

TOWN PLANNING ORDINANCE 1977

1319

No. 53 of 1977

An Ordinance to amend the *Town Planning Ordinance*

[Assented to 12 December, 1977]

BE it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

1. This Ordinance may be cited as the *Town Planning Ordinance* 1977. Short title
2. The *Town Planning Ordinance* is in this Ordinance referred to as the Principal Ordinance. Principal Ordinance
3. The several sections of this Ordinance shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette*.* Commencement
- 4.(1) Section 3(1) of the Principal Ordinance is amended— Definitions
 - (a) by inserting before the definition of “available local member” the following definition:

“‘Appeals Committee’ means the Town Planning Appeals Committee constituted by this Ordinance”;
 - (b) by inserting in the definition of “Residential C land” after “scheme” (first occurring) the words “that was approved before 31 December 1977”; and
 - (c) by adding at the end of the definition of “the Darwin Town Plan” the words “, and includes the Darwin Town Plan as amended from time to time and, where the Darwin Town Plan is amended by way of repeal and replacement, includes the new Darwin Town Plan as amended from time to time”.
- (2) Section 3 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-sections:
 - “(2) In this Ordinance, unless the contrary intention appears—
 - (a) a reference to an amendment of a town planning scheme (or town plan) includes a reference to a repeal and replacement of the scheme; and

* The date fixed was 14 December 1977 (see *Northern Territory Government Gazette* No. 49A of 14 December 1977, page 1).

Town Planning

- (b) a reference to a town planning scheme (or town plan) includes a reference to that scheme as amended from time to time (including amendments by way of repeal and replacement) and, if it has been repealed and replaced, includes a reference to the new town planning scheme and to the new scheme as amended from time to time.

“(3) For the purposes of this Ordinance, a town plan may be cited by reference to the name of the town to which it relates or by reference to the name of that town and the calendar year in which the proposals for the town planning scheme were prepared, were first exhibited or were approved.”.

5. After section 8 of the Principal Ordinance the following section is inserted:

Town Planning
Appeals
Committee

“8A.(1) For the purposes of this Ordinance there shall be a committee, to be known as the Town Planning Appeals Committee.

“(2) The Appeals Committee shall consist of 3 members, namely—

- (a) a person who is enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years; and

(b) 2 other persons, each of whom—

(i) is a duly qualified civil or structural engineer practising in the Northern Territory, being a person who is a corporate member of the Institution of Engineers of Australia;

(ii) is an architect registered under the *Architects Ordinance*; or

(iii) is, or is entitled to be, a corporate member of the Royal Australian Planning Institute.

“(3) The members of the Appeals Committee shall be appointed by the Executive Member.

“(4) The person referred to in sub-section (2)(a) shall be the Chairman of the Appeals Committee.”.

Tenure, &c.
of office

6.(1) Section 8(1) of the Principal Ordinance amended by inserting after “available local members” the words “of the Board and members of the Appeals Committee”.

(2) Section 9 of the Principal Ordinance is amended by inserting after sub-section (2) the following sub-section:

“(2A) In the event of a member of the Appeals Committee ceasing to hold office before the termination of the period of his appointment, a person may be appointed to be a member of the Appeals Committee in his place for the remainder of that period.”.

(3) Section 9(3) of the Principal Ordinance is amended—

- (a) by inserting after “Board” (first occurring) the words “or Appeals Committee”; and
- (b) by inserting after “Board” (second occurring) the words “or Appeals Committee, as the case may be”.

7.(1) Section 10(1) of the Principal Ordinance is amended—

Vacation of office

- (a) by inserting after “available local member” (first occurring) the words “of the Board or a member of the Appeals Committee”;
- (b) by inserting in paragraph (b) after “Board” the words “or Appeals Committee, as the case may be,”; and
- (c) by inserting after “available local member” (second occurring) the words “of the Board or the office of the member of the Appeals Committee, as the case may be.”.

(2) Section 10 of the Principal Ordinance is amended by inserting after sub-section (2) the following sub-section:

“(2A) If a member of the Appeals Committee has a direct or indirect interest in land contained in an area in respect of which the Appeals Committee is considering a matter, he shall, as soon as possible after he knows that he has the interest and that the Appeals Committee is considering the matter, disclose his interest to the Appeals Committee at a meeting of the Appeals Committee.”.

(3) Section 10(3) of the Principal Ordinance is amended by inserting after “Board” the words “or Appeals Committee, as the case may be”.

8.(1) Section 11(1) of the Principal Ordinance is amended by inserting after “available local member” the words “of the Board or of a member of the Appeals Committee”.

Dismissal and resignation of members and available local members

(2) Section 11(3) of the Principal Ordinance is amended by inserting after “available local member” the words “of the Board or a member of the Appeals Committee”.

9. Section 12(1) and (2) of the Principal Ordinance is amended by inserting after “Board” (wherever occurring) the words “or Appeals Committee as the case may be”.

Deputy Chairman

10. Section 13 of the Principal Ordinance is amended by inserting after “available local member” the words “of the Board or to a member of the Appeals Committee, as the case may be.”.

Leave of absence

11. After section 13 of the Principal Ordinance the following section is inserted:

Acting member

“13A.(1) Where there is or is expected to be a vacancy in an office of Chairman, ordinary member or local member of the Board or member of the Appeals Committee, or the occupant of such an office is or is expected to be absent or unable to act, the Executive Member may, by instrument in writing, direct a person who is qualified to hold the office to act in the office.

“(2) The power of the Executive Member under sub-section (1) includes power to direct a person to act in an office from time to time during the absences and inabilities to act of the occupant of the office.

“(3) A person who, in pursuance of this section, is directed to act in an office has, while he is so acting, all the powers and functions of the holder of that office and this Ordinance applies to and in respect of him as though he was the holder of that office.”.

Fees, allowances and expenses

12. Section 14 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

“(2) The Chairman and members of the Appeals Committee shall be paid, in respect of attendance at meetings of the Appeals Committee, or while engaged, with the prior approval of the Appeals Committee, on business of the Appeals Committee, such fees, allowances and expenses as the Administrator in Council determines.”.

Calling of meetings

13. Section 15(1), (2) and (3) of the Principal Ordinance is amended by inserting after “Board” the words “or Appeals Committee as the case may be”.

Procedure at meetings

14. Section 16 of the Principal Ordinance is amended by inserting after sub-section (1) the following sub-section:

“(1A) At a meeting of the Appeals Committee—

- (a) 2 members form a quorum;
- (b) the Chairman, or if he is not present the Deputy Chairman, shall preside;
- (c) all questions shall be decided by a majority of the members present; and
- (d) the Chairman, or if he is not present the Deputy Chairman, has a deliberative vote and, in the event of an equality of votes, also has a casting vote.”.

15. After section 17 of the Principal Ordinance the following section is inserted in Part II:

Functions of Appeals Committee

“17A. The functions of the Appeals Committee are—

- (a) to hear and determine an appeal against a decision of the Board given under section 38A(7); and

- (b) to hear and determine an appeal against a decision of the Board on an application to develop land in an area where development is not permitted without the consent of the Board.”.

16.(1) Section 28(2) of the Principal Ordinance is amended—

- (a) by omitting from paragraph (a) “and traffic” and substituting “, traffic and parking”;
- (b) by omitting from paragraph (b) “the location” and substituting “the location, development and use”;
- (c) by inserting after paragraph (c) the following paragraph:
“(ca) the regulation of space around buildings;” and
- (d) by omitting from paragraph (e) “zones” and substituting “zones, sites and reserves”.

Proposals to be included in town planning schemes

(2) Section 28 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:

“(3) Proposals for a town planning scheme may include—

- (a) maps; and
- (b) schedules providing for and in relation to—
 - (i) the interpretation of and the giving effect to the maps; and
 - (ii) the prohibition or regulation of the use of lands represented on the maps.

“(4) Without limiting the generality of sub-section (3), where a schedule to a map prohibits the use of an area of land represented on the map for a purpose that is indicated except with the consent of the Board, that consent may be conditional.”.

17. Section 30(1)(a) of the Principal Ordinance is amended by inserting after “proposals” the words “, together with, in the case of proposals for a new town planning scheme or for a repeal and replacement of a town planning scheme, the by-laws relating to the proposed scheme,”.

Proposals to be exhibited publicly

18. Section 35 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (d) “and”; and
- (b) by adding at the end thereof the following word and paragraph:
“; and (f) in the case of proposals for a new town planning scheme or for a repeal and replacement of a town planning scheme, the by-laws relating to the proposed scheme,”.

Proposals to be submitted to Administrator in Council

Powers and duties of Administrator in Council when proposals are submitted

19.(1) Section 36(1) and (2) of the Principal Ordinance is amended by inserting after "proposals" (wherever occurring) the words "and by-laws".

(2) Section 36(1)(b)(ii) of the Principal Ordinance is amended by inserting after "scheme" the words "and by-laws".

Scheme to have full effect on publication of notice of approval

20. Section 37 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

"(2) Where a town plan is repealed and replaced—

- (a) an application for an amendment of the former town plan or for approval to develop or use land, made before the repeal, continues to have effect, changing what needs to be changed, as though the new town plan had been in operation on the date on which the application was made and it had been made in respect of the new town plan;
- (b) a prosecution for an offence committed before the repeal may, if the action founding the prosecution is still an offence, be continued as though the repeal had not been effected; and
- (c) action may be taken under sections 58 to 68 inclusive as though the repeal had not been effected."

21. After section 37 of the Principal Ordinance the following section is inserted:

By-laws

"38.(1) The Board may make by-laws, not inconsistent with this Ordinance or the regulations, prescribing all matters required or permitted by this Ordinance to be prescribed by by-laws or necessary or convenient to be so prescribed for carrying out or giving effect to a town planning scheme.

"(2) Without limiting the generality of sub-section (1), the by-laws may make provision for and in relation to—

- (a) the prohibition or regulation of the development of lands represented on a map of a scheme;
- (b) the implementation and administration of the scheme.

"(3) A by-law made under this Ordinance—

- (a) has no effect unless it is confirmed by the Administrator in Council; and
- (b) comes into operation on the day on which notice of the confirmation of the by-law by the Administrator in Council is published in the *Gazette* or, if a later day is specified in that notice as the day on which it comes into operation, on that later day.

“(4) By-laws, when they are confirmed in pursuance of sub-section (3), shall be deemed to be regulations for the purposes of the *Interpretation Ordinance* and the *Regulations Publication Ordinance*.”.

22.(1) Section 38A of the Principal Ordinance is amended by inserting after sub-section (2A) the following sub-section:

Applications for amendment of town planning scheme

“(2B) A person who is required by sub-section (2) to publish a notice shall, if so required by the Chairman, in addition to publishing that notice, display prominently on his land for a period of 28 days a sign approved by the Chairman stating that he has applied for amendment of the town plan and specifying the change applied for.”.

(2) Section 38A(8) of the Principal Ordinance is amended by omitting paragraph (b).

(3) Section 38A of the Principal Ordinance is amended by inserting after sub-section (8) the following sub-sections:

“(8A) A person who receives a notice in pursuance of sub-section (8) may, not later than 28 days after he received the notice, appeal to the Appeals Committee against the decision of the Board.

“(8B) If, after the hearing of all appeals, if any, made under sub-section (8A), the application is approved, the Board shall submit the application to the Administrator, together with each objection, if there are any objections, its decision on the application, its reasons for making that decision and, if there are any appeals, the decision of the Appeals Committee and the Committee’s reasons for its decision.”.

“(4) Section 38A(9) of the Principal Ordinance is amended by omitting “within 14 days of the day on which an application is submitted to him under sub-section (8)”.

23. After section 38A of the Principal Ordinance the following sections are inserted:

“38B. Where it is unlawful to develop an area of land without the consent of the Board, section 38A applies to and in relation to an application to develop that land as though the application to develop was an application to amend the town planning scheme relating to that area of land and the applicant was able to make the application, but the references in section 38A(2), (2B), (12) and (14) to an amendment of the town planning scheme shall be read, changing what needs to be changed, as references to a development application.

Development applications

“38C. Where the Board approves a development application, it may impose conditions on its approval, including a condition that the applicant enter into a contract relating to the development to ensure that, if the development is commenced, it is completed to the satisfaction of the Board.

Contracts to develop

Appeals

“38D.(1) The Administrator may appoint a person to be the clerk of the Appeals Committee.

“(2) An appeal to the Appeals Committee shall be instituted by lodging with the clerk a notice of appeal setting out details of the grounds of the appeal.

“(3) The grounds of appeal shall be that the Board—

- (a) failed to inform itself properly;
- (b) did not give the appellant a reasonable opportunity to present his case;
- (c) did not consider proper town planning principles;
- (d) could not, on the evidence, reasonably have come to its decision; or
- (e) imposed conditions which were unreasonable,

“(4) Upon the institution of an appeal, the clerk shall set a date for the hearing of the appeal and notify all parties—

- (a) of the name of the appellant and grounds of the appeal; and
- (b) the date, time and place where the appeal will be heard.

“(5) On the hearing of an appeal—

- (a) the Chairman and each person who is given a notice in pursuance of section 38A(8) are parties;
- (b) the procedure of the Committee is within the discretion of the Committee;
- (c) the Committee is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
- (d) the Committee shall act without regard to technicalities and legal forms.

“(6) At the hearing of an appeal, a party may be represented by a barrister or solicitor having the right to practise in the Supreme Court or by any other person authorized by the party in writing.

“(7) The Committee may adjourn the hearing of an appeal from time to time.

“(8) If a party does not appear on the hearing of an appeal or on the resumption of the hearing after an adjournment, the Committee may, in its discretion, continue the hearing in his absence and, if he is the appellant, dismiss the appeal.

“(9) The Committee shall hear the appeal and shall—

- (a) confirm the decision of the Board; or

(b) give to the Board such directions as it thinks fit.

“(10) The Committee shall give written reasons for its decision.

“(11) The Board shall comply with a direction given to it under sub-section (9).”.

24. Section 39(1) of the Principal Ordinance is amended by inserting after “scheme” (first occurring) the words “that was approved under section 37 before 31 December 1977”. Permitted use of land

25.(1) Section 42 of the Principal Ordinance is amended by omitting sub-section (1). Carrying on resident's profession, &c. permitted on residential land if Administrator approves

(2) Section 42(3)(a) of the Principal Ordinance is amended by inserting before “apply” the words “as in force on 31 December 1977”.

(3) Notwithstanding the amendment effected by sub-section (1), a person who, immediately before 1 January 1978, held an approval under section 9 of the *Darwin Town Area Leases Ordinance* may continue to act in accordance with the approval while the approval remains effective.

26. Section 43(1) of the Principal Ordinance is amended by inserting after “Land” the words “that is subject to a town planning scheme that was approved under section 37 before 31 December 1977 and”. Use of land for certain ancillary purposes

27. Section 44 of the Principal Ordinance is amended—

(a) by omitting “this Ordinance” and substituting “this Ordinance or in contravention of the scheme or of by-laws supplementary to the scheme”; and

(b) by omitting “400 dollars and, in addition, 40 dollars” and substituting “2000 dollars and, in addition, 200 dollars”.

Prohibited use of land an offence

28. After Division 1 of Part IV of the Principal Ordinance the following Divisions are inserted: Interpretation

“Division 2—Approvals by Darwin Reconstruction Commission

“47. (1) In this Division, unless the contrary intention appears— ‘Act’ means the *Darwin Reconstruction Act* 1975;

‘prescribed date of commencement’, in relation to an approval given by the Commission under section 15(1) of the Act, means—

(a) in a case, not being a case referred to in paragraph (b), where the land in respect of which the approval was given is the subject of a lease from the Crown by reference to which there is an ascertainable date, being a date after 1 January 1978, on or before which building

is to be commenced—that date or, if the time for commencement is extended, the expiry date of the last extension;

(b) in a case where by reference to that approval there is an ascertainable date, being a date after 1 January 1978, on or before which the approved building work was to be commenced—that date or, if the time for commencement is extended, the expiry date of the last extension; or

(c) in any other case—31 December 1978;

‘prescribed date of completion’, in relation to an approval given by the Commission under section 15(1) of the Act, means—

(a) in a case, not being a case referred to in paragraph (b), where the land in respect of which the approval was given is the subject of a lease from the Crown by reference to which there is an ascertainable date, being a date after 1 January 1978, on or before which building is to be completed—that date or, if the time for completion is extended, the expiry date of the last extension;

(b) in a case where by reference to that approval there is an ascertainable date, being a date after 1 January 1978, on or before which the approved building work was to be completed—that date or, if the time for completion is extended, the expiry date of the last extension; or

(c) in any other case—31 December 1979.

“(2) In this Division, unless the contrary intention appears, a word or expression used in the Act has the meaning that it has in the Act.

Building
approval

“48.(1) Notwithstanding anything contained in any other law in force in the Northern Territory, a person may at any time on or before the prescribed date of commencement in relation to an approval given by the Commission under section 15(1) of the Act commence building work in pursuance of the approval, if the work is commenced in accordance with any conditions to which the approval was subject.

“(2) Notwithstanding anything contained in any other law in force in the Northern Territory, a person may at any time on or before the prescribed date of completion in relation to an approval given by the Commission under section 15(1) of the Act continue and complete building work in pursuance of the approval, if the work is continued and completed in accordance with any conditions to which the approval was subject.

“(3) For the purposes of this section, the Administrator in Council may, in his discretion and subject to such conditions as he may impose, on application made before or within 6 months after a prescribed date of commencement or completion in relation to an approval—

- (a) extend the time for commencement or completion, as the case may be of the approved work; and
- (b) grant such other extension of time as he thinks fit for the purpose of making the first-mentioned extension fully effective.

“(4) Nothing contained in sub-section (3) prevents the granting of an extension of time under any other law in force in the Northern Territory.

“49.(1) A person may request the Administrator to issue to him a memorandum of an approval to him under section 15(1) of the Act.

Memorandum
of approval

“(2) Where the Administrator receives a request under sub-section (1) and he is reasonably satisfied, on the balance of probabilities, that the relevant approval was given, he shall issue a memorandum of the approval in the terms that he considers, on the balance of probabilities, were the terms of the approval, including conditions to which the approval was subject.

“(3) For the purposes of considering a request made under sub-section (1), the Administrator may take into consideration evidence that building work was commenced on or before 1 January 1977.

“(4) A memorandum of an approval issued under sub-section (2) is evidence that the approval was given and of the terms of the approval.

“50.(1) Notwithstanding—

- (a) anything contained in this Ordinance (except this Division);
- (b) anything contained in any other Ordinance under which a lease of land may be granted; and
- (c) any express or implied prohibition against use for a particular purpose contained in any lease or agreement,

Use of land
where approval
obtained

where—

- (d) building work has been completed on land in pursuance of an approval given by the Commission under section 15(1) of the Act and in accordance with any conditions to which the approval is subject; and
- (e) the use of the land for the purpose for which the approval was given is not permitted under the Darwin Town Plan,

that approval has effect, subject to this section and section 52, as though the Darwin Town Plan had been amended to permit that use.

“(2) Where the Commission gave an approval under section 15(1) of the Act and that approval purported to allow land to be used for the purpose for which the approval was given but only for a limited time or until the occurrence of an event, sub-section (1) ceases, upon the expiry of that time or the occurrence of that event, to have effect.

Use of land
where no
approval
obtained

“51.(1) Where building work on land was commenced in the Darwin Town Area after 24 December 1974 and completed before 31 December 1976, the Administrator in Council, after receiving a recommendation from the Board, may, upon being satisfied that to do otherwise would cause undue hardship, order that, subject to section 52 and for such time or until the occurrence of a specified event and on such conditions as are specified in the order, the Darwin Town Plan shall be read as though it had been amended to permit the use of the land for a purpose specified in the order.

“(2) Where an order has been made under sub-section (1), the Darwin Town Plan shall be read according to the terms of the order.

Cessation of
use

“52.(1) In this section ‘building’ includes a building in the course of completion.

“(2) Subject to this section, neither section 50 nor an order made under section 51 or sub-section (3) apply to permit the use of land or a part of land where—

- (a) the building on that land or part that was the subject of the order or the approval under section 15(1) of the Act is demolished;
- (b) that building is substantially damaged and the Board serves notice on the occupier or the holder of an estate of freehold or leasehold in that land or part that, in its opinion, the use should not be continued; or
- (c) for any cause the use is discontinued for a continuous period of 6 months.

“(3) Nothing contained elsewhere in this Ordinance or in any other law in force in the Northern Territory shall operate to make lawful the continued use of land for a purpose beyond the time when its use for that purpose is lawful by virtue of this section or section 50 or 51.

“(4) Where the effect of sub-section (2) is that a use of land ceases to be lawful, the Administrator in Council, on application by the user or a proposed user of that land, may, if he is satisfied that to do otherwise would cause undue hardship, order that, subject to this section and for such time or until the occurrence of a specified event and on such conditions as are specified in the order, the Darwin Town Plan shall be read as though it had been amended to permit the use of the land for a purpose specified in the order.

“(5) Where an order has been made under sub-section (4), the Darwin Town Plan shall be read according to the terms of the order.

“52A.(1) Where the Administrator issues a memorandum of approval under section 49(2) or the Administrator in Council makes an order under section 51(1) or 52(4), the Administrator shall forward to the Registrar-General a copy of that memorandum or order. Registration

“(2) Where the Administrator is reasonably satisfied, on the balance of probabilities, that an approval was given under section 15(1) of the Act, he may, notwithstanding that he has not received a request under section 49(1), forward to the Registrar-General—

- (a) a copy of that approval; or
- (b) a memorandum of the approval in the terms that he considers, on the balance of probabilities, were the terms of the approval, including conditions to which the approval was subject.

“(3) Upon receipt of a copy of an approval, memorandum or order in pursuance of this section, the Registrar-General shall register it and note its receipt on both the original and the duplicate copy of the lease or certificate of title of the land the subject of the approval or order.

“52B. Where, by reason of section 50, 51 or 52, land that is the subject of a Crown lease may be used for a purpose, then, while that section has effect to permit that use, section 38A applies to and in respect of the lease as though— Lease purposes

- (a) the Administrator had approved an application for an amendment of the Darwin Town Plan to permit that use; and
- (b) the conditions, if any, subject to which the land may be so used were conditions attached to the Administrator's approval.

Division 2A—Darwin Reconstruction Commission Plan

“52c.(1) The Administrator in Council may cause to be exhibited publicly in Darwin on or before 1 January 1978 the proposals for a planning scheme to replace the 1966 Darwin Town Plan that were made available for inspection by the public by the Darwin Reconstruction Commission on 1 October 1977 until 5 November 1977, with such modifications as the Administrator in Council approves. Modified
D.R.C. Plan to
be exhibited
publicly

“(2) If the Administrator causes proposals to be exhibited in pursuance of sub-section (1), he shall—

- (a) cause the public exhibition to be continued until the new scheme is approved under section 37 in its application by virtue of section 52D(2); and

- (b) cause notice of the exhibition to be published in a newspaper circulating in Darwin.

“(3) The notice referred to in sub-section (2)—

- (a) shall be published on a day that is not earlier than 25 December 1977 and not later than 8 January 1978; and
- (b) shall specify the place where the proposals are, or are to be, exhibited.

Effect of
exhibition

“52D.(1) If the Administrator causes proposals to be exhibited in pursuance of section 52C(1), the proposals shall have effect, on and from 1 January 1978, as though—

- (a) the Administrator had, in pursuance of section 29(1), directed the Chairman to prepare proposals for an amendment by way of repeal and replacement of the town planning scheme for Darwin;
- (b) the Board had, in pursuance of section 29(3), approved the proposals that were exhibited in pursuance of section 52C(1);
- (c) the Chairman had complied with sections 30 and 31 in relation to those proposals;
- (d) the *Darwin Reconstruction Act 1975* had been repealed before the proposals were first exhibited publicly in pursuance of section 30;
- (e) there had been no objections to the proposals; and
- (f) the Administrator in Council had approved the proposals in pursuance of section 36(1) and had given notice of his approval, in pursuance of section 37, in the *Gazette* on 1 January 1978.

“(2) Notwithstanding sub-section (1) but subject to sub-section (3), sections 31 to 37 inclusive apply to and in relation to proposals exhibited in pursuance of section 52C(1) as though—

- (a) sub-section (1) had no effect;
- (b) the Administrator had, in pursuance of section 29(1), directed the Chairman to prepare proposals for an amendment of the town planning scheme for Darwin;
- (c) the Board had, in pursuance of section 29(3), approved the proposals that were exhibited in pursuance of section 52C(1); and
- (d) the Chairman had, in pursuance of section 30(1)(a), caused the proposals to be exhibited publicly on and from 1 January 1978 and had otherwise complied with section 30.

“(3) When the Administrator in Council, in pursuance of section 37 in its application by virtue of sub-section (2), gives notice in the *Gazette* of his approval of the amendments of the town planning scheme for Darwin, that approval has effect to repeal and replace the scheme that, until that time, had effect by virtue of sub-section (1).”.

29.(1) Section 58(1) of the Principal Ordinance is amended—

- (a) by omitting “a town planning scheme that applies to” and substituting “, or otherwise than in compliance with, this Ordinance or a by-law made under this Ordinance, a town planning scheme or a condition imposed by, or in pursuance of such a by-law or scheme, being a by-law, scheme or condition that applies to or in relation to”; and
- (b) by omitting paragraph (a) and substituting the following paragraph:
 - “(a) to alter the structure in such particulars as the Chairman specifies;”; and
- (c) by omitting from paragraph (b) “to so alter the structure” and substituting “to alter the structure to make it possible to use the land in accordance with good town planning principles”.

Chairman may require owner of land to remove building or alter use of land, or demolish work, &c.

(2) Section 58(2) of the Principal Ordinance is amended—

- (a) by omitting “this Ordinance” and substituting “, or otherwise than in compliance with, this Ordinance or a by-law made under this Ordinance, a town planning scheme or a condition imposed by, under or in pursuance of such a by-law or scheme;”; and
- (b) by omitting “, being a use of the land that in the opinion of the Chairman is in contravention of this Ordinance”.

30. Section 59(2) of the Principal Ordinance is amended—

- (a) by omitting from paragraph (a)(i) “a town planning scheme that applies to” and substituting “, or otherwise than in compliance with, this Ordinance, a by-law, a condition or a town planning scheme that applies to or in relation to”; and
- (b) by omitting from paragraph (a)(ii) “in such a manner that it will be in conformity with the town planning scheme that applies to it” and substituting “in a manner, or in another manner, to make it possible to use the land in accordance with good town planning principles”; and
- (c) by omitting from paragraph (b) “this Ordinance” and substituting “, or otherwise than in compliance with, this Ordinance, a by-law, a condition or a town planning scheme”.

Application to the Tribunal for varying or discharging order

Penalty for failure to remove or alter structure if required to do so

31.(1) Section 66(1) of the Principal Ordinance is amended by omitting all the words from and including "400 dollars" and substituting "2000 dollars and, in addition, 200 dollars for each day during which the offence continues and, at any time after the person is convicted, the Chairman may request the Administrator—

- (a) to cause the structure to be removed or altered as required by the order or notice;
- (b) if the land is the subject of a lease from the Crown, to forfeit the lease; or
- (c) if the land is freehold, to sell the land."

(2) Section 66(2) of the Principal Ordinance is amended by omitting all the words from and including "if he thinks fit" and substituting: "if he thinks fit—

- (a) cause the structure to be removed or altered accordingly;
- (b) if the land is the subject of a lease from the Crown, exercise the power of forfeiture as though the lessee was in breach of covenant; or
- (c) if the land is freehold, exercise the power of sale as though the Administrator was a mortgagee."

Penalty for continuing a prohibited use of land

32.(1) Section 67 of the Principal Ordinance is amended by omitting all the words from and including "400 dollars" and substituting "2000 dollars and, in addition, 200 dollars for each day during which the offence continues and, at any time after the person is convicted, the Chairman may request the Administrator—

- (a) if the land is the subject of a lease from the Crown, to forfeit the lease; or
- (b) if the land is freehold, to sell the land"

(2) Section 67 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

"(2) Section 66(2) and (3) applies to and in relation to a request made under sub-section (1) as though that request had been made under section 66(1)."

Crown land not to be used by Commonwealth in contravention of town planning scheme or zoning plan except after reference to the Board

33. Section 71 of the Principal Ordinance is amended by omitting sub-sections (2), (3) and (4) and substituting the following sub-sections:

"(2) Where it is proposed to use land of the Crown or the Commonwealth in contravention of, or otherwise than in compliance with, this Ordinance or a by-law made under this Ordinance, a town planning scheme or a condition imposed by, under or in pursuance of such a

by-law or scheme, being a by-law, scheme or condition that applies to or in relation to that land, the Administrator shall make an application under section 38A or 38B, as the case may be, as though the land was an allotment of freehold and he was the owner.

“(3) Subject to sub-sections (4) and (5), where the Administrator makes an application under section 38A or 38B in its application by virtue of sub-section (1), that section applies, changing what needs to be changed, accordingly.

“(4) Notwithstanding section 38A(8B), the Board shall submit an application made for the purposes of this section to the Administrator whether or not it approves the application.

“(5) Where the Administrator in Council and the Board fail to reach agreement in relation to an application made for the purposes of this section, The Administrator in Council may give a direction to the Board, and the Board shall comply with that direction.”.

34. Section 73 of the Principal Ordinance is amended by adding at the end thereof: Regulations

“and in particular providing for and in relation to the charging of a fee for making an application for an amendment of a town planning scheme or an approval to develop land.”.
