply for development consent and the right of the community to seek independent review of decisions that have the potential to adversely impact on amenity.

#### 3.1. Review of third party appeal rights

Third party appeal rights allow people who feel they would be negatively affected by a proposal to dispute a decision by a consent authority to grant a development permit. The ability to lodge a third party appeal is, however, subject to a number of criteria to ensure that development is not delayed unnecessarily and/or by a person who is not really affected by the development proposal. For example, third party appeal rights are available against most types of development adjacent to an urban residential zone because there is a high amenity expectation in residential areas. This does not include development of dwellings not exceeding two storeys because this is be considered relatively standard for a residential zone and has a low risk of affecting amenity.

Submissions generally supported the extension of third party appeals rights to lots within Zone RL (Rural Living) on the basis that these lots are primarily used for residential purposes with the same high amenity expectation as other residential zones.

Action under this reform is to:

- 3.1.1. *Extend third party appeal rights to include land within Zone RL (Rural Living) of the NTPS.*

#### 3.2. Time limiting deferrals

The Development Consent Authority has the ability to defer consideration of an application if it considers it needs the applicant to provide additional information in order to make a decision. As there is no maximum time period specified for a deferral, considerable time can elapse between when an application underwent public consultation and when it is finally considered by the Development Consent Authority. Community confidence in the transparency of the assessment process is eroded when the public consideration of applications is delayed.

Action under this reform is to:

- 3.2.1. *Introduce a time limit for deferral of an application and associated requirements.*

#### 3.3. EDPs and Concurrent Applications

EDPs provide opportunities for development of land that would otherwise be unlawful while concurrent applications provide opportunities for an application comprising both an amendment proposal and a development proposal. EDPs are determined by the Minister rather than the DCA.

Consultation has identified a range of views around EDPs and concurrent applications. Some in the community expressed concern about the very concept of concurrent applications whereas others support them as they provide more detail through the process. A range of measures were suggested to address perceived problems with the process including:

- increasing the role of the NTPC in the conduct of hearings;
- deferring the making of the planning scheme amendment until the development has been completed;
- the need for independence of decision making; and
- making reports available to the public.

While further investigations to inform a review and potential renewal of these processes are undertaken, some interim improvements are proposed in Phase 1.

This reform comprises interim improvements to enhance consistency between processes and requirements for exceptional development permits, concurrent applications, development permits and planning scheme amendments. It is supported by the amendment to the Act flagged at reform 1.7 to provide criteria for the Minister's consideration.

Actions under this reform are to:

- 3.3.1. *Introduce a time limit for commencement (aka a base period) on exceptional development permits consistent with standard development permits.*
- 3.3.2. *Make Reporting Body Reports for both Exceptional Development Permits and Concurrent Applications to the Minister publicly available.*

## 4. Compliance and Enforcement

A strong theme arising from consultation was the need to improve the effectiveness of compliance activities in recognition of the value the community places on the environment and amenity of our communities. Over recent years the number and severity of development offences has increased and the DCA needs to be provided with effective powers to discourage offences; require rectification of any non-compliance; and to recover costs if prosecution is necessary.

### 4.1. Existing Use Rights

Existing use rights are recognised in planning legislation within Australia to protect lawfully established uses or developments that would otherwise become unlawful following an amendment or introduction of a planning scheme. Currently the administration of existing uses provides no certainty for the owners or operators who have significant investment and rely on the continuing use for their livelihood, nor does it allow effective compliance management to allay the disquiet from adjoining and nearby residents who consider the ongoing use inconsistent with their reasonable expectations of amenity.

Actions under this reform are to:

- 4.1.1. *Introduce new powers for the DCA or Minister to develop Guidelines to provide clarity around the operation of existing uses.*
- 4.1.2. *Introduce a new provision that allows a person to rely on the establishment of an existing use right if the use has been carried out continuously for 15 years. This will allow existing uses to be registered and effectively monitored for compliance.*
- 4.1.3. *Introduce a new provision allowing any person to seek review of a decision by the DCA in relation to an alleged breach of existing use rights to the Northern Territory Civil Administrative Tribunal (NTCAT). This will allow independent review of the decision and provide over time additional guidance on the administration of the existing uses.*
- 4.1.4. *Introduce a 'Compliance Certificate' process for existing use rights holders that can be used to formally establish the particulars of the right (type of activity permitted, area and intensity of use).*
- 4.1.5. *Introduce the right of review for a decision by the DCA to refuse an application for a 'Compliance Certificate' to the NTCAT.*

### 4.2. Enforcement and the role of the DCA

The DCA currently has limited enforcement powers under the Act without resorting to prosecution of alleged offences in the Local Court. The DCA has no power to order rectification works or to order demolition or removal of unapproved works. The introduction of a new range of enforcement powers will allow the DCA, and Courts, if necessary, to effectively take action in the event of breaches of the *Planning Act* and Scheme.

The following reforms have been identified:

- 4.2.1. *Introduce new powers for the DCA to issue a 'Show Cause Notice' requiring a person alleged to be in contravention of the Act to make representation to the DCA as to why an Enforcement Notice should not be issued. This will also provide for the person making the complaint to attend the DCA to also make representations.*
- 4.2.2. *Introduce new powers for the DCA to issue an "Enforcement Notice" that can require a range of remedies to non-compliance including ceasing an activity, removing or demolishing a building or lodgement of a development application.*

- 4.2.3. *Introduce new powers for the DCA to issue an “Enforcement Notice” immediately on its own initiative for urgent issues such as clearing of native vegetation; demolition of a building; development causing erosion or environmental harm;*
- 4.2.4. *Create a new summary offence of failure to comply with an ‘Enforcement Notice’ to be dealt with by the Magistrates Court with the ability to impose a penalty, compensation and orders.*

### 4.3. Appeals and the role of the NTCAT

There are currently no provisions within the Act that allow a person to seek independent review of enforcement decisions by the DCA or to appeal orders seeking cessation of a development or use without resorting to an application to the Supreme Court. The cost of taking a matter to the Supreme Court and the risk of costs in the case of an adverse decision puts this beyond the means of most people. Expansion of the NTCAT role to include the ability for a person to seek review of enforcement decisions by the DCA would allow for independent review and over time provide guidance on the interpretation of the Act.

Actions under this reform are to:

- 4.3.1. *Introduce that a person unsatisfied with the DCA’s handling of a complaint may apply to the NTCAT for an Enforcement Order.*
- 4.3.2. *Introduce the right of review for a person subject to an “Enforcement Notice” issued by the DCA to the NTCAT.*

### 4.4. The role of Authorised Officers

Authorised Officers are appointed to conduct compliance investigations on behalf of the Minister and are the primary point for receipt of complaints, investigation of complaints, preparation of briefings on enforcement matters to the DCA, monitoring of compliance with decisions of the DCA, and liaison with complainants. In order to ensure that Authorised Officers have effective powers to conduct their investigations, actions under this reform are to:

- 4.4.1. *Introduce powers for an Authorised Officer to take any action that is necessary to find out if any person has contravened the Act including taking measurements/samples, photographs, and to require a person to produce any documents considered necessary*
- 4.4.2. *Create new offences for assault, delay, obstruct, hinder or impeding an Authorised Officer, failure to produce records or making false or misleading statements.*
- 4.4.3. *Introduce the requirement for an Authorised Officer to be issued with a photographic identity card, for the card to be produced and displayed when exercising a power under the Act and to create an offence for failure to return an identity card if appointment ceases.*
- 4.4.4. *Clarify that Authorised Officers are appointed by the Chief Executive and that police officers should be deemed authorised officers.*
- 4.4.5. *Provide a mechanism, though the Regulations, for the Chief Executive to appoint local government employees as Authorised Officers subject to conditions.*

#### 4.5. Revision of penalty units

A jurisdictional review has identified that the current penalties for offences are low compared to other jurisdictions and do not reflect the bad faith of the breach nor community expectations around protections for environment, heritage and amenity. The current maximum penalty does not reflect the value the community places on compliance with the Scheme. In particular this is the case for offences that can have significant amenity impacts such as clearing of native vegetation and unapproved industrial uses in a residential area.

Action under this reform is to:

- 4.5.1 *Increase penalties to a level so they provide effective deterrent, reflect the seriousness of the breach, and are consistent with comparable offences in other jurisdictions.*

#### 4.6. Introduction of penalty infringement notices

The use of Penalty Infringement Notices (PINS) has proven effective in other jurisdictions in building a culture of compliance within industry and are typically restricted to offences that have an immediate short term impact on amenity or the environment. PINS are best used to encourage compliance when immediate rectification is relatively easy and further prosecution would be excessive. Examples include minor failure to comply with Development Permit conditions when undertaking works (hours of construction, erosion and sediment control measures) or non-compliance with Scheme provisions (advertisement signs).

Action under this reform is to:

- 4.6.1. *Introduce the use of PINS by Authorised Officers for a prescribed range of offences listed in the Regulations.*

#### 4.7. Deeming Provisions

The prosecution for offences against the Act in the past has proven difficult in cases where it has been unclear whether it was the owner, occupier or another third party that carried out the offence. Other jurisdictions have found it necessary to specify people who are criminally liable for breaches of the planning scheme on land. Specifically, the owner and occupier of the land are each deemed guilty if the land is used or developed in contravention of the planning scheme or permit. A contractor working without a required permit is also considered guilty of an offence.

By deeming certain persons to be liable, the onus of proof for who is responsible is effectively reversed. Prosecution can proceed on the basis that an offence has occurred, with each deemed person held responsible and each required to prove they are not guilty.

Action under this reform is to:

- 4.7.1. *Introduce deeming provisions that specify the owner and occupier is guilty of an offence if the land is used or developed in contravention of a planning scheme or a permit.*

#### 4.8. Liability of office holders

The number of body corporates in the Northern Territory has increased in recent years. Therefore, it is considered necessary to now include responsibility for offences to officers of bodies corporate if they failed to exercise due diligence to prevent the commission of the offence by the body corporate.

Action under this reform is to:

- 4.8.1. *Introduce that office holders of body corporates be included as liable for their body corporate where they failed to exercise due diligence.*

#### 4.9. Time to commence prosecution

The Act currently provides for a two-year period to commence prosecution from the time any member of the Police Force or an Authorised Officer becomes aware of the commission of the alleged offence. However, it is unclear if the DCA has the ability to issue an Enforcement Notice if a development or use contravenes the Scheme at any time regardless of when it first became aware of the alleged offence.

The DCA should have the ability to issue an Enforcement Notice if a development or use contravenes the Scheme at any time regardless of when it first became aware of the alleged offence. This is to ensure action can be taken against continuing offences that can occur sporadically over several years. For example a mango packing shed may have a history of non-compliance with the conditions on its development permit but due to the seasonal nature of the use, compliance may vary from year to year. The DCA could, if necessary, issue an Enforcement Notice each year that a breach of operating conditions occurs.

Action under this reform is to:

- 4.9.1. *Clarify the wording of the Act that the two-year limitation does not interfere with civil enforcement action, and that persons can be prosecuted for ongoing breaches of the scheme, provided the breach was ongoing within the previous two years.*