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19.6.2016

Michael Gunner, MLA  
Leader of the Opposition,  
NT Legislative Assembly

Proposed Amendment of the NT Planning Act and Regulations, 2016  
Serial 178

Dear Opposition Leader,

We are writing to you, most urgently, about the proposal of the present Northern Territory Government, in its dying days, to force onto the people of the NT, a major and inappropriate amendment of the Planning Act and Regulations. This is proposed to pass on the very last day of the current parliamentary session. Planning is an aspect of Territory life that affects us all. It has widespread future ramifications.

An amendment of the Planning Act is being promoted by Planning Minister Tollner, who has repeatedly demonstrated his disregard for the needs of the community, the NT Planning Scheme (NTPS), due process, and the public interest. The result has been a series of unusual, apparently personalized and unique decisions, only possibly reversible by direct public challenge in the Supreme Court.

The proposed amendment is being forced on Parliament in extreme haste, without appropriate openness, and with a lack of time for adequate discussion and calm consideration. 'Secret' pre-emptive staffing changes have been made within in the Department of Lands and Planning and Environment in advance, as early as May, 2016, without any public announcement, or explanation.

These amendments are proposed, without prior public exhibition and public consultation, and without the knowledge of the general Northern Territory community. They therefore cannot be in the public interest. We have seen no evidence that Rod Applegate, Chief Executive Officer of the Department of Lands, Planning and the

Environment, has authorized them.

**We urge you not to support the present proposed amendment in any way, but rather to seek its withdrawal.**

Having dealt with planning, particularly planning to meet sustainable community needs in the NT, for nearly twenty years, using a consultative network model, we now outline in our letter reasons why the proposed Amendment to the Planning Act should not to pass into law. In the urgent circumstances, we cannot present a thorough analysis of all issues.

Any changes to the Planning Act must not be done in haste, without genuine consultation. An extended review and analysis, properly involving the public, departmental, and government authorities, and relevant stakeholders is required. Any changes should not be politically determined. Independence should mean impartiality, not lack of accountability.

### **1. Premature and rushed introduction of the Proposed Amendment to the Planning Act**

This proposal is a major amendment to the Planning Act. Changes to the NTPS which is the framework of planning, obviously have a very major impact on future planning throughout the NT. There is a big difference between good planning, and the facilitated development. Balance is essential.

As major stakeholders in planning, we only tangentially became aware of the proposed Amendment to the Planning Act. This was through the Minutes of the City of Darwin, First Ordinary Council Meeting for May, 2016, (Report 16TS0096 CR:hd Common Number 3275638, dated 17/5/2016) and NT News notes on them.

Council had received an undated letter, on 27 April, 2016. It was signed by Bruce Michael (as 'Executive Director, Planning and Development'- DDLPE2016/0129).

The subject of this letter was stated as:

‘Proposed Amendments to the Planning Act to Assign the functions of the Reporting Body to the Planning Commission’

The introductory paragraph stated:

‘ In order to strengthen the role of the independent NT Planning Commission (the Commission) and streamline current planning arrangements, the Government is considering a proposal to amend the Planning Act (the Act) and assign the functions of the Reporting Body to the Planning Commission.’

Other local government authorities received a similar communication, and were given just two days to respond with comments.

It is understood that the only reason local government bodies were ‘consulted’ was because the existing Planning Act requires it.

The Michael letter proposes that the Commission, or just one of its members, should replace each of the local Development Consent Authority (DCA) panels, as reporting body to hear public submissions. It should then report to the Minister the issues raised for each proposed amendment to the NTPS, or application for a Exceptional Development Permit.

## **2. Faulty rationale for use of Commission as reporting body**

The letter to Council, states as the major rationale for changing the reporting body from the DCA panels, to the Commission, is stated as:

‘The Commission conducts extensive consultation with the community, and is therefore considered the most appropriate body to report on submissions about proposals that do not fit into the parameters set by the planning scheme. The involvement of the independent Commission is expected to contribute to community confidence in strategic town planning processes and policies.’

We strongly disagree with this proposal. this change would not increase community confidence. There are already many instances

of the community complaining strongly about the inadequate narrow superficiality of public consultation by the Commission. Its 'brand' of consultation is already being rejected as biased.

It has failed to listen and respond on locally based issues. The Chairman is seen as lacking patience with residents, too distant, and not a listener. He is seen as 'not a Territorian', 'remote' and superior, and not responding to peoples well informed concerns. Spin has not dispelled these fears.

Neither do people all feel certain that there are no 'conflicts of interest' from earlier business interests, or political affiliations.

The Commission is seen as ensuring development opportunities, more than balanced sustainable planning. Already it has demonstrated lack of sensitivity and response to community need. For example, regardless of projections of large population growth, the Commission has deliberately made no provision for additional community purposes land in the Inner Darwin Area Plan. In the case of Area plans, there is little, or no evidence that public comment is influencing Area Plans, from draft to final document.

It is important that the reporting body is not a single remote person, but of a balanced group, with practical experience in assessing planning applications, representative of, and accountable locally. Only two members of the Commission are 'expert' in planning, *per se*. It is also important that the group not be politicized.

It is true that the DCA is often the target of public criticism. Much of this is because it has been seen to be party politicized. The public thus takes the view that it may be improperly influenced towards facilitating development.

### **3. The Proper Role of the NT Planning Commission**

The NT Planning Commission was established for a distinct role, to catch up on strategic policy. Its role is forward planning, such as frameworks, regional planning, and area plans. Its role is not to make immediate decisions, as they arise from time to time,

To fulfill this defined role, the Commission does not need to be a permanent body, or to be permanently staffed. It should be

regularly retired once its set of strategic planning jobs for a period of years is complete. Reconvened perhaps every ten years, it should review, adjust and update its long term plans.

The role and experience of the Commission no way equips its members to replace the DCA as reporting body, as suggested here. The Commission has not been directly involved in either the approval of development applications, or planning scheme amendments. These two sets of decision making are interlinked, and quite separate from forward projections and strategic planning.

#### **4. Lack of Workability of the Proposed Amendment.**

It would be administratively inappropriate, and confusing to the public to have two separate reporting bodies responsible for current planning decisions – one for Development Assessment and one for Amendments to the NTPS. Knowledge and experience dealing with each requires knowledge and experience of the other. Awareness of and sensitivity to local issues, including land capability, and amenity is essential.

A prime obligation of the DCA is to ensure that Section 51 of the Planning Act is properly considered. This overlaps both areas.

The letter from Bruce Michael is very inadequate and superficial its description of the proposal. It is vague about its practical implications, although stating, apparently as an after thought, that:

‘The prescribed functions of the reporting body will not change and the DCA will continue to be responsible for the assessment of development applications’.

How then, for example, will the matters below be dealt with:

Exceptional Development Permits applications (EDP's) ?

Individual specific area rezonings ?

Concurrent development applications which cover both rezoning and development ?

Application of relevant local knowledge to decisions ?

## **5. Present 'doubtful' administrative and legal situation**

We are seriously concerned about how this unsatisfactory situation has been allowed to progress to this stage.

Public submitters are, as of yesterday, being contacted by a 'Co-ordinator', instead of the Secretary of the DCA, to present themselves to the Commission on 30<sup>th</sup> June, 2016 at Energy House, as the reporting body for the hearing on the proposed planning amendment for the Dual Occupancy 1000sm+.

This presumes that the proposed Amendment to the Planning Act will by that time, have been passed by Parliament, assented to by the Administrator, and promulgated. Members of the public attending at a Commission non neutral venue, and on that day, would feel manipulated and compromised. There were earlier brief notifications, in the press, of movement of functions to Energy House from the Department of Lands, Planning and Environment in Parap.

We understand that Bruce Michael, was previously in Crown Lands Management, an area not directly related to the NTPS, or to the assessment of development applications.

Mark Meldrum was long term Director, Lands, Planning, and Douglas Lesh previously Director of Development Assessment Services. These are the two relevant strands of the Planning Act. We have heard nothing from these very experienced public servants, nor what has happened to their positions. However, we began to hear glimmerings of important internal changes to structure and personnel in early May, 2016.

There is no mention of, or to reference to Rod Applegate-Chief, Executive Officer of the Department of Lands, Planning and the Environment in copies of documentation about the proposed Amendment to the Planning Act.

Our organisation objects to this secretive pre-empting of a legal process. This is certainly not open government. It is poor government. This situation should be rectified.

A copy of this letter from Bruce Michael is at Attachment A

## **6. Inconsistency of proposed amendment with Section 2A Objects of the Planning Act.**

This proposal is not consistent with the the Objects of the Planning Act. A full copy of Clause 2A Objects of the Planning Act, is at Attachment B.

© effective controls and guidelines for the appropriate use of land having regard to its capabilities and limitations;

(d) control of development to provide protection of the natural environment, including by sustainable use of land and water resources;

(e) minimizing adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development;

(f) ensuring, as far as possible that planning reflects the wishes and needs of the community through appropriate public consultation and input in both the formulation; and

(g) fair and open decision making and review processes.

## **7. Summary**

**\* Presentation of the proposed Planning Act Amendment is both inadequate and superficial. No lead up time, too much haste, lacking in explanations, consultation, or honed drafts. Instead there has been rushed, secrecy within a select group, no exhibition period, and no public consultation.**

- Where 'consultation' was mandatory (two days), three councils at least, are known to have rejected the proposed change of the reporting role to the NT Planning Commission, instead of local DCA panels.**

- **No reason given for introducing change.**
- **The defined role of the Planning Commission is long term strategic planning. Members lack NTPS and development assessment experience.**
- **Consultation by the Commission is seen by residents as favouring development opportunities not community need. No reason for confidence and trust.**
- **Commission members have no knowledge and experience dealing with development assessment or NTPS amendment manners, or local land capability or amenity. This is a required by the DCA. These matters are interactive.**
- **The proposal is unwieldy in practical terms, because relevant issues are beyond it scope.**
- **Steps leading to the proposed amendment of the Planning Scheme have been in secret, inadequately researched, and untested.**
- **The formulation of the proposal is highly questionable, because of the secrecy, and the sidelining of experienced planners (Attachment A).**
- **The proposal is inconsistent with the formal Objects of the Planning Act (Attachment B).**
- **The proposed introduction on 20 June, 2016, is pre-emptive. It places the community in an unfair and compromised position.**
- **Rushed actions taken to pass this bill, and pre-emptive moves to advance it in secret are not worthy of the present NT Government.**

## **8. Recommendations**

### **8.1 That the Opposition does all in its power to have this**



**proposed amendment to the Planning Act withdrawn.**

**8.2 That the Opposition does all in its power to prevent the passing of this amendment bill.**

**8.3 That if the amendment passes, every effort be made to rescind it as soon as possible.**

**M A CLINCH**

**Convener**

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Amendments A and B send separately because of volume limit on email.

