

11 March 2020

LITCHFIELD
COUNCIL



Community effort is essential

Legislation Scrutiny Committee
Committee Secretary
GPO Box 3721
Darwin NT 0801
LSC@nt.gov.au

Planning Amendment Bill 2020

Thank you for the opportunity to provide comments on the *Planning Amendment Bill 2020*.

Litchfield Council has reviewed the *Planning Amendment Bill 2020* and has prepared the information below and the attached table detailing Council's comments on the changes proposed.

Council has structured this submission in two parts:

- A summary included below addressing Council's most significant areas of interest in the *Planning Amendment Bill 2020 (Amendment Bill)* and
- A table detailing all proposed changes to the *Planning Act 1999*, the potential effect of those changes, and Council comments in relation to each change. The far right column of the table details whether Council supports or objects to the proposed change, whether more information is required to be able to evaluate the effect of the change, or where alternatives are proposed to better address the particular matter.

Should you have any questions regarding this submission, please contact Litchfield Council's Planning and Development division.

Summary of Comments on Areas of Significant Interest to Council

Appointment of Development Consent Authority (DCA) Members – Section 89 and Section 91
Under the current Act, Council nominates two members, plus one alternate member to the DCA. The Minister must appoint those members.

The *Amendment Bill* requires Council to nominate at least one more person than the number of vacancies to be filled on the DCA (Section 91(2)) and requires the Minister to appoint Council's nominees (Section 89(1)).

It is unclear if there is an error in stating the Minister must appoint Council's nominees when Council appoints more than the vacancy rate, or if the intent is for Council to nominate a greater number of options and the Minister is required to select from those options. It is also unclear whether Council would nominate an individual as alternate that must be appointed or whether the Minister would select the alternate from the additional number nominated by Council.

It is **supported** that the Minister must nominate Council's selected community representatives, as the Council is likely in the best place to select individuals that will represent the views of the local community. However, **clarification is required** on the number of nominations and final selection of those nominees by the Minister, for the reasons detailed above.

Restrictions on DCA Members' Employment -Section 87 and Section 89

There are currently no restrictions on DCA members' employment.

Under the *Amendment Bill*, employees of Council and employees of the Agency administering the Planning Act are not eligible to be on the DCA. This change would affect one of the DCA members for Litchfield, Council's nominee of Council's Manager Planning and Development, who would no longer be eligible for future appointment to the DCA.

Council understands that there may be a perception of bias for employees of any agency administering planning applications or from whom formal comments on applications are requested. As such, it would logically follow that the provisions on prohibitions of employment for DCA members be extended to exclude any employees of any service authority to which an application is referred for formal comment from being appointed to a DCA.

As such, restrictions on local authority and Agency employees on DCA can be **supported**, and it is recommended that **additional changes** be made to include further restrictions in the *Amendment Bill* that all employees of service authorities are prohibited from being DCA members.

DCA Members' Removal from Office – Section 100A

The *Amendment Bill* provides for situations in which the Minister terminates the appointment of a member to the DCA. It is supported that there be provisions in the Act that allow for the termination of an appointment. However, it is recommended that **additional changes** be made such that, if the Minister chooses to terminate the appointment of a member nominated by the local authority, the Minister must provide written reasons for the termination to the local authority. Similarly, should it be the local authority who requests that an appointment of a community member nominated by that authority be terminated, the local authority should provide written reasons to the Minister to support that request. These requirements would support transparency in the membership process and avoid the potential and/or perceived politicisation of nominations by either the Minister or local Councils.

Minutes of DCA Meetings – Section 103

The *Amendment Bill* proposes to record the number of votes for or against, or abstaining from, and whether any member declared a conflict of interest, without linking individual members to individual votes.

This approach is **supported**, as there were significant concerns regarding the proposals to publish individual voting records, which could lead to situations where members feel that they may be politically obliged to make a decision rather than evaluating an application on merit.

Process of Consideration of Council's Comments on Applications – Section 22, Section 30M, and Section 49

Under the *Planning Act 1999*, all Council comments on applications are considered a submission. If Council makes a submission, a DCA meeting or NTPC hearing must be held and Council must be invited. If Council does not submit comments, Council is not required to be invited to any DCA meeting or NTPC hearing that is held.

Under the *Amendment Bill*, Council can give the authority "advice or comment" on applications or make a "submission" on applications. "Any advice or comments...is taken not to be a submission...if the advice or comment does not oppose or contradict the application".

For DCA meetings, if Council makes a "submission", Council must be invited to a DCA meeting, but if Council makes a "comment/view", Council is not required to be invited to a DCA meeting.

For NTPC hearings, if Council makes a “submission”, Council must be invited to an NTPC hearing only if NTPC “is satisfied that a hearing would provide further useful information”. If Council provides “advice or comment” and no public submissions are received, no NTPC hearing is required to be held.

Whilst it is understood that it is not the intent to restrict Council’s opportunity to attend a hearing, Council is concerned that there is a risk for Council’s opportunity to be aware of and a hearing and address Council’s comments on an application only if Council opposes the application based solely on the information provided in the initial application is **not supported**. This approach may limit Council’s ability to understand an application and the community’s views and provide support for or refute community views.

Further, there is concern over how the NTPC would determine that “a hearing would provide further useful information”. In several recent hearings, Council has been able to revise comments during the hearing based on new understanding of the amendment revealed during the hearing and based on community views raised during the hearing. This proposed change is **not supported**.

Further, it is unclear on what basis the NTPC may decide that a hearing will not “provide further useful information”. Transparency has been a leading theme throughout the Planning Reform process, and while it is not believed that the intent of this provision is to withhold transparency, that could be the effect of the provision. The minimal administrative time required to confirm a desire to attend a hearing would be preferred by Council. Without additional changes to specify under what circumstances it would be appropriate to not hold a hearing, this change is **not supported**.

Rejection of Service Authority and Local Authority Advice – Section 50

The *Amendment Bill* includes a new provision that the consent authority may reject any advice or comment it receives from a service authority or local authority. The consent authority is not the authority on infrastructure owned by a service authority or local authority. The consent authority does not have the expertise to be able to make comment on the suitability, or financial implications, of the imposition of an infrastructure requirement or lack thereof by a service or local authority. There could be significant financial and other consequences for the service or local authority should comments related to their infrastructure be rejected by the consent authority. A service authority and a local authority must have autonomy related to infrastructure under their ownership. Council **strongly objects** to this provision.

Independence – Section 12B

The *Amendment Bill* includes some information on the independence of the NT Planning Commission (NTPC). However, the NTPC cannot be independent when the NTPC holds the hearing on applications put forward by the NTPC, such as Area Plans and Subregional Plan applications. There will always be questions of perceived bias and reluctance to recommend changes to plans originally recommended by the NTPC. **Additional changes** to the Act are recommended to ensure true independence in the strategic planning process.

Electronic Publication – Section 139A

The *Amendment Bill* and the existing *Planning Act 1999* set out when notification of an application must appear in a newspaper local to the development or amendment proposed. However, Section 139A overrides those requirements by stating that the requirement to publish in a newspaper may be satisfied by publishing the document on a website or other electronic platform.

Council **strongly objects** to this proposal for a number of reasons:

- Publishing only in electronic format unfairly disadvantages those individuals without internet access, or adequate internet access, as well as individuals not familiar with computer use.
- Many elderly residents do not feel comfortable with use of internet and many rural residents do not have adequate access to internet.
- Internet access is limited or unavailable in many parts of the NT, including within the rural areas of Litchfield. Many mobile blackspots have been identified in the rural area.
- Newspapers are still a well-used form of communication that many individuals review on a daily basis.
- The NT Government cannot expect private citizens to regularly log on to a planning website (and a liquor licence application website, gaming website, water licence website, etc) to find information about what is going on in their community.

This provision would reduce transparency and could be viewed as an attempt to get fewer public submissions on applications.

Development Application Requirements – Section 46

The *Amendment Bill* includes new provisions on what must be submitted with a Development Application, including the name and contact details of the land owner, any person making the application on behalf of the land owner, and “any person who would directly benefit from the development”. The measure for determining whether an individual would directly benefit from a development is unclear.

It is understood that the intent of including this provision is to ensure transparency and avoid unintended lack of disclosure of conflicts of interest when parties may not realise the full extent of parties involved in the development. However, the current phrasing is unclear and would likely draw questions as to the feasible extent of implementation. For example, a subsidy company that is currently involved in the future development proposed and would reap direct financial benefit could be feasible to note; however, an individual or company who may be the future renter of a new independent unit or commercial warehouse may be a more difficult and private link to establish or meet any burden of proof. **Additional changes** to the wording of this requirement to more clearly reflect the intent of the clause and ensure enforceability of the clause are recommended.

Decisions on Concurrent and Development Applications- Section 30W and Section 52

One of the objectives of the Act as stated in the *Amendment Bill* is to “ensure strategic planning is applied”. Further, it is understood that part of the intent of the planning reform changes is to ensure that strategic planning is enshrined more stringently within the *Act* and the planning scheme.

It is therefore unclear how explicitly allowing the Minister and DCA to make decisions contrary to the strategic framework, with no criteria against which to measure or report against those decisions, can be supporting the objectives of the *Act*. If there is a reason to make a decision contrary to the strategic planning framework, it may be better to change the framework than to allow for the ability to contravene the planning decisions made based presumably upon best practice planning theory and community consultation. Should these provisions remain, **additional changes** are required on when it would be suitable for these powers to make decision contrary to adopted strategic planning framework should be allowed.

Changes to Developer Contribution Plans (DCP)

The current Act requires DCPs to collect money for infrastructure and subsequently construct that infrastructure. The *Amendment Bill* proposes that Councils can construct infrastructure required to service an area, as detailed in a DCP, and subsequently collect funds from new development

to reimburse Council for the costs of previously providing the infrastructure constructed. This proposed change is **supported** as it allows Councils to provide necessary infrastructure when required to service residents and support development, rather than having to wait for an area to be fully developed, yet un-serviced, to fund the needed infrastructure.

Enforcement – Part 7

There are a range of new provisions in the *Amendment Bill* to better enhance the enforcement abilities for activities against the Act. The new provisions will allow, among other items, the ability for enforcement officers to enter premises, take photos and/or collect items from the property to prove illegal uses, and issue on the spot notices and fines. DCA will have new powers to issue show cause notices and other enforcement actions, as well as enhanced fines. The proposed changes to enforcement can be **supported** in full.

Timeframes – Section 25, Section 46, and Section 47

The *Amendment Bill* institutes new timeframes intended to ensure that applications do not sit for an unlimited time without decisions.

Requests for additional information for deferral of development applications include a 30-day timeframe (with some opportunity for extension), after which the application can be considered abandoned and terminated if no information is provided. This provision is **supported**.

The proposed amendments also include allowing significant development applications to be publicly advertised for a period of 28-days instead of the current 14-days. This will allow the public to have an extended time period to comment on larger development proposals with greater community impact. This proposal is **supported**.

For applications for which the Minister is the consent authority, there is a new proposed timeframe of 90 days from the time the Minister receives the report from the NTPC for the Minister to make a decision on the application. While this timeframe is **supported**, **additional changes** are recommended to include additional timeframes for how long the applicant must wait for a hearing on the application and how long the NTPC may take after the application to prepare the report for the Minister. Additions of these timeframes, however long, would give more certainty to applicants and allow for applicants to make decisions without unknown timeframes.

Existing Use Rights – Section 37A and Section 37B

The proposed amendments also include stronger provisions for DCA to be able to determine existing use rights and to issue certification of, and conditions on, those rights. While the idea of clearer direction on existing use rights is supported, the current provision allows DCA to make these decisions but does not give clear criteria on how assessment of existing uses should be measured. This provision is **supported in principle**; however, it is recommended that **additional changes** be made to include criteria for determining existing use rights, to give clear direction for DCA members and the public.

Regulations

There are a variety of provisions within the *Amendment Bill* on which Council cannot provide full assessment, as these provisions are dependent upon proposed amendments to the *Planning Regulations*, which have yet to be made available for public review. Examples of areas within the *Amendment Bill* where this issue is of concern to Council include, but may not be limited to:

- Section 46 – Development Applications,
- Section 47 – Public Notice of Development Application,
- Section 47B – Development application requiring limited notice,
- Section 47C – Development application requiring only local notice,
- Section 73 – Discount, interest rate etc.),

- Section 84 – Functions and powers of Development Consent Authority,
- Section 89 – Appointment of Members within Council Area,
- Section 111 – Review of Decisions of Consent Authority, and
- Section 135B – Administrative Decisions.

For these areas, Council **cannot give support** without having reviewed the regulations.

Thank you for your attention to the above matters, as well as other detailed in the attached table of comments. Once again, should wish to discuss any of the comments provided, do not hesitate to contact Council.

Yours faithfully



Daniel Fletcher
Chief Executive Officer

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 2A Purpose and Objectives	Replacement of Section 2A Objects	Expands on purpose of Act	Gives better direction on intent and objectives	-Can be supported -Object that previous item (e) on amenity has been removed and revised text has no reference to amenity. Effect on amenity of existing residents is a key consideration of best practice planning. -Recommend including (e) or similar version – “minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development”
Section 5A Application of Criminal Code	New	Criminal code applies to an offence against the Act	Clarification	Can be supported
Section 6A Persons and Bodies Performing Functions under Act	New	Clarifies responsibilities of different people/bodies	Clarification	Can be supported
Sections 9, 9A-9C Planning Scheme	Revision	Replaces and adds more info on planning scheme content, strategic framework	Describes layout of proposed new planning scheme	Can be supported. The focus on strategic policy framework gives clearer guidance for NTPS. Specifications on overlays gives clarity to applicants. Zones (and development requirements) will both benefit from stronger focus on purpose and intent.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 12A Request to Amend Planning Scheme	Revision	Provides more information on what a PSA request must include	Gives some direction where before there was little to none	-Can be supported -This could be an opportunity to note what types of applications require assessment of issues such as traffic or land suitability, so that the applicant's investment required to undertake such studies is understood up front.
Section 12B Planning Commission (NTPC) Views on Request and Decision	New	Minister may request view of NTPC on an application	Additional review of application is provided	-Unclear how NTPC would input planning advice to Minister when only one member is required to be a planner. Understood that Lands Planning staffs the NTPC for planning advice; this could be more clearly stated in Act or in NTPC information in Act. -As noted in previous Council comments on NTPC advice and application reporting, the independence of NTPC (and Lands Planning) is questioned when NTPC has proposed the amendment on which the Minister is seeking advice. -Cannot support until further clarification or changes provided
Section 13, Minister's Consideration of Request and Decision	New	Items Minister must consider when assessing PSA	Clarification	Can be supported
Section 16, Section 30J (Notices/Signs)	Revision	Replaces "notice" with "sign" and clarifies location of sign and offence	Clarification	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 17 Publication of Notice of Proposal	Revision	Clarifies where notice must be made available	Clarification	Can be supported
Section 18 Exhibition of Proposal	Revision	Clarifies what must be exhibited	Clarification	Can be supported
Section 19(3) How Council can Make Comment on PSA/EDP	New	Councils may make formal submissions or may make a comment/view	Will allow Consent authority to not invite Council to a hearing unless submission is made or comment/view objects to application	Object. See comments on Section 22 below for more information.
Section 22 Submissions and Hearings	Revision	<ul style="list-style-type: none"> -Clarifies what a submission must include (name/contact details etc) -Council may give advice or comment on a proposal; the advice is not considered a submission unless Council objects to the proposal -If Council makes a “submission”, Council must be invited to an NTPC hearing if NTPC “is satisfied that a hearing would provide further useful information”. -If Council makes a “comment/view”, or provides no comments, and no public submissions received, no NTPC hearing required to be held. 	<ul style="list-style-type: none"> -Limits hearings, concern that limited hearings would potentially limit consideration of Council comments and Council’s ability to be aware of all community comments (both in support of and against applications) -Provides two different ways for Council to give comments on application, Council must object for comments to be considered for meetings and/or hearings 	<ul style="list-style-type: none"> -Object to this change. -For Council, if comments are not an objection to the application and there are no public submissions, there will be no requirement for a hearing -It is unclear from wording in Act how it would be determined that a hearing would not provide further useful information. In several recent hearings, Council has been able to revise comments based on new understanding of the amendment proposed that was revealed during the hearing as well as revise comments or provide more information to inform community views. Holding a hearing also gives opportunity for all submitters to understand other concerns for and against proposal. Not holding a hearing decreases transparency.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
		-If Council makes a “comment/view” or provides no comments and public submissions received, no NTPC meeting required to be held NTPC “is satisfied that a hearing would provide further useful information”.		-While it is understood that at times all submitters support the application, or at times hearings are held with no submitters attending, a potential opportunity could be to amend (b) such that, if all attendees decline, in writing, to attend a hearing, a hearing is not held. The minimal administrative time required to confirm a desire to attend a hearing would be preferred by Council over a lack of transparency for all on why the NTPC felt a hearing would not provide useful information.
Section 24(2) Reports	New	Report required even if no hearing held	Covers what to do if no hearing held, which is a new opportunity	-Support in principle, provided that the report in Section 24 is available to the public, for transparency, and to provide submitter with opportunity to ensure their comments are accurately understood and represented

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 25 Minister’s Action on Amendment of Planning Scheme	Revision	-Details what Minister must consider in making decision -Adds timeframe in which Minister must make decision after receiving NTPC report -Adds that Minister may request further information from applicant	Provides some greater certainty on criteria for decision-making and timeframes	-Can be supported. -To ensure timeframes and give certainty to applicants and allow them to make appropriate plans for the future, it is recommended that timeframes be added 1) in which a hearing must be held after submissions received and 2) in which NTPC must provide report to Minister. Council is not recommending any particular timeframe, as that is most appropriately set by those preparing the reports; however, having no timeframe could mean the application process is drawn out for the applicant with no clear ability to make plans for the future.
Section 30C Making Concurrent Applications	Revision	Clarifies what the application must be assessed against	Clarification	Can be supported.
Section 30D Consideration and Initial Decision by Minister	New	Clarifies what the application must be assessed against	Clarification	Can be supported.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 30H Notice to Local Authority	New	Council may give advice or comment on a proposal; the advice is not considered a submission unless Council objects to the proposal	Provides two different ways for Council to give comments on application, Council must object for comments to be considered for meetings and/or hearings	-Object to this change. -For Council, if comments are not an objection to the application and there are no public submissions, there will be no requirement for a hearing and it is unclear what happens if Council supports part of application but objects to other parts
Section 30J Notices on Land to Which Concurrent Application Relates	Revision	Specifies signs instead of notices	Clarification	Can be supported.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 30M Submissions	Revision	-Clarifies that submission may be in relation to the proposed planning scheme amendment or development -Council may give advice or comment on a proposal; the advice is not considered a submission unless Council objects to the proposal -If Council makes a “submission”, Council must be invited to an NTPC hearing if NTPC “is satisfied that a hearing would provide further useful information”. -If Council makes a “comment/view”, or provides no comments, and no public submissions received, no NTPC hearing required to be held. -If Council makes a “comment/view” or provides no comments and public submissions received, no NTPC meeting required to be held NTPC “is satisfied that a hearing would provide further useful information”.	Clarification	Object to this change. Refer to Section 22 comments.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 30S Determination of Development Proposal	Revision	Adds addressing whether proposal is in public interest	Clarification	Can be supported.
Section 30W Concurrent Application Determination of Development Proposal	Revision	Minor revisions to text	Clarification	Can be supported.
Section 30W(5) Concurrent Application Determination of Development Proposal	New	Consent authority may request Minister approve development contrary to strategic planning framework if “(a) the development was not foreseen by the strategic framework” or “(b) there are unusual or exigent circumstances that make the development appropriate”	Allows DCA to make decision contrary to strategic planning documents	-Cannot be supported. -Objectives of the Act state “ensure strategic planning is applied”, unclear how that is accomplished if Minister and DCA can make decisions not in accordance with strategic framework -Should clarification be provided around when it may be appropriate to make decisions in contradiction to adopted strategic frameworks (rather than amending the framework and strategic policies), and requirements provided to detail reasons for such decisions, Council could consider support for the proposal. -Items (3) and (4) can be supported.
Section 37(A) Application for Certificate and 37(B) Decision to Issue Certificate	New	-May apply to consent authority for certificate certifying extent of existing land use/building/work -Consent authority may issue certificate or not	Allows owners to have certainty related to existing use rights	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
42A Duration of Permit, 42B Extension of Period of Permit, and 43D Certification of Compliance EDP	New	Details length of permit, ability to request extension of permit, ability to certify compliance with permit	Clarification as previously not specified	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
46(3A) Development Applications	New	Regulations may prescribe types of applications that may only contain some of reports or information specified in 46(3)	Intent is for applications to only have to address clauses relevant to the request	<p>-Can support concept in principle, but cannot give full support to provision until Regulations are available for comment</p> <p>-(aa)(iii) It is understood that the intent of including this provision is to ensure transparency and avoid unintended lack of disclosure of conflicts of interest when parties may not realise the full extent of parties involved in the development. However, the current phrasing is unclear and may draw questions as to the feasible extent of implementation. For example, a subsidy company that is currently involved in the future development proposed and would reap direct financial benefit could be feasible to note; however, an individual or company who may be the future renter of a new independent unit or commercial warehouse may be a more difficult and private link to establish or meet any burden of proof. Review of the wording of this requirement to more clearly reflect the intent of the clause and ensure enforceability of the clause is recommended.</p>

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
46(5), (6), (7), (8), (9) Development Applications - Request for More Info/Deferral for Development Applications	New	-Must notify applicant of request for more info, deferral, reasons why and/or reasons for refusal -Sets timeframes and extensions for provision of additional information requested -Allows consent authority to reject application if additional info not provided	Gives more certainty to applicant on what is required, gives timeframes so application is not sitting idle indefinitely	Can be supported
Section 47 Public Notice of Development Application	New	-May charge applicant -Sets minimum period for application submissions and allows for some applications to be open for submissions for 28 days	Allows for longer exhibition for some application types, to be set later by regulation	Can be supported in principle; full support cannot be provided until Regulations are available for comment. Full support depends on which types of applications are included for longer submissions. When considering which types of applications have longer submissions, the complexity of the application is more key than the type of proposal. For example, a small lot subdivision application can seem simple, but a recent application required over 500 pages of application information. Such an application would be prime for extended exhibition.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 47A Development Applications Requiring No Public Notice	Revision	Adds no public notice for subdivision for unit titles for existing constructed development	Formalises existing process; unit title subdivisions for vacant land, as occur in the rural area, would continue to require exhibition.	Can be supported.
Section 47B Development Application Requiring Limited Notice	New	Adds information on requirements for limited public notice	Unclear as it is unclear which applications would fall in this category, will likely reduce submissions	Council cannot give support without Regulations noting which types of applications fall into this category. In general, Council supports public notification of all development types (other than as noted in 47A) for transparency to the public.
Section 47C Development Applications Requiring Only Local Notice	New	Allows certain development types to only notify adjoining neighbours and have sign on land but no newspaper or electronic notice	Will likely reduce submissions from non-adjoining neighbours	Council cannot give support without Regulations noting which types of applications fall into this category. In general, Council supports public notification of all development types (other than as noted in 47A) for transparency to the public.
Section 48 Notice to Local Authority of Development Application	New	-Council can make a “submission” or lodge a “comment or view” on applications. If Council makes a “submission”, Council must be invited to a DCA meeting. -If Council makes a “comment/view”, and no public submissions received,	Allows DCA to not invite Council to a hearing if Council does not make a “submission”. If Council makes a “comment/view” and public make submissions, Council will not be invited to the hearing to listen to public	-Object to this change. -Council is required to be invited to all reporting body hearings for PSAs, Concurrent Applications, and EDPs. It is unclear why Councils would not be invited to a meeting of the DCA. It is understood that it is administrative practice to invite Councils to all DCA meetings in their jurisdiction; it is recommended to include this

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
		DCA meeting not required to be held. -If public submissions received and Council makes a “comment/view” or provides no comments, DCA meeting held but Council not required to be invited.	comments and understand community views. If Council attends hearing without being formally invited, Council would not have permission to speak at the hearing.	requirement in the Act instead of leaving to the administrative practice of the day. -It is important to Councils to hear the views of the public and to be able to respond to those views at a DCA meeting if appropriate. It is unclear why all local and service authorities would not be formally invited to all DCA meetings and leave it up to those agencies to choose to attend. The proposed approach may limit Councils’ abilities to understand and provide support or refute community views with no clear public or Council benefit.
Section 48A Notice to Service Authority of Development Application	New	Specifies how service authority is notified and how it may comment	Separates notice to Council and notice to service authority	-Can be supported. -This section allows a Service Authority to request an extension on the comment period. There is no similar provision for a local authority. It is recommended that Section 48 be amended to include this same extension request provision for local authorities.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 49 Submissions	New	-Must lodge submission within exhibition period, includes requirements for submission	Provides two different ways for Council to give comments on application, Council must object for comments to be considered for meetings and/or hearings, unclear what happens if Council supports part of application but objects to other parts	<p>-Council is required to be invited to all reporting body hearings for PSAs, Concurrent Applications, and EDPs. It is unclear why Councils would not be invited to a meeting of the DCA. It is understood that it is administrative practice to invite Councils to all DCA meetings in their jurisdiction; it is recommended to include this requirement in the Act instead of leaving to the administrative practice of the day.</p> <p>-It is important to Councils to hear the views of the public and to be able to respond to those views at a DCA meeting if appropriate. It is unclear why all local and service authorities would not be formally invited to all DCA meetings and leave it up to those agencies to choose to attend. The proposed approach may limit Councils' abilities to understand and provide support or refute community views with no clear public or Council benefit.</p>
Section 50 Evidence and Information	New	Consent authority may adopt or reject advice from a service authority	Consent authority could approve applications that do not meet service authority requirements and/or not	-The consent authority is not the authority on items owned by a service authority or local authority. A service authority and a local authority must have

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
			apply conditions required by service authorities	autonomy related to infrastructure under their ownership. -Where advice given is considered “opinion”, such as comments from a government agency without ownership of infrastructure, the consent authority could consider the validity of such advice; however, for infrastructure under the authorities’ ownership, the consent authority has no expertise to be able to make comment on the suitability, or financial implications, of the imposition of the requirement or lack thereof.
Section 50B(3) and (3A) Significant Development Report	New	Adds criteria	Adds clarity	Can be supported.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 51 Matters to be Taken into Account	Revision	Instead of requiring all applications to address all items, may take into account “any of the following relevant to application”	Can reduce requirements for applicants	<p>-Can be supported in principle; however, it is unclear how the applicant will know which items to address and which not to address. More clarity is needed in this section for applicants and all individuals/organisations reviewing the application to determine if all required areas have been addressed.</p> <p>-It is the further opinion of Council that applications that do not address the minimum requirements should not be placed on public exhibition. Accepting applications for exhibition that do not meet the requirements is a waste of time for the public and service/local authorities. Further, if the additional required information is submitted at a later date, the application is not typically re-advertised to the public, thus not allowing the public to review and comment on the actual application. This is not transparent and not equitable to the public.</p>

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 52 Limits on Consent	Revision	Minister and DCA may consent to a development despite it being contrary to any strategic framework in the planning scheme	Allows DCA and Minister to approve applications not in compliance with strategic framework in the planning scheme	-Cannot be supported. -Objectives of the Act state “ensure strategic planning is applied”, unclear how that is accomplished if Minister and DCA can make decisions not in accordance with strategic framework -Should clarification be provided around when it may be appropriate to make decisions in contradiction to adopted strategic frameworks (rather than amending the framework and strategic policies), and requirements provided to detail reasons for such decisions, Council could consider support for the proposal.
Section 61 Subdivisions and Consolidation of Land	Revision	Reverses from “must not subdivide” if not in accordance with to “must subdivide” in accordance with and specifies penalties	Clarification	Can be supported
Section 63 Purported Subdivision or Consolidation Prohibited	Revision	Clearer on penalty	Clarification	Can be supported
Section 65 Certification of Compliance with Permit or Part	Revision	Minor revisions to text	No effect for Council	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 66 Minister May Revoke or Modify Permit	Revision	Minister must notify and notes when offence is committed if person still uses/develops land in accordance with permit or conditions	Clarifies penalties and notification	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 67 Definition of Infrastructure	No change proposed	No change proposed	Continues to limit ability of Councils to collect funding for required infrastructure as a result of new development	<p>Additional Amendments Requested.</p> <p>It is understood that the Regulations will be amended as part of the Planning Reform work and changes to the Act. The current regulations limit “infrastructure” to “motor vehicle carriageways and stormwater drains”. However, there are additional features that often warrant upgrades as a result of a new subdivision or development. For example, footpaths or streetscapes may need to be improved as part of road upgrades but contributions are currently limited to the motor vehicle carriageway. Further, in some areas, new public open spaces are required to service a large development area. Currently, the only developer responsible for those upgrades is the one on whom the Area Plan has placed the new open space area. In reality, the entire Area Plan area should be contributing to this park that will be used by all new development within the Area Plan area. The ability for local authorities to raise funding for these other features should be addressed in the Regulations.</p>

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 68 Making Contribution Plans through Section 74 Enforcement of Contribution Plans	Revision	Specifies that both local authorities and service authorities may make contribution plans and enforce the plans	Makes consistent with new Act definitions	Can be supported
Section 70 Contribution Towards Car Parking	Revision	Contribution must be calculated in accordance with revised requirements	Notes how it is to be calculated	Can be supported
Section 71(1A), (1B) Contribution Payable	Revision to 71 (8)	Notes how contribution should be calculated and proportionality, and that cost should be most appropriate and cost effective	Relocating text	Can be supported
Section 72 Duties of Local and Service Authority	Revision to 72	Revises text on how contributions are kept and used, allows for authorities to be reimbursed for costs for infrastructure built after plan created and included in plan	Authorities can recoup costs on infrastructure required to be constructed prior to development occurring	Can be supported
Section 73 Discount, Interest Rate	Revision	Minor revisions to location of text within clause	Nil	Can be supported
Part 7, Sections 75-80 Enforcement	Many revisions	-Adds penalties -Adds powers to collect evidence, enter premises -Can issues show cause notice -Body corporate executive officer can have criminal liability if reckless	Greatly enhances enforcement powers	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 81B Functions of NTPC	Revision	Provides advice on strategic planning instead of matters within the objects of the act	Focusses more specifically on strategic planning matters	Can be supported
Section 81D Independence	Revision	Provides more info on how members will act independently	More info on considerations for independence but still conflict with functions of NTPC	Council object as this provision will not be able to be enforced as long as the NTPC holds reporting body hearings on applications proposed by the NTPC. There will always be a perceived bias of the NTPC holding hearings and writing reports on strategic planning documents, area plans, regional plans, PSAs proposed by the NTPC.
Section 81F Constitution and Appointment of Members	new	Requirement that one NTPC member must be eligible for membership in a planning association or have planning qualifications recognised by Minister	Ensures minimal representation on planning commission from a planning expert	-Can be supported for a minimum 10% of the commission to have planning expertise. However, considering that it is a planning commission, it is recommended that the minimum percentage of members with planning expertise should be significantly higher than 10%. One option could be that any other members under (f) would be required to have planning qualifications to ensure sound planning outcomes. -It is unclear how the person with planning qualifications will be recorded for public knowledge. -It is unclear whether the NTPC could continue to convene if the planning member resigns.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 81L Community Consultation	New	NTPC must develop policies (and publish on website) on consultation with public and specific participants and on public education	Will add to transparency and accountability of consultation	-Can be supported in principle. -To develop policy is sound idea; content of policy will determine the effectiveness of the requirement
Section 81Y Annual Report	New	Includes requirements for annual report	Should aid in transparency and accountability	Can be supported
Section 81ZA Unauthorised Disclosure of Confidential Information	Revision	Minor revisions to text	Nil	Can be supported
Section 84 Functions and Powers of DCA	New	DCA may seek advice from any specialist members on Minister's list; lays out process of seeking that advice	Allows DCA to get advice from professionals/experts outside of the service agencies responding to application and applicant's consultants	The general idea is supported, though it is unclear how it will work in process and how the process may affect statutory timeframes. For many DCAs that only meet once a month, a request at one meeting for advice will likely result in a two week timeframe for that advice to be provided to meet the next hearing. The likely outcome is then for the advice to be presented to DCA in two months, which would lead to a two month delay in processing the application.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 87 Constitution of Development Consent Authority	New	Adds in that employees of agency administering Act not eligible to be DCA Members	Inconsistent eligibility restrictions across service authorities	<p>-Can be supported, with the following additional recommendation</p> <p>- Council supports adding that employees of service authorities are ineligible for membership on the DCA. If local authority employees and agency employees are not eligible to be on DCA due to perceived bias due to their employment status, it logically follows that employees of all service authorities that may be commenting on development applications should also be ineligible for the same reasons of perceived bias.</p>
Section 88 Chairman and Deputy Chairman	New	Minister must be satisfied chair has skills, qualifications or experience to exercise powers and perform the functions of the office	Assume Minister has always thought that about appointee, good idea but not useful without criteria	<p>-Can be supported.</p> <p>-It is noted that for DCA members, the required skills, qualifications, or experience to hold the position is expected to be detailed in the Regulations. It is recommended that the same occurs for the DCA Chair.</p>

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

<p>Section 89 Appointment of Members within Council Area</p>	<p>Revision</p>	<ul style="list-style-type: none"> -Change from Minister being required to accept 2 Council nominees to Council submitting at least one name in excess of the number required and Minister would choose which persons to appoint -Change from 2 other members to 2 “specialist” members -Eligible to be specialist member if have skills, qualifications and experience prescribed by Regulations -Employee of Council not allowed on DCA -Minister may maintain list of people eligible and willing to be specialist members 	<ul style="list-style-type: none"> -Unclear how list of specialist members works -Eliminating employees of Council/agency could reduce perceptions of bias 	<ul style="list-style-type: none"> -Unclear wording in that Minister “must” appoint Council’s nominees, but Council is appointing more nominees than on the Authority, which ones would the Minister be required to appoint and which would the Minister not be required to appoint -Unclear whether Councils nominate 3 plus an alternate or if the alternate is one of the 3 and Minister chooses who is alternate -Strongly support that Minister not be able to reject Council nominees (without clear reason) to ensure local representation on committee and avoid creating a political, rather than community or specialist, decision-making body. -Council recommends the Act be amended to note that if at any time the Minister wishes to not appoint or terminate the appointment of a Council nominee, the Minister must advise Council in writing of the reason Council’s appointee is considered unsuitable, in order to ensure transparency -Can support in principle the idea of specialist members having appropriate skills, qualifications, or experience, but cannot give full support until Regulations are developed and those
---	-----------------	--	--	---

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
				<p>requirements are available to Council for comment. It would be beneficial to expect DCA members to have some set of planning-related qualification; however, Council would submit that, in some cases, being a long-term resident in the community with a feel for the community's views of appropriate development would be sufficient qualifications/experience rather than any requirement for formal qualifications or degrees in specialist subjects.</p> <p>-It is unclear on whether the list of specialist members is specific to individual local authority areas or Territory-wide. This should be clarified in the Act or Regulations.</p>
Section 89A Training of Members	New	Requires Minister approve a training course for members, which members are required to complete	Should result in more educated members	<p>-Can be supported.</p> <p>-Course(s) should train members on NT Act, Scheme, requirements etc, as well as sound planning theory and provide resources</p>
Section 91 Nomination of Community Members	New	Details how Minister must appoint community members nominated by local authority	See comments on Section 89 above	See comments on Section 89 above

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 92 Term of Office of Member	New	If Council placed under official management, local member continues to be local member unless terminated by Minister	Clarification	-Can be supported -Council recommends the Act be amended to note that if at any time the Minister wishes to not appoint or terminate the appointment of a Council nominee, the Minister must advise Council in writing of the reason Council's appointee is considered unsuitable, in order to ensure transparency
Section 97 Disclosure of Interest	Revision	Clarifies that a DCA member that makes a disclosure of interest and has a noted relevant relationship must not be present or participate in deliberations or decision unless determined suitable by the Chair	Clarification	Can be supported.
Section 98 Offences Related to Non-disclosure of Interest	Clarification	Separates penalty for non-disclosure from previous clause 97	Clarification	Can be supported
Section 98A Independence of Community Members	Revision	Clarifies that members appointed by local authority are to make DCA decisions independent of the local authority's comments in relation to the application	Clarification	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 100 Code of Conduct	New	Minister may establish a code of conduct for Planning Commission and DCA members and publish on website	Holds Planning Commission and DCA members to known code of conduct	Can be supported in principle. Cannot offer full support until Code of Conduct is drafted and available for review.
Section 100A Removal from Office	Revision	Adds that Minister may terminate appointment of DCA member for failure to adhere to code of conduct and that a local authority may request to the Minister that a community member's appointment be terminated	-Holds DCA members to known code of conduct -Effect of Councils being able to request termination of a member's appointment is unclear	-Can be supported. -Council recommends the Act be amended to note that if at any time the Minister wishes to not appoint or terminate the appointment of a Council nominee, the Minister must advise Council in writing of the reason Council's appointee is considered unsuitable, in order to ensure transparency -Similar provisions to the above should apply to the reasons for a local authority's request for termination of appointment; reasons should be provided and Minister should make decision, in order to ensure transparency.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 103 DCA Minutes	New	-Minutes of DCA meeting must record: number of members attending, issues voted on, conflicts of interests or abstentions declared, and number of votes in relation to each decision.	Provides enough information for public to be confident in impartiality of decisions without potentially politicizing the vote by making individual votes public. Council objects to any proposal that would making voting public. DCA members are appointees, not elected officials; publishing individual voting records could lead to situations where members feel politically or socially obliged to make a decision rather than being able to evaluate an application on merit. Council feels that while the intent of this recommendation is to provide transparency, in reality, this recommendation could lead to politicisation of the DCA, which is undesirable. In other Council locations in Australia, DCA members have been threatened or experienced negative social behaviour as a result of publicly recorded voting.	-Can be supported. -Council would have strong objections to any proposal that would making voting public. DCA members are appointees, not elected officials; publishing individual voting records could lead to situations where members feel politically or socially obliged to make a decision rather than being able to evaluate an application on merit. Council feels that while the intent of this recommendation is to provide transparency, in reality, this recommendation could lead to politicisation of the DCA, which is undesirable. In other Council locations in Australia, DCA members have been threatened or experienced negative social behaviour as a result of publicly recorded voting.

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 104 Annual Report	New	Requires DCA Chair to write annual report on performance of DCA and table report in Legislative Assembly.	Collects all information from public DCA minutes into a single document to put before Assembly.	Can be supported
Section 106 Disrupting Meeting	Revision of previous Section 106 Contempt	Revises text	Clarification	Can be supported
Section 107 Offence to Disclose Certain Information	Revision of previous Section 107 Confidentiality	Clarifies intent of disclosure and revises text	Clarification	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 111 Review of Decisions by Consent Authority	New	Previously were only able to review refusal to issue a permit, new section allows review of a number of issues, including, but not limited to,: -refusal to issue development permit, -conditions on a permit, -request for additional information, -refusal to grant extension of time, -refusal to grant compliance with EDP, -issue enforcement notice, requirements of that notice, or refusal to issue notice. Also states how application for review must be made and specifies 28-day timeframe	Allows public more opportunity to review planning decisions.	Can be supported
Section 112 Review if Consent Authority Does Not Determine Application	Revision	Revision to text	Clarification	Can be supported
Section 115 Review of Refusal to Refund or Remit Contribution	Revision	Revisions to text to address new definition of local authority as separate to service authority	Clarification	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 119 No Use or Development Permitted Under Permit if Application for Review	Revision	Clarifies that land must not be developed until application is determined by Tribunal and offence penalties	Clarification	Can be supported
Section 130 Determination of Application for Review	Revision	Clarifies decision making	Clarification	Can be supported
Section 135B Administrative Directions	New	Minister may issue directions on how to interpret and administer provisions of the Act, regulations and NTPS. Directions should be consistent with the Act, regulations and NTPS and NTPC and DCA must have regard to the directions.	Allows Minister to provide interpretation.	Can be supported

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 139A Electronic Publication	New	A requirement to publish in the newspaper may be satisfied by publishing on a website or other electronic platform, other than a required gazette notice.	Individuals required to have internet access to view all notifications.	<p>-Council strongly objects to this proposal for a number of reasons.</p> <p>-Publishing only in electronic format unfairly disadvantages those individuals without internet access, or adequate internet access, as well as individuals not familiar with computer use. Many elderly residents do not feel comfortable with use of internet and many rural residents do not have adequate access to internet. Internet access is limited or unavailable in many parts of the NT. Many mobile blackspots identified in the rural area.</p> <p>-Newspapers are still a well-used form of communication that many individuals review on a daily basis. The NT Government cannot expect private citizens to regularly log on to a planning website (and a liquor licence application website, gaming website, water licence website, etc) to find information about what is going on in their community.</p> <p>-This provision would reduce transparency and could be viewed as an attempt to get fewer public comments.</p>

Litchfield Council – Submission on Draft Bill of Amendments to the NT Planning Act 1999
 March 2020

Draft Bill Section	Section from current Act	Key Change	Effect	Council Submission
Section 148 Regulations	Revision	Revises max penalty units for offence against regulations from 10 penalty units to 200 or 100 penalty units.	Increases penalties	Can be supported
Division 6 Planning Amendment Act 2020, Sections 209 through 212	New	<ul style="list-style-type: none"> -Makes transitional provisions for moving from old to new Act. -Provisions of new Act apply to permits issued before Act -Members of NTPC and DCA holding office before Act continue to hold office under same terms and conditions -Authorised officers before Act continue to be authorised officers -Clarifies which applications must adhere to new Act 	Makes clear applicability of act and membership	Can be supported
Division 6 Planning Amendment Act 2020, Sections 213	New	Provides transition provisions for Specific Use Zones	Unclear	Unclear how these provisions will be applied without review of proposed new Planning Scheme, cannot be supported until more information is provided on new Planning Scheme treatment of Specific Use Zones