Environmental Defenders Office

11 March 2020

Legislation Scrutiny Committee

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By email: LSC@nt.gov.au

Dear Committee

Submission on Planning Amendment Bill 2020

Thank you for the opportunity to make this submission on the *Planning Amendment Bill 2020* (the **Bill**). The Environmental Defenders Office (**EDO**) is a community legal centre that specialises in using the law to protect the environment. Our expertise includes planning and environment law, and we regularly give advice to clients engaging with the planning system and navigating the *Planning Act 1999* (NT) (the **Act**).

Throughout our engagement with the planning reform process, we have expressed the view that the proposed reforms do not go far enough to develop modern planning legislation for the Northern Territory (**NT**). In our view, the Act must more holistically consider and respond to current and future issues that are of key concern to the community (such as climate change). This is necessary to ensure that the Act is fit to respond to future challenges that will be imposed on the planning system, including due to the impacts of climate change.

While we consider the Bill will result in some improvements to the administration of the NT's planning system, we consider the Bill to be a missed opportunity to more fundamentally redraft the Act.

In this submission we have chosen to focus our comments on three specific issues:

1. The failure to integrate climate change throughout the Bill;
2. The need to further strengthen the objects clause and include the principles of ecologically sustainable development (**ESD**); and
3. The need to enhance the provisions regulating native vegetation clearing.

Issue 1: Climate change must be integrated in the Bill

We are highly concerned that the Bill does not include any reference to climate change, given the strong relationship between climate change risk, and planning and development decision-making.

While we consider a standalone *Climate Change Act* is a fundamental component of the response to climate change in the NT, "climate-ready" planning laws are also critical for an effective response. Many climate impacts are authorised by development approvals, and particularly in the case of the NT, a range of climate change adaptation measures would best be implemented through strategic land use planning and development control tools. This means the integration of climate change considerations in the Bill is crucial.

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Even the NT Government's own Climate Change Response identifies that one of the central ways it will respond to climate change includes embedding greenhouse gas (GHG) emissions reductions and climate risk response considerations across government decision-making. Despite this, and the fact that the current reform to the Act is a perfect opportunity to embed climate change considerations in planning decision-making, climate change is not referred to once in the Bill.

A report recently prepared by the EDO in NSW[1] outlines how a planning system can and should integrate climate change. Many of the recommendations can be directly adapted into the NT's planning system. It is our strong view that the Bill should be further amended to integrate climate change into its provisions in the following ways:

- The objects clause (s 2A) must be amended to include a clear reference to climate change, ensuring the legislative framework for planning is one that drives reducing GHG emissions through development decisions, provides guidance on planning for a rapid and just transition to a low carbon economy, and ensures planning is undertaken effectively for adaptation to the impacts of climate change;
- Specific provisions should be included in the strategic planning to require climate change plans, which could be inserted into proposed new sections s 9, 9A and 9B, including for example explicit requirements for climate change overlay(s) in the planning scheme (e.g. sea level rise overlay mapping to guide decision-making);
- Climate change must be included as a mandatory relevant consideration for decision-makers in s 51 (matters to be taken into account) of the Act; and
- There should be clear requirements in the Act for the development of building sustainability standards and benchmarks for new developments, to accommodate climate change projections (e.g. water efficiency, thermal comfort, energy efficiency, extreme events).

Implementing these recommendations will more appropriately position the Act to enable the planning system to play a fundamental role in ensuring the NT can appropriately respond to the risks associated with climate change and implement actions to mitigate emissions.

If the above changes are not made to the Bill, we would strongly argue that at a minimum, the objects clause (s 2A) include a new subclause about climate change to ensure there is a clear mandate in the Act to integrate climate change considerations in the development of strategic plans, the NT Planning Scheme, and overlays under the Act, and for development consent decision-making. In our view, the objects clause of the *Planning Act (Qld*) (ss3-5) [2] provides a good model that could be drawn on, as it includes references to resilience and climate change, amongst other things.

Issue 2 – The objects clause and the principles of ESD must be strengthened

We consider the proposed new 'purpose and objects clause' includes some significant improvements to the existing objects clause in the Act. In particular, we support that the proposed new s 2A includes specific reference to: the responsible use of land and water resources to limit the adverse effects of development on ecological processes (s 2A(f)); to maintaining the health of the environment and ecological processes (s 2A(g)); and to protecting the quality of life of future generations (s 2A(h)). These are all critical considerations for a planning system that ensures the environmental impacts of development are integrated in decision-making, and are important amendments to the existing objects clause in the Act.

[1] See: https://www.edonsw.org.au/climate_ready_planning_laws
[2] See: https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2016-025

However, we are concerned that the Bill does not directly adopt the definitions of ESD as per the *Environment Protection Act 2019*, and, as discussed above, does not include any reference to climate change. Further, the use of the term 'sustainable development' (s 2A(e)) is confusing, particularly because it remains undefined in the Bill. It is not clear whether it is intended to be the equivalent of ESD.

Adopting the principles of ESD in the Act (as defined in the *Environment Protection Act 2019*) through the objects clause would ensure there is integration and cohesion across related NT statutory frameworks, and embed these fundamental, and directly relevant, environmental principles within the planning system. Again, we refer to Qld's *Planning Act* (ss 3-4) as a strong model for framing of ecological sustainability and climate change within an objects clause.

Finally, we support the inclusion of respect for, and encouragement of, fair and open decision-making and public access to processes for review of planning decisions (s 2A(l)). This clause is an important recognition of the importance of public consultation and access to justice in decision-making in the planning system.

Issue 3 – Stronger provisions for native vegetation clearing are required

EDO broadly welcomes the re-drafting of Part 7 of the Act in order to provide stronger compliance and enforcement powers for the planning system. We consider these changes to be long overdue. However, in our view, the provisions regulating native vegetation clearing must be strengthened (we note it is currently only addressed by the proposed offence at s 75C).

EDO has long been concerned with the inadequacy of regulatory oversight in the NT of native vegetation clearing. The individual (site-specific), and cumulative impacts across the landscape, of land clearing are not appropriately nor adequately regulated by the current arrangements made under the Act, and the existing unenforceable NT Land Clearing Guidelines that sit under it.

While using overlays will be a useful mechanism under the Act to assist with the regulation of land clearing (for example, by identifying environmentally sensitive areas that cannot be cleared), it is not a sufficient mechanism to ensure that environmental impacts are appropriately avoided and mitigated through decision-making.

In our view, while the issues posed by land clearing across the NT requires holistic legislative reform (and preferably, standalone legislation such as a *Native Vegetation Act*), more comprehensive controls could be inserted into the Bill in the interim. This would ensure there are legislative mechanisms available to set appropriate principles and operational provisions to enable environmental impacts of native vegetation clearing to be properly managed across the landscape.

For example, the Bill could include a specific power to make detailed regulations or standards relating to land clearing. This would establish an obligation on the NT Government to prepare enforceable rules to robustly regulate the circumstances under which clearing can occur when clearing is prohibited, and what matters need to be considered when making a decision about clearing on land zoned under the Act, amongst other things.

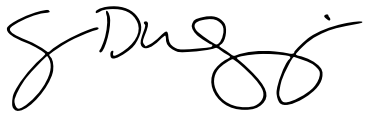
Further, while we consider the proposed drafting of s 75C in the Bill to be a slight improvement on the existing land clearing provision in the Act (s 75A), we consider that this provision must be further strengthened. For example, a tiered structure of offences (as per the drafting in the recent *Environment Protection Act 2019*) should be introduced that includes differing levels of liability and associated penalties, tied to the seriousness of an offence (e.g. to differentiate between wilful or negligent offences). This would ensure consistency in approach to other recently reformed legislation in the NT, as well as more rigorous offence provisions being available to suit individual circumstances.

We also consider that the offence for the unlawful clearing of native vegetation should attract higher penalties in order to better reflect the potential seriousness of this offence, including the individual and cumulative impacts of land clearing on the environment. The current proposal of 500 penalty units (approximately $77,500) in proposed s 75C is not high enough. For large scale development, this penalty amount is not adequate to operate as a strong enough deterrent and does not reflect the potential seriousness of the offence.

We thank the Committee for the opportunity to provide these comments. We would welcome the opportunity to discuss the matters we have raised.

Yours sincerely,

Environmental Defenders Office



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