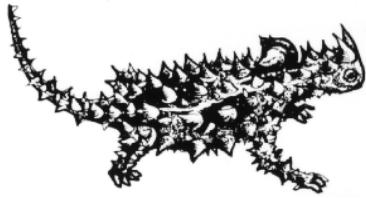


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## Northern Territory Planning Reform Stage 2: ALEC Submission

The Arid Lands Environment Centre (ALEC) is central Australia's peak environmental organisation that has been advocating for the protection of nature and ecologically sustainable development of the arid lands since 1980.

ALEC is consistently engaged with planning reform and processes in the arid zone. We advocate for integrity in planning decisions as well as ensuring planning outcomes adequately incorporate the environmental implications of development.

### Planning Reform Consultation: Arid Lands Environment Centre Submission

The challenge with these reforms will be to give lasting substantive legal effect to the high-level values identified in the discussion documents. To improve public confidence in the planning system these reforms will need to demonstrate public engagement can influence the future design of the framework.

The general direction of the reforms in improving accountability, transparency and certainty are supported but these reforms do not go far in enough to guarantee strengthening of those principles.

Part 1 of the *Planning Act* should be reformed to provide a holistic, overarching set of principles and standards that clarify the role of planning in the NT and direct the ambiguity and conflict within the various layers of regulations. This could include a balance of prescriptive standards as well as planning principles.

### Ecologically sustainable development

There is a risk that the identified principles will remain empty rhetoric unless there are clear prescriptive standards that clearly articulate how they operate in decision making and the development of area plans. In the event of inconsistency or ambiguity in the application of the *Planning Scheme*, planning policy or an area plan, these planning principles could be applied to resolve ambiguity or conflict. The interpretation which gives greatest effect to ecologically sustainable planning should be prioritised.

In their current form the proposals do not give enough recognition to the importance of environmental, social and cultural factors in planning. The planning scheme should include factors to be considered by decision makers that integrate principles of ecologically sustainable design. The nexus between planning and resource use is obvious and sustainable design incorporates notions of cultural and social sustainability.

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Public participation is a core component of ecologically sustainable development. By including a direct reference to ESD public participation can be enshrined in the entire planning framework,

including access to information, review and reasons behind the planning scheme outcomes, DCA operations and policy proposals.

The *Environmental Protection Authority Amendment Bill* includes a requirement for decision makers to have regard to the principles of *ecologically sustainable development*. ESD principles are included in the Bills being released as part of the environmental regulatory reform. Planning policy should therefore not be an exception. This will allow for more collaboration between Departments and deliver development outcomes that are consistent with the broader environmental and economic priorities of the Government.

The inclusion of ESD integrates sustainable planning principles that should be clearly articulated and can be applied by proponents of a development or decision makers more generally. It is imperative that economic development within the Northern Territory conforms to best practice principles of sustainable design, including being responsive to the need to accommodate for improved climate resilience and opportunities for strengthening adaptive capacity.

A potential way to include sustainable principles would be to include 'ecological sustainability' as an objective of the Act. Ecological sustainability has been included in Planning law in Queensland in recent reforms. It is simply best practice planning regulation.

Proponents of a development could be able to consider sustainable design at the forefront of their application rather than face lengthy delays or subsequent costs in retrofitting buildings or development. There are numerous incidental benefits associated with sustainable design such as the economic benefit of reduced electricity and water consumption.

### **Reducing the political influence over planning**

Specific legislative changes are needed to enforce a more stringent standard of accountability and transparency in planning outcomes. There are specific provisions and powers that are perceived to be highly vulnerable to political influence and their exercise should be curtailed by improving public oversight and opportunities to participate in decision making. Ministerial discretion in amending the planning scheme, regulations and approving concurrent development applications should be limited by requiring reference to clear prescriptive decision-making criteria.

ALEC supports the key reform proposal that will see a greater role for policy in determining the design and operation of planning. This should not however come at the expense of effective prescriptive guidelines. By creating a framework that can apply and operationalise policy, planning law will gain greater public legitimacy.

A key flaw in the current structure is the high degree of discretion afforded to the consent authority. This can be addressed by ensuring decisions are guided by policy that is designed according to principles of best practical planning and sustainable design. It will also enable more opportunities for cross departmental communication and consistency in the delivery of whole of government priorities.

The political influence over planning outcomes could be further reduced by requiring decision makers to integrate, apply or operationalise planning principles rather than merely 'have regard to'. Actively applying planning principles in the *Planning Scheme* will improve the democratic legitimacy of the planning framework. This will also improve public confidence in the framework as policy and regulation rather than personality will be determinative of planning procedure, outcomes and guidelines. Policy should not be overridden by overly prescriptive standards in the planning scheme if they will not result in a better or more sustainable planning outcome.

These reforms are striving for a balance, but the materials do not outline the relevant factors involved in the balancing or what values and planning objectives this balance will be decided on. What are the substantive objectives this balance is striving to achieve? A balance should strive to achieve prescriptive standards as well as delivering outcomes that are equitable and sustainable.

It is not clear why:

“The Minister will retain discretion over planning scheme amendments and exceptional development permits. This recognises that these decisions relate to changes to government policy.”

If there are no changes to government policy with these specific processes, then what is the role of this reform? The distinction between proposed reforms and rejected proposals needs to be justified. Why are some reforms designated as a matter of government policy reform when others are administrative changes?

The high level of subjective decision making in the direction of this reform is one of the key deficiencies in this process.

Exceptional development permits, spot rezoning and continuing use permits are decisions that allow an exception to an otherwise clear prohibition. These exceptions to consistency and certainty in the law should only be exercised in the event they can fulfill a public interest test. It is not clear why the review of EDPs has been postponed until the second stage of the reform. EDPs are a significant weakness in the accountability of the system and the refusal to address them from the beginning of this process is concerning.

It is imperative that there are additional controls placed on the use of EDP as they remain one of the most political contentious aspects of the NT planning system. Continuing use permits should be greatly restricted so that they do not retrospectively validate development that is otherwise contentious, unacceptable or inconsistent with aspects of the Planning Scheme.

### **Access to justice and review of decisions**

The summary of feedback states that there is concern that review and appeals will increase the time for applications to be assessed and at an increased cost to development. There is no substantial body of evidence to demonstrate the economic risk of vexatious litigants or delay because of reviews. It is concerning that the proposals appear to accept the argument from developers to the detriment of broader public interest in gaining access to justice and improved confidence in planning decisions.

The possibility of an economic cost to development should not be the sole factor in deciding whether to expand review rights. It is fundamental to addressing the key concerns identified by most community respondents. Expanding the opportunities for review encourages more robust decision making as consent authorities are required to make decisions that are defensible to apprehended arguments from the broader public.

In the interest of community confidence and consistency review rights should be extended to planning decisions across all residential and rural zoned areas.

The proposed reforms aimed at improving accountability within the technical factsheet favour the interests of applicants and developers:

- Review of an enforcement notice.
- Refusal of an application for a Compliance Certificate for an Existing Use
- Deferral of a development application by the consent authority

There is a significant imbalance between the appeal and review rights afforded to third parties and proponents of a development. The next stage of this reform will need to make the case that accountability is being improved for the public, submitters and third parties so not simply expanding rights of review for developers.

Expanding the review and appeal rights will bring planning into line with general NT government policy as well as key environmental Acts currently under reform.

### **Compliance and enforcement**

If breaches of planning law, policy or regulations are not apprehended or sanctioned, community confidence in the planning framework will continue to be poor. In the current framework proponents can breach planning regulation with apparent impunity.

ALEC supports the inclusion of many additional provisions that provide greater authority to the DCA, authorised officers and NTCAT to enforce the planning framework and strengthen accountability.

Wide spread reform of the DCA is supported. There are however, additional ways that process could be improved to strengthen accountability. To guarantee the accuracy of evidence there could be new provisions around evidence and material submitted to the DCA. This could include effective penalties for false or misleading evidence, independent verification of the evidence a proponent relies upon and ensuring a proponent cannot benefit from arguing opposing cases (proponents have on one hand presented one situation and then relied on the opposite depending on how it suits their interest).

Amenity should be defined by the parties that allege interference. It should include factors such as property devaluation and the future consequences of a development such as the cumulative impacts. Participants in DCA process have reported a lack of clarity on the role of precedent in hearings. This should be corrected with a view to improving certainty in DCA hearings.

#### **Public participation**

ESD enshrines clear legislative principles to ensure adequate and valuable public participation as well as improved pricing and evaluation methods which will allow for industry and developers to share a greater burden of the administrative or environmental costs associated with planning applications and development.

Public engagement would be strengthened by legislating requirements to ensure ongoing communication with people who make submissions. Further to this, it would be highly valuable to identify how community feedback has led to specific requested reforms. It is critical to demonstrate to the public that their feedback will not only be considered but can influence the design and outcome of planning reform.

It is important for the public to understand who supports specific positions and how resistance to a reform is justified. When outlining community feedback, the public should be aware of the specific arguments made by industry, developers, government and other community groups. This will bring more transparency to the public debate around planning policy in the NT. All future consultation documents should identify, unless objected to by the submitter, who made the submission.

## **Conclusion**

All in all, the reforms are supported for the recognition paid to the principles of accountability, transparency and certainty. However, the process by which these are going to be integrated into the current framework remain limited and give inadequate effect to those principles. There is a risk this process will not deliver the reforms that are needed by the public to improve confidence in process and outcomes.

A substantial transformation in planning is needed to deliver a system of regulation that works to maintain human wellbeing and ecological sustainability rather than merely facilitating the interests of the proponents of development. Economic agendas for growth should not come at the expense of broad public support or at the cost of cultural or environmental capital.