



Legislation Scrutiny Committee
GPO Box 3721
DARWIN NT 0801

16th March 2020

Mode of delivery
Email to: LSC@nt.gov.au
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Dear Committee,

Re: Environment Centre NT Submission: Planning Amendment Bill 2020

The Environment Centre Northern Territory Inc (ECNT) is the peak community sector environment organisation in the Northern Territory, raising awareness amongst the community, government, business and industry about environmental issues and assisting people to reduce their environmental impact. We support community members to participate in decision making processes and action. ECNT thanks the Legislation Scrutiny Committee for allowing a few extra days to provide comments on the draft Planning Amendment Bill 2020 (the Draft Bill).

The ECNT has previously made comment on the Planning Act 1999 and on the first draft version of this Bill and will remain involved through the development of this Legislation, its Regulations and the Planning Scheme.

The ECNT's earlier submissions focussed on the need for the Northern Territory's planning system to address the risks of climate change; apply the principles of ecologically sustainable development (ESD); incorporate Regional Natural Vegetation Management Plans; ensure integrity, accountability and transparency; and increase opportunities for public participation and review of decisions.

We were pleased to see some of the ECNT's recommendations incorporated in this revised Draft Bill, for example the Purpose and Objectives have been amended to include the application of strategic planning when individual planning decisions are made; the need to ensure that the planning system is clear, comprehensive, efficient and accessible to the community; and good design and amenity of developments (which were a notable omission from the previous draft).

The greatly strengthened investigation and enforcement, penalty and cost provisions are also welcomed as they are essential to ensure compliance of land owners and occupiers with the Act and development approvals.

Likewise, the ECNT agrees with the strategies to improve the professionalism of the Development Consent Authority; qualifications, a Code of Conduct, training, increased community representation and access to specialist expertise will enhance its decision-making capabilities and credibility.

Submitters often have limited resources and development proposals may be detailed and complex - which make it difficult for community members and non-government organisations (NGOs) to prepare well-researched and considered submissions during exhibition periods. Enabling the Development Consent Authority to allow (where warranted) extra time for submissions to be received is absolutely appropriate [Section 49(8)].

The legislated independence of the Planning Commission; its need to exercise professional care, integrity and diligence; the requirement that it consider the diverse interests of the community; and the application of a Code of Conduct will together improve its responsiveness and capabilities. The requirement that it publishes its policies relating to public consultation and education together with its more comprehensive annual reporting will improve transparency and result in better community understanding of, and willingness to participate in, planning processes.

The change to require the Commission to advise local authorities and those who made a submission of its intention to not conduct a hearing, to give them the opportunity to respond to this intention, and then being required to consider these responses before making a final decision, is also supported.

It is noted that a 'public interest' test is mentioned at various times in this Draft Bill; it is not clear what criteria are used to assess whether proposals pass this test.

The Draft Bill goes a long way towards creating a Planning Act and planning processes that meet community and industry expectations and position the Northern Territory for the future. However, there still remain major areas where further changes are needed – some of which the ECNT and others have raised previously.

The new Planning Act should play a central role in the Territory's efforts to reduce climate change while helping ensure that we adapt effectively to anticipated increases in climatic temperatures and other environmental changes (eg supporting NT Government priority of zero emissions by 2050). The ECNT suggests that this ought be an explicit Objective of the Act along the lines of: Ensure appropriate and effective responses to the challenges of climate change - to reduce release and increase retention of greenhouse gases, and to create built environments and protect and support natural environments that help ensure the 'liveability' of the Northern Territory.

Active consideration of climate change should flow through the Act to the Regulations and to proposed Planning Schemes, overlays and zones, plans and development assessment processes and decisions.

The draft Purpose and Objectives include the statement ...to promote the sustainable development of land. However, as noted in the ECNT's previous submissions, this needs to say that it applies ESD (as defined in the Environment Protection Act 2019).

As the principles of ESD defined in that Act cover: decision-making; precautionary principle; evidence-based decision-making; intergenerational and intragenerational equity; sustainable use; conservation of biological diversity and ecological integrity; and improved valuation, pricing and incentive mechanisms - it would make very clear how sustainability would be achieved in all stages of land use and development planning and assessment.

The ECNT previously suggested wording along the lines of: "to ensure that all the principles of ecologically sustainable development (Environment Protection Act 2019) are applied at all stages of land use planning and development". If accepted, this would also help achieve various of the other elements of the Purpose and Objectives of the Act, indeed some elements could become redundant.

On other matters...

It is noted that the Minister will retain ultimate decision-making power regarding approval of proposed developments.

Section 52 Limits on consent

(3) the Minister may consent to a proposed development despite it being contrary to any strategic framework in the planning scheme applicable to the development.

(4) the Minister may give the Development Consent Authority approval to consent to a proposed development despite it being contrary to any strategic framework in the planning scheme applicable to the development,

It is imperative that this discretion is used sparingly and transparently: sparingly so as not to undermine the Planning Scheme; and transparently so that the community understands the reasons why a development which does not align with the Planning Scheme is approved. Transparency (supporting Ministerial accountability) could be achieved in various ways including the Minister reporting in detail the reasons for their decision to the Legislative Assembly. In any case, community trust in the decision-making processes needs to be rebuilt and then maintained.

This Draft Bill is an opportunity to work to address the disparity of resources between proponents and submitters, including access to expert departmental advice. Section 30A of the Act requires the Minister to appoint a public sector employee to be a planning adviser for those wishing to make concurrent applications. So, in the interests of equity, it is also recommended that an adviser be available to those members of the community and NGOs who may be considering making a submission. Their role would be to ensure information is available to potential submitters and processes are followed. This adviser (like the applicant's adviser) would play no other part in the development application assessment process.

In summary...

The ECNT suggested various detailed changes to the previous Draft Bill, and while some have been incorporated in this latest draft, many have not, however, rather than repeat all these here we refer to our previous correspondence.

We have noted some of the improvements to the draft, and these are important, recognising the difficult task of balancing various competing interests. Nevertheless, there are two fundamental matters that ought be addressed in the new Act – climate change and ecologically sustainable development.

The first of these is now an accepted global problem that governments and communities are working to address – to reduce emissions and to adapt to the impacts ... how we use land, how we protect natural ecosystems and how we see our environment generally are keys to our response, and the new Act is central to this.

The second, ESD, provides understanding and tools to do development better – to identify what is precious and shouldn't be changed through to achieving developments that have long-term positive environmental, economic and social outcomes.

The ECNT believes that the changes we have suggested will help ensure that the revised Planning Act is fit for its new purpose.

Thank you again for the opportunity to contribute to this important review process.

Yours sincerely



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Director Environment Centre (NT)