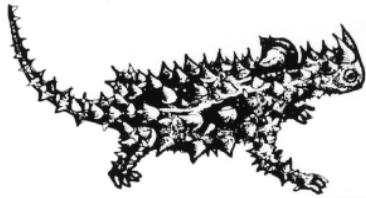


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## **Arid Lands Environment Centre Submission: Review, Reframe and Renew Discussion Paper**

The Arid Lands Environment Centre (ALEC) welcomes the opportunity to contribute to the reform of the planning system in the Northern Territory. ALEC is the peak regional environmental organisation servicing central Australia. For more than 37 years, ALEC has been a strong and trusted voice for the conservation and responsible management of the land, water and natural resources of the arid lands.

ALEC commends the NT Government on the commitment to move towards a more transparent, accountable and equitable planning system. The current system is a complex patchwork of guidelines, plans and laws that is difficult to navigate. There is duplication of responsibilities and high-level discretion on decision-making.

The current planning system does not acknowledge the challenges of climate change and does not incorporate principles of ecological sustainable development (ESD).

ALEC recommends that the planning system be reformed to provide a more holistic and integrated approach for land use and development that is centred on the principles of ESD. Climate change must be incorporated as a mandatory consideration in all regional planning frameworks and comprehensive climate change framework must be developed to assess the impact of all significant projects, including a methodology for quantifying carbon emissions.

Certainty in planning will be improved by reducing the role of discretion in development proposals and introducing guidelines that direct decision makers in a transparent and accountable way.

### **Ecologically sustainable development**

The planning framework is fundamental to administering the equitable and sustainable use of land and natural resources. Sustainable development is not guaranteed by merely balancing competing interests in land. Currently this balance is ultimately up to the subjective determination of the decision-maker, which is largely arbitrary in the absence of clear legislative guidance on how to evaluate environmental and social impacts. There needs to be greater definitional guidance on what constitutes an environmental impact and when a project will trigger referral for NT EPA assessment.

This reform should aim to shift to a more robust level of planning that aims to *integrate* environmental factors rather than simply *balance*. To appropriately assess

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environmental impacts, the Minister should be compelled by law to reference a development proposal against environmental benchmarks and progress indicators.

The importance of the components of ESD cannot be understated. These reforms should progress acknowledging the need to embed ESD at all levels of planning.

Accountability is also improved by narrowing the scope of potential decisions that can be made.

- *The precautionary principle*: utilise prevention and avoidance before mitigation to prevent serious irreversible human or environmental harm.
- *Inter-generational and intra-generational equity*: the needs and rights of future generations and groups across society are given equal weight.
- *Conservation of biodiversity and ecological integrity*: including cumulative impacts across regions, should be a fundamental factor in decision-making.
- *Full environmental costing*: costs traditionally considered as “externalities” should be factored into decision-making, for example impact on ecosystems should be considered. This includes the *polluter pays principle*. Proponents who cause environmental harm are responsible for the costs of avoiding, reducing or remediating the harm.

The Planning Scheme should provide clear and objective criteria to guide the design of regional development plans that integrate both short- and long-term environmental, social, cultural and equitable considerations. Regional land use plans should be informed by the best available science that provides a baseline condition of the environment. This would include carrying capacity and the cumulative impacts of the development. Ideally the development would enhance environmental value in the region.

Proper integration of environmental factors could be achieved by implementing the following:

- Adopting a framework of ambitious and clear natural resource management goals and targets that are referenced to baseline studies and supported by NRM agencies.
- Establish Territory level accounts of environmental condition to assess trends and progress against the above targets. These accounts should assess the condition of environmental assets including biodiversity, native vegetation, carbon storage and sequestration, soil and water.
- Include as a core aim of regional plans the need to maintain or improve the condition of environmental values specific to that region.
- Ensuring re-zoning decisions and significant development proposals are considered against a public interest test to ensure benefit to the communities now and for future generations.

Current land use planning is assessed according to the managerial and economic imperatives of the Department of Infrastructure, Planning and Logistics, which is also within the purview of the Treasury. The practical implication of this arrangement means that economic considerations are prioritised above environmental, social or cultural factors. It is therefore important that the Department of Environment and

Natural Resources is given referral powers in decisions that may have significant environmental impacts.

## Recommendations

- **That ESD is introduced as a core planning principle and as a mandatory consideration for all development proposals.**
- **That ESD is inserted as a planning principle in section 4.1(b) of the *Planning Scheme***
- **That land reserved for conservation purposes is not subject to spot rezoning, specific uses or exceptional development permits to allow for protection in perpetuity.**
- **That ESD can be applied as a condition of approval that provides benchmarks for ongoing compliance.**

## Accountability and public trust

ALEC has concerns that under the current planning system the commercial interests of developers have a disproportionate level of influence over development decisions in the NT. The system incorporates numerous provisions that undermine certainty by reserving a large level of unrestricted discretion for the DCA, planning commission and the Minister. Discretion that is not directed by clear criteria or guidelines undermines accountability in decision-making.

The following are examples of actions and proposals within the scheme and Act that undermine integrity and accountability in planning because normally applicable regulations are bypassed through Ministerial or DCA discretion.

- Part 2.5 of the Scheme: the DCA may consent to development that is otherwise inconsistent with 4 and 5 if *special circumstances* exist. There is no clear guidance on what constitutes special circumstances.
- *Spot rezoning* is the antithesis of well-considered planning. In the absence of objective well informed criteria ensuring spot rezoning provides a net public benefit, it undermines the very intention of planning to provide certainty and consistency.<sup>1</sup>
- *Exceptional development permits* should be subject to a public interest test to ensure that development that is otherwise inconsistent with planning principles is only allowed in compelling circumstances.
- *Specific use zones* should be required to be compliant with core planning principles and granted only with a demonstrated public interest test.
- Section 52(1) and (2) of the Act state consent cannot be granted if the development contradicts policy in the planning scheme but this is then counteracted by unrestricted Ministerial discretion allowing the DCA to consent to development that is otherwise prohibited.

These exceptions collectively undermine the integrity of planning processes by permitting unbridled discretion to determine development and zoning outcomes. As the reform process is committed to improving transparency and certainty, the entire

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<sup>1</sup> EDO NT, "A framework for corruption" 15/07/15 < <http://edont.org.au/framework-corruption/>>

system should be reviewed to reduce the role of Ministerial discretion. This will improve accountability and public trust in both processes and outcomes.

### **Recommendations**

- **That the role of reporting authority is returned to the DCA from the Planning Commission.**
- **That the entire planning system is reviewed for provisions that permit inappropriate levels of Ministerial discretion.**
- **That public interest criteria are developed to guide the exercise of Ministerial discretion that permits development that is otherwise prohibited under the Planning Scheme.**
- **That spot rezoning is removed from the Planning Act.**

### **Roles and responsibilities**

The intersection of planning authority with other laws regulating land use in the NT is fragmented and ambiguous. There are instances of duplicate responsibility to approve development but the provisions regulating concurrent referrals are not clear.

There needs to be greater clarity over referral of decisions that may have an environmental impact. This means defining what is meant by environmental impact in clear objective guidelines to ensure that all proposals that can impact the environment undergo appropriate environmental assessment.

As the Planning Commission is a recent addition to the planning system, its roles and responsibilities are still developing. Reporting powers should be returned to the DCA. Membership of the DCA should be regulated to ensure that only individuals with appropriate expertise are appointed. This will guard against the perception of developers making decisions only for commercial interest and ensure that environmental, cultural and social factors are given appropriate weighting.

### **Recommendations**

- **That clear guidelines are developed around EPA referrals to ensure development proposals that could have a significant environmental impact undergo environmental assessment.**
- **That membership of the DCA is restricted to individuals that have appropriate expertise or training in areas of planning policy, such as environmental management, town planning or representative of local government (not as individuals)**
- **That the DCA is empowered to enforce developer contributions.**
- **That matters are referred for consideration to regional councils if a proposal is outside of DCA jurisdiction.**

### **Public participation**

The planning system should expand the scope for public participation and develop plans that focus on communal needs rather than only considering sectors and industries in isolation.

Consultation processes should be tailored to the specific needs of a community. For example, consultation with Aboriginal communities should be accessible and in a culturally appropriate manner. There needs to be a move away from orthodox submission writing that is not always appropriate or accessible.

Regional land use plans or area plans that are developed for communities should be informed by direct engagement with the community. This includes a more open and proactive form of consultation to increase levels of public engagement.

The reformed planning system will need to demonstrate to the community that consultation is determinative of outcomes, otherwise there will be little public confidence in the regime and lack of incentives to participate.

### **Recommendations**

- **That public consultations are held for significant development and the development of regional land use plans.**
- **That consultation for Aboriginal communities is accessible and culturally appropriate**
- **That development proposal decisions are accompanied by the reasons for that decision.**
- **That area plans and regional land use plans provide a summary on how community consultation has influenced the content of the plans.**

### **Reviews of decisions and appeals**

The scope for the public to review development and planning decisions should be expanded. There is more opportunity for proponents or applicants to review a decision under the Act than third parties or individuals who make submissions. Review rights should include judicial review on the legality of the decision as well as merits review.

Expanding review and appeal rights will improve public participation and accountability in the planning system. Ministerial discretion to remove review rights under the Act undermines public confidence in particularly contentious decisions and should be repealed.

The process of making a regional development plan, re-zoning decisions and area plans should also be subject to merits review. Individuals or community groups should be able to review the content of plans if they are inconsistent with planning principles or are not substantiated by the best available science.

Broad merits appeal rights were recommended in a 2012 report from the NSW ICAC as an important safeguard against corruption and method for building public

confidence.<sup>2</sup> Third party review rights will operate as a strong disincentive against corrupt decision making.

## **Recommendations**

- **That section 117A(2) of the Planning Act is repealed, preventing the ability of the Minister to refuse review rights for certain decisions. This use of Ministerial discretion undermines the opportunity for public scrutiny of potentially contentious decisions.**
- **That development plans and zoning decisions are subject to review.**
- **That spot rezoning decisions are subject to independent review.**
- **That full third-party merit and judicial review rights are provided in the Act.**
- **That cost rules be amended to allow NTCAT and NT Courts to not make an order for the payment of costs against an unsuccessful public interest litigant.**

## **Climate Change Framework**

The current NT planning framework does not allow for the effective implementation of greenhouse gas reduction strategies and developing climate change resilience and adaptation. Climate change is only mentioned once in the Planning Scheme, referenced as a planning principle for Francies Bay planning in Darwin.

This is inadequate. Climate change needs to be integrated into the Planning Scheme as a core planning principle that informs the entire implementation of the Scheme. An objective of the planning framework should be to both deliver carbon reduction strategies and ensure decisions are made that factor in the climate change projections.

Climate change is projected to significantly impact the NT, with each region experiencing distinct climatic changes. Regional planning frameworks should be designed according to the needs of climate change mitigation and adaptation that is specific to each climatic zone. For example, land use planning in the arid zone should be subject to regulations and guidelines that are informed by environmental conditions unique to the arid zone. Each climatic zone presents unique challenges to land use, and this should be acknowledged and built into the planning system.

Finally, regional planning processes should be capable of prohibiting carbon intensive proposals, encouraging sustainable building design and promoting public transport, cycling and pedestrian friendly areas.

## **Recommendations**

- **That climate change is incorporated as a mandatory consideration in all regional land use plans.**

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<sup>2</sup> NSW ICAC, "Anti-Corruption Safeguards and the NSW Planning System" (2012).

- **That a comprehensive climate change framework is developed to assess the impact of all significant projects on climate change including a methodology for quantifying carbon emissions.**
- **That standardised best practice criteria are developed for sectors regarding mitigation and adaptation that all development proposals must be compliant with.<sup>3</sup>**
- **That climate change mitigation and adaptation is a mandatory consideration for the DCA and the Minister in determining development proposals.**
- **That all significant development projects are assessed against a greenhouse gas target and are refused if they exceed the level of acceptable greenhouse emissions.**
- **That sustainable and efficient built form design is informed by the findings of the *Built Environment* section of the *RoadMap to a desertSMART Town 2013-2018*.**
- **That the Planning Scheme facilitate the making of environmental upgrade agreements to split incentives to drive retrofitting of commercial and residential buildings.**

## **Conclusion**

The Northern Territory Planning System needs to be reformed to develop a system that is accessible, transparent and accountable to the communities that are affected by planning processes.

The current system permits decision makers to approve development that is otherwise inconsistent with the planning scheme, planning principles or development assessment guidelines under the Act. This significant level of unrestricted discretion afforded to decision makers renders the system vulnerable to perceptions of corruption and undermines public confidence.

The current planning system does not acknowledge the challenges of climate change and does not incorporate principles of ESD.

ALEC recommends that the planning system be reformed to provide a more holistic and integrated approach for land use and development that is centred on the principles of ESD. Climate change must be incorporated as a mandatory consideration in all regional planning frameworks and a comprehensive climate change framework must be developed to assess the impact of all significant projects, including a methodology for quantifying carbon emissions.

The Northern Territory Planning System reforms need to promote trust, transparency and accountability, truly sustainable development, reduce climate impacts and provide equitable benefits to all.

## **References**

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<sup>3</sup> EDOs of Australia, "A place for everyone – the future of Australia's Cities" 04/08/2017, Submitted to Committee on Infrastructure, Transport and Cities, House of Representatives.

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