TO THE NORTHERN TERRITORY GOVERNMENT,

PLan's NOTES ON THE NTG's PROPOSED 'PLANNING REFORM'

The Government says it wants better planning outcomes.

This is PLan's submission, with information from the community.

DOCUMENTS

The three documents supporting this reform process are:

Booklet A. Consultation Outcomes Report - (33 pages). Here Elton summarises public survey input October-December, 2017.

This is a useful information and opinions sharing document.

A chart on Page 19 provides percentage opinions on seven key planning system questions.

Booklet B. Planning Reform Directions (Dark Blue Cover-12 pages)

This second booklet is very different from the first. It suddenly jumps to outlining specific sweeping changes proposed as amendments to the *Planning Act* and *NT Planning Scheme*. It is as if each proposed change was endorsed by a mention in Booklet A.

Booklet B works on the basis that the necessary planning reforms are already clear, as if derived from the results of the ELTON Survey.

THIS IS SIMPLY NOT TRUE.

For instance, the first proposed change listed is to:

'Revise the purpose of the *Planning Act*, and refine the structure and principles of the *NT Planning System*'.

This is astounding. The Objects of the *Planning Act* (section 2A)are the very lifeblood, underpinning balanced planning.

Where in the Booklet A survey is it stated by the community that the Objects of the Planning Act should be changed ?

These Objects have been in place for many years.

Booklet B introduces both Phase 1 and Phase 2 of the planning reform amendments actually proposed by the NTG, with references to where they will appear in the new instruments. This has serious implications.

Most people have had very little involvement with the planning system, and how it works. Many have said that they find this review, and the way it saysit proposes to achieve good overall planning very complex and difficult to understand.

The normal staged government legislation change process of presenting first green, then white papers, with legislators then drafting proposed agreed amendments would have been much better, and have gained more trust.

Booklet C. Planning Reform Phase 1-Priority Reforms *(*White Cover*)* (19 pages)

1. This booklet details the changes suggested in Booklet B, discusses them, and then recommends the wording for most of the individual proposed amendments, as if now ready for Phase 2.

In my view, many of the people attending ELTON 'review' sessions were pressured step by step to ' go along' or 'agree' that these proposals, even just by session time pressures or group pressures.

A moment previously they may not have even known about the proposals, their place in the system, or their impact on good planning. They were however involved in crucial decision making about the outcomes in the planning system.

It was put to me that agreement was being sought without knowing the ultimate outcomes. We were often told that time was short. Often for the participants this was their first exposure to any part of the planning system, how it works, or the relevant terminology. There was not time to discuss or digest, and I had to stop.

2. A main objection by the community is that inappropriate developments, particularly oversized and insensitive ones, are too often approved, sometimes for political reasons, rather than for good planning. This was recognized in Booklet A.

It is well known that developers prefer the flexibility of 'policy' above quantifiable regulation. They seek opportunities to be assessed on performance outcomes, rather than prior prescription. Interpretation is king, and fine tuning can slip away.

3. The newly established *NT Planning Commission* has been made responsible for identifying future 'developer opportunities' for commercial, including large new residential developments.

The community has frequently expressed concern about its jargon-dominated theoretical models for Area Plans, such as 'activity centres', and artificial modeling in a future time span. Land capability and environmental issues, climate change, social and cultural issues, and public community rights have been easily ignored in the processes used. There has been superficial consultation, with not enough community input.

4. This strategic planning was previously done by a small section within the mainstream planning organisation by very experienced and informed planners. Strategic planning does not warrant a separate NT Planning Commission. It should revert to the main stream, and share its routine administrative resources, with some appropriate

professional staff supplementation at times when there are major strategic developments. There is no real role for a permanent elevated NT Planning Commission with its expensive separate elite Board, meeting only occasionally, and the need for a wasteful and confusing duplicated second structure of hearings and decision making under the same Minister. The Chairman has already been in part seconded to very important responsibilities associated with the newly developing NT Oil and Gas industry.

This booklet seems to be largely an agenda covering the developers. For a long time, there have been other issues than development approval to be considered in order to achieve good sustainable planning in urban, suburban, rural and remote areas, within both tropical and desert NT environments.

5. STRATEGIC LAND USE PLANNING, NTPS, ETC. (White Booklet, pages 4-5)

The NT Planning Commission is unnecessary as a permanent body. Its central role of providing Area Plans will soon be completed.

Its everyday existence rests on a principle of densification, now enshrined in NTPS by Amendment 387, and the NT Compact Urban Growth Policy. This is inappropriate to the Northern Territory which does not have the land shortages and continued population pressures suffered by Sydney and Melbourne.

The late amendment of the *Planning Act* involving the *NT Planning Commission* was rushed tough in the last days of the CLP Government, without proper notice or public consultation, particularly with local government, by Minister Tollner. It should be cancelled, not consolidated permanently into the *Planning Act*.

Minister Tollner's action has resulted in a unwieldy and unsupported duplication of two planning assessment processes, one of which is unnecessary. There was really no need for two separate streams.

Tollner's action has resulted in the *NT Planning Commission* relying, even today, on the professional planners of the mainstream planning section (Development Assessment Services) to carry out the professional advice assessment of *NT Planning Scheme* applications, reporting at hearings, and professional technical support for decision making.

The infrequency of *NT Planning Commission* hearings does not justify a separate organisation chart component for professional staffing there. As before, assessment and reporting for both DCA and *NT Planning Commission* hearings can be done by the same professional staff without an extra staff structure. The Chairman of the NT Planning Commission - Mr David Ritchie- has now been allocated an unrelated second responsibility by the Chief Minister.

Thus it is sensible in both administrative and budgetary terms, not to persist with the expansion of the *NT Planning Commission* as a separate entity (post Minister Tollner), but to re-combine the two arms of the mainstream planning system into one. The key is to keep professional and experienced planning staffing at sufficient levels to keep pace with ongoing strategic plan issues. Otherwise they can possibly get out of hand through only being attended to only every ten years or so.

Bringing the two streams back together would also answer another current processing problem. That is how to support the Minister in final decision making when dealing with matters presently set for *NT Planning Commission.* With a re - combining of the two planning system streams, the Minister could be directly advised professionally on all types of decisions falling within that his/her decision making responsibilities.

6. NT PLANNING SCHEME (NTPS),ETC (White Booklet, pages 5-9)

The NTPS contains essential zoning, and other important systems and principles. It has been built up over the years by Planning Scheme Amendments.

The Objects of the *Planning Act* are clear and balanced. These should in no way be weakened in favour of broad policy which relegates them and changes their purpose in comparison to the NTPC, in spite of claims of greater transparency.

7. DEVELOPMENT ASSESSMENT, AND APPLICATION PROCESSES. (White Booklet, pages 10-13)

It is agreed that the community will be able to continue to rely on the NTG being responsible routinely for providing printed, and on - line information about development applications, assessment processes, hearings and decision making.

The weekly *Planning Notices* of development applications, including land clearing, and special proposed changes, must continue officially in the *NT News,* and also on informative site notices, regardless of any other method of advice. Facebook and social media are not official.

The archived section of the notices should now be freely available to the public.

The official Land Information System on line, showing land ownership should be freely available to members of the public.

There should be easy access to DCA reports and decisions, not always dependent on computer access.

It is agreed as at 2.2.1, that there be pre-application mandatory community consultation in cases where High Impact Development is expected. This needs to be defined broadly, but carefully, and not restricted only to possible impact on amenity and/ or environment. Development Assessment Services, and not the applicant, should be responsible for setting up such consultations.

Where appropriate post exhibition meetings should be available between applicant and potential submitters.

In each case the exhibition period for applications should be 28 days.

Just as there is now a ONE STOP SHOP for planners to help developers making applications, a COMMUNITY ADVOCATE should give information on how submissions are to be made. Development Assessment Services (DAS) has made a useful beginning, with a switchboard information number. This needs to be more publicised.

Relations between (DAS) and the community should be normal, promoting transparency and trust in the planning system. There should be more confidence, more understanding both ways. Less protective attitudes amongst professional planners are necessary. To some community is being treated as the 'enemy'.

'Minor' applications may appear simple, but must be handled seriously. Excessive demands over such as lot size, parking, setbacks, height, and the placement of sheds and containers should be avoided, because the impact soon adds up in terms of urban degradation. Public urban degradation lies in such easy precedents.

Pleasant streetscapes, once carefully monitored, are important in good planning. Buildings, including homes, should address the street. Setbacks, with tidy gardens, trees and open space, on residential lots are important for appearance, recreation and play. This is as important in multiple dwellings as i single dwellings, including rentals.

8. DEVELOPMENT CONSENT AUTHORITY(DCA)PROCESSES
(White Booklet, pages 13-15)

For a very long time, the community has had little trust in the DCA to make balanced decisions.

There is strong objection to the more recent use of the Conditional Precedent form of approval, with impacts like traffic not being assessed before locking in development approvals. Such is strongly the case with the 4 Blake Street decision.

The community becomes strongly dissatisfied with any lack of balanced decision making, calling for change.

Decisions have been seen to be made on political, or broad general policy bases.

Hearings should be held outside working hours, allowing all participants equally to attend.

The DCA, not the DAS planning staff, must clearly demonstrate, in writing, that it has actually taken every part of Section 51 of the *Planning Act* seriously in the assessment of all applications. It does not appear to have being doing so.

Planners should not be permitted to write reports that are properly DCA reports, and/or recommend the decision to the Chair, or panel of the DCA in writing, or otherwise. It is not 'balance' to do so, as has been recently claimed by some planners. Some of these reports have been extremely poor.

We have been appalled and angered by how some community submissions have been downplayed by 'professional' planners.

Many do not understand and ignore the real meaning of 'culture'.

For some time, planners have been routinely making written recommendations to the DCA even before applicants and submitters have made their verbal presentations at DCA hearings.

Applicants must vacate the presentation table after finishing their presentation to allow submitters to properly address the DCA.
The planning system has for a long time ignored consideration of the essential provision of parks, open spaces, community purpose land, and other not for profit facilities as parts of applications, or separately.

Pathways must be established for the creation of these essential elements of social planning.

This is particularly the case with high rise development in the CBD, and new suburbs when residential lots have been made smaller as part of increased densification. Since developers do not see this as their responsibility, it must be made a separate proper task for the planning system.

No pathway for providing for these social functions has been in place for over twenty years. The rights and mental/recreational wellbeing of the public have been denied. Common law rights to open spaces and the special character of natural urban environments as Conservation Zones has been abused.

The DCA should be renamed the *Northern Territory Planning Authority* to encapsulate its wider responsibility than assessing development applications only.

Responding service authorities must use their expertise to address any relevant specifics, and not just routinely submit general statements of agreement.

9. DEVELOPMENT CONSENT AUTHORITY PANELS. (White Booklet, page 13)

It is not agreed that the Chair of the DCA should be a lawyer. Most important is a knowledge of planning, aspects of planning, and their wide and narrow implications.

At the start of their tenure, members of all DCA panels must receive education and training in their tasks and responsibilities.

Each panel should be appropriately composed with Local Government nominees, and community members. Each should carry out their particular role, and not follow other preferences. Community members should remain in communication with the public.

DCA members should not behave as pro-development agents or

political representatives, or in any other biased way.

A DCA code of conduct, must make all conflicts of interest declared.

Reports of reasons for decisions should not be just general statements, but informative, and easily understood by the community. The votes of each member must recorded for the public scrutiny.

An informative professional DCA Annual Report should be prepared promptly by the Chairman for the Legislative Assembly.

10. APPEAL RIGHTS FROM DECISIONS (White Booklet, p14.)

There is currently an imbalance in the Appeals process. Appeals by third parties are severely restricted. A genuine appeal system is essential to the integrity of the DCA, and its processes.

Third parties need to be given the same time for an appeal as applicants.

The right to appeal should not be governed by neighbourhood proximity, or limited to particular cause, such as 'amenity' or review.

Appeals can be made to the NT Civil and Administrative Tribunal(NTCAT) or to a full court jurisdiction.

As a right, third party appeals should now be extended not only to submitters with land situated in RL(Rural Living zones) but also to submitters in the CB (Central Business), as this is now a prime residential zone. There should be no limit for 'standing'.

An effective and accessible Appeals process is a deterrent to misuse of the planning system and its processes.

Appeals were previously heard in the *NT Land and Mining Tribunal.* As a tribunal, it was established that Appeals should not be dependent of formal legal participation, but that the emphasis be on

interpreting planning and its rules.

As it is a tribunal, this should also be the case with planning appeals in the *NT Civil and Administrative Tribunal (NTCAT*). This is a combined purposes administrative tribunal, rather than a formal court but it should must special planning expertise.

11. TIME ISSUES WITH DEVELOPMENT APPLICATIONS AND THE HANDLING OF ADDITIONAL INFORMATION AND APPLICANTS VARIATIONS

11.1 We agree with reference 3.2.1 that there be a serious time limit for deferred applications to prevent them falling into limbo.

11.2 Time limits must apply for activating permit use, or be withdrawn.

11.3 A third area timewise, is the 'variation situation'. Here the applicant submits additional or changed information, post exhibition. The submitter then rarely has time to review the new information in the three or four days set by DAS before the DCA hearing.
The amended application should be withdrawn and resubmitted as a new application. At present the usual practice is for it to proceed, but this disadvantages submitters.

12. EDP's AND CONCURRENT APPLICATIONS (White Booklet, pages 14-15.)

EDP's must be redefined as they were originally intended, thus putting an end to the unfortunate continued opportunist wasteful misuse of this device. What appears simple can easily lead to decision making uncertainties which can become a longterm threat to the reputation of ministers.

Concurrent applications should be withdrawn. Some appear simple, but some the combinations proposed are unworkable. There is more

saving in this for developers who use separate applications, in case the ‘concurrent' one does not succeed.

13. COMPLIANCE AND ENFORCEMENT AND MISCELLANEOUS RELATED ISSUES (White Booklet, pages 16-19.)

Several issues important to the community arise here. Attention to these issues is overdue.

For a planning system to work, enforcement of compliance must be effective. This requires sufficient levels of dedicated competent staffing, with enforceable legal processes in place.

13.1 Compliance depends on respect for the planning system and its processes, including the NTPS, and integrity based decision making.

This Planning Reform exercise confirms that tightening compliance is long overdue. New powers, authorities and tools, are urgently needed, as well as a will to prosecute. We support this, knowing that abuse has long persisted.

Two examples are the illegal clearing of no.1 Boulter Road. In this case Minister Tollner told the community that the penalties were not sufficient to warrant pursuit. Those responsible for the illegal clearing were known.

Another serious non compliance is the refusal over many years to remove the illegal stockpile from Conservation zoned land on the Kulaluk lease at Ludmilla.

Familiar non-compliance situations include the misuse of zoned land, especially Conservation land, illegal dumping, failure to activate development permits within two years, development non - compliances in building, like ignoring setbacks, poor drainage provision, failure to rehabilitate land used commercially, excessive noise and air pollution, clearing of large areas of natural bushland, and not maintaining bushland free of certified weeds.

We are pleased that planning staff are actively investigating stronger, practical compliance, enforcement and penalties to deter not compliance.

Existing Use Rights are also being addressed(p16). We appreciate that the passing of time can be a legitimate factor in some existing use rights matters. However, the local community would very angry if this category was applied wrongly retrospectively to cases like the polluting 'Minmarama Stockpile' on Conservation land, on the Kulaluk lease in Ludmilla.

This stockpile was declared illegal years ago by the Planning but never 'moved by' Minister Tollner. The developer had applied unsuccessfully to retain it as a going concern on site for another 15 years, but was refused. Even though given a very generous time allowance because it may have been inconvenient to move the fill promptly, the developer has never moved the mounds of the fill. This developer appears to have impunity.

Whilst we would support responsible compliance by body corporates, we regard it as unfair to penalise officers and individual members of body corporates not individually actually responsible for non compliant decisions of the corporate body, particularly if they do not support the non compliance (p18).

14. CONCLUSION

The word 'PLANNING' is a much more all embracing than the word 'DEVELOPMENT'- a much narrower economic term.

That needs to be recognised in a practical way by the NT Government, in order to achieve better planning for the whole of the community.

Planning is for people and includes sustainable social, cultural, environmental issues, as well as long term economic ones.

Many planning issues are not addressed in the Planning Reform Document. It is seriously too narrow to really examine all necessary parts of planning responsibility.

Timely genuine public consultation with professional planners who listen, and can apply what they hear, is the key to better planning outcomes, and to an open government which the community feels it can trust.

M A CLINCH
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