

Darwin Central Business District

Planning for the future

A Capital City Committee project



Darwin City - a people place



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PART 1

WHAT WE HAVE AND WHERE ARE WE?

1. INTRODUCTION

1.1 Background

Over the years there has been considerable discussion on the future of Darwin (what is the vision, what is Darwin, how do you influence development).

In the past 4 years there have been three CBD/Capital City Forums at which the following issues were raised consistently:

- greater co-ordination in planning;
- setting a shared vision;
- pedestrian amenity – shade and shelter;
- streetscapes and landscaping;
- public art;
- urban design;
- public open space; and
- traffic and parking.

Australia's pre-occupation with urbanisation has created problems and challenges for most large cities in Australia.

Being a relatively small city and certainly the smallest Capital City, Darwin has the opportunity to learn from the experience of others and perhaps better plan for its growth and development over the next 20 years.

The recently released House of Representatives report on Sustainable Cities served to highlight many environmental issues that represent major concerns for the future of cities. The Chairman of the House of Representatives Environment and Heritage Committee has said:

“Healthy living cities are a community issue about our health, our well being, our future and our children. We have to engage the community and not just at government level.”

1.2 Capital City Committee

The Capital City Committee (a joint Darwin City Council and NT Government Group) was formed in February 2003 and has developed the “Capital City Charter”, a statement of intent, to achieve a greater level of co-operation and alignment between the Government and the Council in order to achieve better outcomes for Darwin.

The Committee agreed to a framework to:

- recognise Darwin's future as a strategic city;
- identify strategic issues supporting the economic, social and physical development of the city; and
- co-ordinate the delivery of outcomes from NT Government and Council, including the fostering of and achieving a high standard of urban design.

The Charter sees Darwin City being a "people place" and specifically provides for:

- a commitment to work together with the community to enhance the physical, social, cultural and environmental aspects of Darwin with a focus on the central business area;
- development that:
 - appropriately celebrate heritage;
 - respects the spatial content;
 - produces:
 - public spaces that encourage active use of space by residents and visitors;
 - active street frontages.
 - has an emphasis on design quality in the development approvals process.

1.3 CBD Planning Project

In order to achieve the outcomes set out in the Charter, the Capital City Committee undertook a review of planning controls that apply to the Central Business District.

The Central City Planning Project brief, copied at **Attachment A**, identifies the following issues for particular consideration:

- building height and plot ratio controls;
- site coverage controls;
- car parking; heritage;
- pedestrian amenity;
- the commercial use of public space;
- landscaping; and
- noise regulations.

Darwin City Council and the Department of Planning and Infrastructure provided a project team of two senior planners and a focus group was established to provide input into the project. The group consisted of a Council alderman as chair, the Government Architect, and representatives from the Chamber of Commerce, the Property Council of Australia, the Architects Institute of Australia (NT Chapter), the Building Designers Association and a representative from the Department of Planning and Infrastructure.

The project team researched the matters referred to in the brief and canvassed relevant policy, legislation and standards that impact on development in the CBD. Approaches to achieving better urban planning outcomes were sourced from other Australian jurisdictions.

The focus group requested that consideration of land use policy and development assessment processes should be included in the project, with specific reference to the Leading Practice Model published by the national Development Assessment Forum (DAF) in March 2005, and to Melbourne's Places for People as an example of leading practice in providing strategic vision.

2. OVERVIEW

During the project it became evident that, although there are differing views on certain matters, there is total support for a clear direction for the future.

Development of the CBD needs to be considered under the following three broad headings:

- | | | |
|-------------------|---|-----------------------------|
| Vision and Policy | - | big picture; |
| Guidelines | - | planning controls; |
| Process | - | applications and approvals. |

With this in mind the project attempted to deal with visionary aspects and the guidelines or controls to direct an outcome.

2.1 Vision and Policy

Without clear policy direction based on the community's vision, it is not possible for the CBD to develop in such a manner that achieves improved outcomes.

Topics such as: public space; streetscapes; and urban design principles are factors that influence the future livability of the city.

Decision makers, developers and the community need to have a vision for the future.

2.2 Guidelines

To ensure the shared vision is achieved, planning controls must be structured so as to produce the most appropriate outcomes.

The NT Planning Scheme and other related documents provide the means by which the vision can be achieved, and Part 2 of this report proposes a number of changes to the NT Planning Scheme.

Related documents could include strategies that relate to streetscapes, public art, public open space and car parking which have been prepared to guide authorities and developers on how the public domain and therefore the interface between private and public land should be developed.

2.3 Process

The processing of development applications is seen by some as complicated and costly. There is a need for a simplified system that provides for:

- improved integration between the Development Consent Authority and the Darwin City Council;
- more delegations of authority;
- developer forums;
- step by step guide.

3. RECOMMENDATIONS

Following is the summary of recommendations for endorsement of the Capital City Committee. These recommendations are discussed in detail in Part 2 of this paper.

In relation to BUILDING HEIGHT and DEVELOPMENT DENSITY:

- 1. That the planning scheme be amended to require the height of any part of any structure within the CBD zone to not exceed the height prescribed by the Defence (Area Control) Regulations.***
- 2. That the potential for any interface issues arising from building height or development density at the boundaries of the CBD zone be reviewed.***
- 3. That a 'tiered' approach to development assessment, such that 'common' development provisions would apply to all development in the CBD zone, and 'higher' urban design provisions would apply to more significant development, be explored further in consultation with the development industry.***

In relation to SITE COVERAGE and OPEN SPACE:

- 4. That important urban design issues relating to:***
 - the current site coverage provision of clause 17.2 of the Darwin Town Plan;***
 - the provision of a minimum area and quality of communal open space;***
 - the provision of a ground level landscape area for visual amenity;***
 - the provision of, and an acceptable definition of, viable private open space; and***
 - the provision, with commercial development, of a minimum area of ground level directly-accessible open space designed to enhance the amenity and quality of the public domain;******be considered further by the urban design advisory panel established in accordance with recommendation 12.***

In relation to CAR PARKING and PEDESTRIAN SAFETY:

- 5. That a car parking study be undertaken to calibrate existing parking generation formulae for the CBD zone against current parking demand for residential land uses in the CBD zone.***
- 6. That a car parking study be undertaken to review existing parking generation formulae for commercial land uses in the CBD zone, and to consider circumstances where better urban design outcomes would be achieved by limiting on site car parking.***
- 7. That the planning scheme be amended to require the design of access from the public road to off-street car parking to comply with appropriate Australian Standards (for example AS 2890 Off-street car parking), especially in relation to public safety.***

In relation to NOISE:

- 8. That the planning scheme be amended to require all development in the CBD zone to provide measures to attenuate noise, in accordance with referenced guidelines.***

In relation to the URBAN DESIGN and the PUBLIC DOMAIN:

- 9. That the Darwin City Council maintain a streetscape strategy that includes a thematic street-based landscaping strategy, a pedestrian corridor plan that identifies linkages and the footpaths that should be provided with a continuous awning; and that includes or references design guidelines for awnings over pedestrian corridors.***
- 10. That the planning scheme be amended to require development in the CBD to provide awnings over pedestrian corridors as identified in the streetscape strategy adopted by Darwin City Council and in accordance with the awning design guidelines of that authority.***
- 11. That the planning scheme be amended to reference any streetscape strategy adopted by Darwin City Council for local roads or by the NT Government for Territory roads, and to require development in the CBD to accommodate and respond to those strategies.***

In relation to the establishment of a DESIGN REVIEW PANEL:

- 12. That an urban design advisory panel be established to monitor the performance of the NT Planning Scheme provisions for the CBD zone, especially with regard to achieving the desired outcomes of the Capital City Charter, and to report to the Capital City Committee.***

In relation to the DEVELOPMENT ASSESSMENT PROCESS:

- 13. That the draft NT Planning Scheme (at Part 2, clause 4) be amended to reflect the commitments of the Capital City Charter.***
- 14. That the draft NT Planning Scheme (at Part 4, clause 8) be amended to include, where possible, objective rules and tests to support consistent and predictable assessment of development applications within the CBD zone.***

PART 2 - THE CHANGE NEEDED

SYNOPSIS

The *Darwin Town Plan* has had little effect on the performance of development in the CBD beyond the provision of essential infrastructure, loading bays and an amount of on-site parking.

Similarly the performance criteria of the *Central Darwin Land Use Objectives* and the *Design Guide for Residential and Commercial Development*.. have had little demonstrable effect on urban outcomes. The *Land Use Objectives* are open to wide interpretation, and the *Guidelines*, although offering more for urban design appraisal, do not enjoy adequate weight in development assessment determinations.

A summary of current land use policy affecting central Darwin, including a response to Melbourne's *Places for People* as requested by the focus group is copied at **Attachment B**. One implication from considering the Melbourne approach is that a basis for the performance monitoring of urban design outcomes could be conveniently established now to inform future planning policy.

A discussion of the Northern Territory's development assessment process in the context of the Development Assessment Forum's *Leading Practice Model* is copied at **Attachment C**. Notwithstanding opportunities for improvement, the Northern Territory's assessment processes demonstrate a good level of 'fit' to the Development Assessment Forum's model. Some options to improve process form part of the recommendations to the Capital City Committee.

Measures to improve urban design outcomes are proposed as an amendment to the planning scheme, including: the expansion and refinement of current provisions for ground level open space and private open space; the introduction of new provisions to mitigate noise, and to improve pedestrian amenity; and the introduction of new provisions for significant proposals promoting climate responsive design and greater contribution to city form and the public realm.

Recommendations are also made on urban performance issues that require further work or are beyond the scope of the planning scheme, for example: amendments to Council's Streetscape Strategy; review of some Central Business District's parking generation rates; and, in consultation with the industry, the development of a 'threshold' between low density and significant development.

PLANNING BACKGROUND

The performance criteria of the *Central Darwin Land Use Objectives* and the *Design Guide for Residential and Commercial Development in the Northern Territory*, are not written in a manner nor given adequate status to allow the Development Consent Authority to enforce any meaningful compliance with them.

The assessment of development proposals for the CBD zone, rests almost entirely on provisions of the *Darwin Town Plan*. The Town Plan provides the opportunity for the design of almost all new development in the city to be considered by the Development Consent Authority. The CBD zone only permits two minor land uses (home occupation and caretakers residence) without development consent. All other uses are either prohibited, or require development consent subject to one or more of the following clauses:

- 17.1 (open space for cluster dwellings),
- 17.2 (landscape area for flats, guest houses and hostels),
- 19.4 (service stations),
- 19.5 (shops offices & restaurants – interchangeable uses),
- 21.1 to 21.5 (parking requirement, reduction, payment in lieu and layout), and
- 23.1 (loading bays).

Clauses 17.1 and 17.2 have the capacity to influence better urban design outcomes but only clause 17.2 is in common application and only applies to proposals with a residential component. In practice the 30% landscape area requirement of clause 17.2 is commonly waived in lieu of the provision of other areas of private and communal space.

It is apparent that the *Darwin Town Plan* exercises little effective control beyond facilitating loading bays and an amount of on-site parking, and that the plan does not operate as a vehicle to achieve better urban design outcomes.

DISCUSSION

Building Height in the CBD

The Australian Bureau of Statistics high-growth population projections of 400,000 in the Territory by around 2050, equates to an average annual growth rate of between 1.5% and 2%. Short of an unprecedented macroeconomic impact on the region, the city's form will continue to rest on the aspirations and financial circumstances of individual developers, and to an extent on land use constraints such as tenure, lot size and development controls other than height.

Observation from any tall building in the CBD will confirm the dominance of low-density development that has only capitalised a fraction of the development potential offered by the site area and current height policy.

It is relevant to note that tenure to multiple dwellings is usually by unit title with property management by a body corporate. CBD properties under this tenure structure could only be redeveloped in the tenuous circumstance of all body corporate members being in agreement.

In the foreseeable future, the city's built form will only randomly describe any imposed height limit, and an arbitrary limit less than the aviation ceiling would serve no apparent purpose.

Defence Regulations apply to airspace for landing approaches to Darwin Airport, and will continue to define a ceiling for the height of structures in the CBD. This height is under review but expected to remain approximately 90 metres above ground level.

From a city planning perspective, there is no rationale for a building height limit less than that imposed for aviation safety, particularly when the desire to increase inner city living is taken into account. A compelling empirical basis for a lower limit has not been identified.

In theory the adoption of the aviation limit will allow the profile of the CBD to rise to around 30 storeys above ground level but, given the moderate predicted growth, this is an unlikely scenario. Darwin is much more likely to retain a porous city form with its aesthetic quality, especially as appreciated from the water, remaining a function of its individual elements (natural features, dominant structures and vegetation), rather than a function of profile. There is a case for simply allowing aviation safety requirements to limit CBD building height.

A question related to CBD height limit is whether or not to 'interface' with the height limits in adjacent zones. The purpose of an interface provision would be to minimize the adverse impact of high-rise development on adjacent residential development through overlooking.

As the southwest and southeast edges of the city interface with the esplanade and the civic precincts; the question of interface provisions need only be considered for the zone boundaries adjacent to the 'tank farm' redevelopment and the Daly Street end of the city.

Recommendations 1 and 2

That the planning scheme be amended to require the height of any part of any structure within the CBD zone to not exceed the height prescribed by the Defence (Area Control) Regulations.

That the potential for any interface issues arising from building height or development density at the boundaries of the CBD zone be reviewed.

Plot Ratio

the introduction of the CBD zone in 1998 ended the use of plot ratio to limit city development. There remains some support for plot ratio from the real estate industry, which values its use as a tool to estimate the development potential a city property.

Other jurisdictions employ plot ratio as a mechanism to achieve better urban design or heritage outcomes, but not where high-rise development is also being promoted. To the contrary, plot ratio as a control mechanism may encourage low-rise, low-merit development.

If an incremental structure of development provisions is introduced to achieve urban design outcomes commensurate with the scale of development, then plot ratio may be useful as a simple threshold mechanism independent of building height. The use of plot ratio in this way forms part of the draft option to amend the planning scheme.

Plot ratio would also provide a simple basis for the measurement of development density, which may be useful if performance monitoring is initiated for the CBD (see box below).

Performance monitoring

An implication from Melbourne's *Places for People* is that the establishment of indicators for monitoring urban design performance could usefully inform future planning policy.

Essential aspects of each development approved in the CBD zone could be conveniently recorded in a database, such as NT Government's ILIS. The following dimensions could be readily measured:

1. Floor areas (commercial and residential),
2. Number of storeys (that contribute to the measured floor area),
Note: the area of a site is already recorded in ILIS, so from dimensions 1 and 2, plot ratio and a coefficient of volumetric development density can be generated.
3. Parking provided on the site,
4. Open space provided at ground or podium level (as a percentage of site area) for communal or public use,
5. Private open space (as a percentage of the assessed residential floor area at 1)
6. Length (as a percentage) of the adjacent pedestrian corridor provided with awning,
7. Length (as a percentage) of the property frontage provided with an active interface.

Dimensions 4 to 7 are practical indicators of performance against urban design outcomes. They can all be recorded as rates rather than absolute dimensions and, being independent of development scale or density, could be readily utilised for the purpose of comparing the performance of CBD development. These dimensions could be combined as a single coefficient of urban performance.

Development Threshold

The building design industry has expressed support for the assessment of development proposals to have a stronger focus on design performance. The industry proposed the following criteria for assessment: context, scale, built form, density, energy efficiency, landscape, amenity, safety and security, and aesthetics.

Any stronger focus on urban design should not impact on the capacity or flexibility of the development industry. A degree of certainty and economic flexibility could be provided by structuring urban design provisions to be commensurate with the scale of development.

The development of a 'threshold' mechanism in consultation with the industry would allow a 'common' platform of development rules to achieve 'core' outcomes with all CBD development, and 'higher' urban design outcomes to be sought from more significant development.

A brief background to the proposed development threshold is boxed below.

Issues associated with a Development 'Threshold'

The intent of introducing a threshold is to provide a degree of economic flexibility by structuring development rules to require all CBD development to comply with 'common' development provisions, and significant proposals to comply with 'higher' urban design provisions. The 'common' development provisions should include: existing on-site parking and loading space requirements; compliance with redefined rules for open space at ground level; new provisions for awnings over pedestrian corridors, and noise mitigation; and compliance with the principles of *Crime Prevention through Environmental Design*.

Provisions for more significant proposals should include: site-responsive building design sympathetic to climate, location and character of adjacent built form; an 'active' interface with the public domain that complements the streetscape strategy; the provision of 'linking' arcades or other forms of publicly accessible space; the provision on-site of public facilities public art; and architecture that demonstrates 'pride of place' and enhances city form.

The assumption is that low-rise, low-density development has low impact beyond the site, subject to full compliance with common development provisions; and that high-rise, more significant development has an impact on the public domain and on the city as a whole.

Indicators of the scale of development could be derived from, for example, project cost, land use, off-site impact, or spatially by locality or site constraints (site area, plot ratio, height etc). A spatial approach is likely to offer the most practical indicators. Considering the nature of the proposed provisions can assist in determining whether a precinct-based or site-based threshold would be more appropriate. Specifically, the requirement for footpath awnings and noise mitigation may vary in application from one precinct to another.

As outlined under *Pedestrian Amenity* the areas where awnings should be mandatory, should be independent of land use, and referenced to a pedestrian corridor plan. The corridor plan is a linear network rather than a precinct area.

Noise mitigation could be precinct based, but there is no apparent reason why the recommended measures to mitigate noise at the source (plant and equipment) and to provide better acoustic privacy to bedrooms of multiple dwellings shouldn't be CBD wide.

Although the 'higher' provisions may vary in design solution from one locality and land use to another, there is no apparent benefit from linking higher urban outcomes to specific precincts. A site based volumetric approach appears to offer the most practical indicator.

Low-density development dominates the existing built form of the CBD, with relatively few developments exceeding 4 storeys. As there is no desire to limit height, plot ratio would provide a flexible ceiling for low-density development. A plot ratio of 2.5 is consistent with a 3 or 4 storey development providing car parking and open space at ground level.

The question arises regarding how to treat minor development, such as refits for a change in use or redevelopment of very small lots, with equity; bearing in mind that a significant relaxation of provisions for small lots may stimulate subdivision into small lots.

The smaller lots in the CBD, primarily the old housing lots that characterize the original residential areas of the city and the small commercial properties along Smith and Knuckey streets, are all less than 1200m².

As a starting point for the discussion of a threshold; a plot ratio of 2.5 and site area of 1200m² is proposed to exempt low-density development from the higher requirements for significant development. This threshold would approximately equate to a 3 or 4 storey proposal providing compliant on-site parking and open space at ground level.

Regardless of site area, the requirement to comply with CPTED, provide access and parking to appropriate standards, and provision of noise mitigation contribute to public safety and basic city amenity, and should not be negotiable.

Similarly the provision of footpath awnings is considered essential to pedestrian amenity, particularly as the intention is to promote the development, over time, of continuous shelter to selected city footpaths. It might be considered onerous to require awnings with small developments, but in fact, most of the CBD's small lots either already have awnings or have narrow frontages to which the attachment of an awning should not be a disproportionate cost.

The provision of ground level communal space with small commercial proposals could cause hardship, and is therefore proposed to form part of the higher provisions.

Recommendation 3

That a 'tiered' approach to development assessment, such that 'common' development provisions would apply to all development in the CBD zone, and 'higher' urban design provisions would apply to more significant development, be explored further in consultation with the development industry.

Site Coverage and Ground Level Open Space for Residential Development

Clauses 17.1 and 17.2 of the Town Plan have the objectives to afford private open space to cluster dwellings and communal open space to flats, guest house or hostel. As CBD land value tends to preclude the development of cluster dwellings, only clause 17.2 (landscape area for flats etc.) is in common application within the city.

Clause 17.2 requires that *flats and guest houses and hostels* shall not be developed unless 30% of the site is a ground level landscaped area, not less than 6 metres wide. If applied as stated, this provision would provide practical areas of communal open space and, subject to landscaping regime, would add visual amenity and tropical character to residential development with the potential to complement the visual quality of streetscapes.

However, from a social planning perspective, recreation space at the ground level of a residential tower compares poorly to private open space contiguous with each dwelling. Private open space, if of sufficient size to function as an extension to the dwelling for relaxation, dining, entertainment and recreation, would also function as an area for children's play conveniently supervised from the dwelling.

With this in mind, and because the development industry seeks to minimise landscaped area in order to maximise development yield, the Development Consent Authority routinely allows substantial waivers to clause 17.2 where either: balconies are provided that the Authority considers useable as private open space; and/or where alternate communal open space, for example a gymnasium, pool or open space at an upper level is provided. As a result, no high-rise residential development in the city fully complies with the open space provision of the Town Plan, and most residential developments enjoy substantial waivers to the requirement.

Communal Versus Private Open Space

If communal open space at ground level is to be offset by the provision of private open space to multiple dwellings not at ground level, then a basis for this 'trade' should be quantified and stated in the planning scheme.

As for private open space at ground level, the minimum area required for high-rise open space should not be limited by entertaining only one built form of that space. Private open space for multiple dwellings may be in many forms other than a balcony. It may be partially or entirely within a building's shell; it may be cantilevered, column supported or integral to a building's supporting structure; it may open internally, to an atrium for example, as well as externally; and may be configured with a dwelling's internal spaces in any number of ways. There is no limit to the ways in which a building designer might incorporate private open space into a multiple dwelling design, and nor should there be, given the need to provide privacy, and the intention to promote passive climate control and a 'tropical architecture'.

Any balcony, breezeway or other open area offered to support a waiver to site coverage provisions should be useable as private open space. AMCORD (1995) recommends a minimum private open space of 80m² with at least one part not less than 25m² contiguous with the dwelling and with a minimum dimension of 4 metres. This lesser area should, according to AMCORD, "*...be capable of enabling an extension to the function of the dwelling for relaxation, dining, entertainment, recreation and children's play...*".

An indirect benefit of requiring a generous minimum for private open space to multiple dwellings would be the default provision of a spacious habitable area with passive climate control. This might provide some balance to the energy efficiency debate and assist design professionals to achieve climate responsive solutions for inner city dwellings.

Where compliant private open space is being offered in lieu of ground level open space, the question is how much of the latter should be 'on offer'?

The draft NT Planning Scheme currently proposes to relax the minimum area of communal open space to 15% of the site and at the same time, introduce objective requirements for private open space including a minimum dimensional requirement for multiple dwellings of 12m² with a minimum dimension of 2.8m (see following box for draft clauses 7.5 and 7.6).

This approach reflects current practice and, subject to closer compliance with the minimum dimensions recommended by AMCORD, will provide a reasonable and practical basis for ensuring that multiple dwellings in the CBD will have both functional private open space contiguous with the dwelling, and communal open space on the site.

A variation on this approach would be to maintain the site coverage requirement for residential at 30% but only require 10% where all dwellings are provided with compliant private open space. This would give developers the flexibility of not providing compliant private open space if 30% of the site is compliant communal open space at ground level.

Similarly a further discount could be available where viable alternate communal open space is being offered. The question here is what residual percentage of ground level open space should be retained to accommodate landscaped areas adequate to enhance the visual quality of the development and to respond to the streetscape? An absolute minimum of 10% would be consistent with the open space requirement for residential subdivisions.

Extract from the draft NT Planning Scheme - Clause 7.5 Private Open Space

The purpose of this clause is to ensure that each dwelling has private open space that is: appropriately sited; and of an adequate size to provide for domestic purposes and outdoor recreation. Private open space areas are to: satisfy the minimum area and dimensions contained in the table to this clause; and be directly accessible from and enable an extension of the function of the dwelling.

Other than for a single dwelling, private open space at ground level is to be: screen fenced to a height of at least 1.8m providing a visual barrier to adjoining residences and public areas; or fenced to a height of at least 1.8m and planted with dense vegetation which will provide a visual barrier within two years of planting.

The location of the private open space is to take into account views from the site, the natural features of the site and the location of any private open space or habitable room associated with neighbouring dwellings.

If a multiple dwelling has no direct access at ground level to private open space, the multiple dwelling development is to incorporate communal open space.

Table to Clause 7.5 minimum areas of Private Open Space

Type of Dwelling	Private Open Space Area
<i>single dwellings on a lot of less than 600m²</i>	<i>50m² (exclusive of driveways and parking areas) but including a minimum area with dimensions of 6m x 6m.</i>
<i>multiple dwellings with direct ground level access.</i>	<i>45m² (exclusive of driveways and car parking areas) but inclusive of an area with minimum dimensions of 5m x 5m.</i>
<i>multiple dwellings without direct ground level access.</i>	<i>12m² inclusive of an area with minimum dimensions of 2.8m x 4m.</i>

Extract from the draft NT Planning Scheme - Clause 7.6 Communal Open Space

The purpose of this clause is to ensure that suitable areas for communal open space are provided for hostels, multiple dwellings and supporting accommodation. A minimum of 15% of the site, being not less than 6m wide at any point, is to be communal open space.

The design of the communal open space is to have regard to:
 the overall dwelling density proposed for the site;
 the proximity and quality of alternative private or public open space;
 the need to clearly distinguished communal open space from private and public open space and the need to maintain the reasonable privacy of nearby dwellings;
 the type of activities provided for and the hours of operation of communal facilities;
 the projected needs of children for outdoor play;
 the provision of landscaping and shade;
 safety issues including lighting and informal surveillance;
 on-site traffic circulation; and
 future maintenance and management requirements.

Ground Level Publicly Accessible Space for Commercial Development

The consideration of ground level open space for residential development in the CBD highlights a tension in relation to the land use objective to "*increase residential components in the precinct by encouraging mixed commercial and residential development*".

Commercial development is not constrained by site coverage control, but the incorporation of a residential component into a commercial proposal, even for a couple of 'shop top' flats, would currently introduce a potential 30% restriction on the site area available for development. This disincentive to the vertical integration of residential development could be removed by extending site coverage control to commercial development in the CBD.

A site coverage requirement for commercial development would act to extend the 'public' domain at street level and to develop an active frontage to the pedestrian corridor. A component of publicly accessible space within a development could have a range of commercial functions that form part of, or provide internal access to, the development's tenancies. The space would need to be exclusive of all utility and servicing purposes, such that the area remains for public use and enjoyment.

On a smaller site, a site coverage requirement could be satisfied by, for example, an 'al fresco' dining area, or an articulated façade, lobby, colonnade or combination thereof, and on a larger site, by an internal court or arcade linking to the pedestrian corridor network. Spaces such as these have the commercial benefit of increasing frontage to commercial tenancies and retail exposure, as well as providing open and safe lobbies to upper level premises. Some allowance may need to be made for redevelopment of very small sites where this requirement might be onerous.

As 'al fresco' dining continues to develop on Darwin's streets, so does the issue of commercial alienation of public land, especially with regard to the safety and amenity of pedestrian corridors. A site coverage control for commercial development will encourage 'alfresco dining' and similar activities to be accommodated at least partly within development sites rather than maximizing the use of public land at a cost to the community.

Site coverage control for this purpose is superior to the use of front boundary setbacks which would deny the developer flexibility. In addition site coverage as proposed here would not limit the upper levels of a multi-storey development.

Determining how much of a site should be subject to this proposal is almost a case of 'pick a number', however for comparability it is useful to note that the open space requirement in new subdivisions is 10%. Casual observation suggests that smaller developments in the CBD, for which this proposal would present the most difficulty, often include arcades or similar internal spaces, which utilise approximately 10% of the site. In addition this report has recommended an absolute minimum of 10% ground level open space for residential development.

For consistency and to avoid ambiguity when assessing mixed use proposals (especially those with commercial at street level with multiple dwellings above), it is desirable that ground level open space for commercial development be at least equal to the minimum requirement for residential. It should be noted that adopting the minimum residential requirement has the implication that compliant private open space will have to be provided to the dwellings above.

Recommendation 4

That important urban design issues relating to:

- ***the current site coverage provision of clause 17.2 of the Darwin Town Plan;***
- ***the provision of a minimum area and quality of communal open space;***
- ***the provision of a ground level landscape area for visual amenity;***
- ***the provision of, and an acceptable definition of, viable private open space;***
and
- ***the provision, with commercial development, of a minimum area of ground level directly-accessible open space designed to enhance the amenity and quality of the public domain;***

be considered further by the urban design advisory panel established in accordance with recommendation 12.

Car Parking

There is broad support for the current carparking requirements of the Town Plan, and general support for the parking generation formulae as stated in the plan.

For commercial uses in the CBD zone, the parking generation formulae of the Town Plan are discounted. Although not explained in the plan, the substantial discounts reflect the shared use of parking in a mixed land use environment, and the greater availability of public parking and public transport. There is no apparent reason to consider further discounts.

The Development Consent Authority only infrequently approves reductions to the parking generation rates, but often experiences tension between Council's preference that at least 80% of a development's parking requirement be provided on site, and the usual preference of developers and architects to seek a substantial relaxation of the 'on site' provision.

When the requirement to provide all determined parking on site is waived, a payment in lieu (prescribed by a developer contribution scheme) is made to Council for the parking shortfall.

For residential development there is general support for the Authority to continue to require the provision of all parking on site, but there has been a suggestion that the formula should be linked to the numbers of bedrooms. The Authority has on occasions relaxed the generation rate for one-bedroom flats to less than 2 spaces. One question is whether such discounting (and possibly a higher rate for 3 or more bedrooms) would impact on dwelling choice in the CBD.

A related matter is the safety afforded to users of internal parking and manoeuvring areas. It has been observed that vehicular access to city development is not always designed and constructed to appropriate standards, which is leading to potential hazards at conflict points between vehicular and pedestrian traffic. This happens in part because of ambiguity regarding which person or agency is responsible for ensuring that vehicular ingress, parking and egress are constructed to comply with the appropriate standard (ie. AS 2890 Off-street car parking). The Town Plan does not reference to Australian Standards and, although a development permit typically endorses plans showing a parking layout, compliance with AS2890 is not usually stated as a condition of development.

Recommendations 5, 6 and 7

That a car parking study be undertaken to calibrate existing parking generation formulae for the CBD zone against current parking demand for residential land uses in the CBD zone.

That a car parking study be undertaken to review existing parking generation formulae for commercial land uses in the CBD zone, and to consider circumstances where better urban design outcomes would be achieved by limiting on site car parking.

That the planning scheme be amended to require the design of access from the public road to off-street car parking to comply with appropriate Australian Standards (for example AS 2890 Off-street car parking), especially in relation to public safety.

Noise

Noise is a growing issue for residential development in the city. There is general support for noise attenuation to be a criteria for the design and construction for new residential development. There is also support for noise mitigation to be an integral part of mechanical plant and services, especially air conditioning, of new buildings.

One suggestion is that noise regulation could be precinct based (eg. less control in Mitchell Street as a tourism/entertainment precinct and stricter control in Woods Street as a residential precinct). However an underlying strategy of the CBD zone was to encourage more residential development throughout the city, particularly as a component of mixed use development with retail and commercial at street and lower levels and residential above. Precincts may lessen the flexibility of this initiative.

The issue of nuisance with noise generating activities such as nightclubs presents a unique problem for which a practical solution could not be readily identified. The government architect promotes the acceptance of a level of urban noise as an inherent part of choosing inner city living.

To provide a degree of acoustic privacy, guidelines for noise attenuation and acoustic privacy could be referenced by the planning scheme and thereby taken into account by the Development Consent Authority.

Recommendation 8

That the planning scheme be amended to require all development in the CBD zone to provide measures to attenuate noise, in accordance with referenced guidelines.

Heritage

The Heritage Conservation Act has the principle object to provide for the identification, assessment, recording, conservation and protection of a wide range of places and objects with almost any kind of heritage significance.

Darwin's CBD area currently has 20 registered heritage places (predominantly buildings and trees); 7 buildings that were previously nominated but never declared (including the Sue Wah Chin Building and the old Darwin Primary School) and 7 places under current consideration or negotiation (including the Victoria Hotel and the Star Arcade).

Strong support for heritage retention has included suggestions for heritage protection such as government purchase of heritage buildings, incentives in the planning scheme, incentives through reduction in rates, and transferable development rights.

The development industry seeks certainty and is concerned that claims of heritage significance, not previously identified, can be made at the development application stage. Given the extent to which Government has mapped and recorded places and objects with heritage value in the CBD, the industry would like assurance that if, at the time of lodging development application, Government has not identified a heritage place or object on the site, then the site does not have heritage value that might impact on its development.

Notwithstanding the difficulties that the Environment Protection Agency often faces in securing formal recognition of heritage significance, the Heritage Conservation Act is the appropriate legislation for registering and protecting the city's heritage sites. Section 51(r) of the Planning Act requires the consent authority to take into account the impact of a development on *natural, social, cultural or heritage values*, but the consent authority would be challenged to limit or refuse a development on the basis of heritage value if this value had not been identified under the Heritage Conservation Act. Any heritage provisions under the Planning Act should respond to heritage identified under the Heritage Conservation Act, and should not be concerned with determining heritage value.

It remains the role of the Environment Protection Agency to secure formal recognition and protection of the heritage value of places and objects that have been identified or nominated but not yet declared.

The draft NT Scheme proposes to introduce a heritage zone to protect heritage precincts such as the heritage triangle. The following extract gives the stated purpose of the proposed zone:

Draft NT Planning Scheme Zone HT – Heritage

The primary purpose of zone HT is to conserve and enhance those elements that contribute to the heritage significance of an area.

A use or development is to be compatible with the heritage value and character of the area.

Pedestrian Amenity

This fundamental of city performance can be considered in terms of the community's ability to feel comfortable and safe, and to enjoy the urban environment when walking in the city.

In relation to pedestrian comfort, the most widely expressed concern with pedestrian amenity in the city is the lack of adequate shade and shelter over the city's footpaths and the inconsistency between the degree of shelter from one property to the next.

There is little argument regarding the desirability of awnings over CBD footpaths. Any proposal for the planning scheme to require the provision of awnings will need to clarify: the jurisdiction of a development permit in relation to Council airspace; design aspects such as the spatial envelope and design criteria for awnings, and the interface between awnings and street trees. Also, the ability to exclude some areas (like the civic precinct), some roads, (like the Esplanade), and some land uses (like multiple dwellings) from mandatory awnings should be considered.

The last point primarily concerns the practicality of requiring awnings with developments that are set back from the pedestrian corridor. The government administration buildings in the civic precinct, the hotels along the Esplanade and most apartment blocks are examples. A precinct approach to identifying these areas and land uses is likely to be less tidy than simply identifying those corridors that must be provided with an awning in Council's Streetscape Strategy. The Streetscape Strategy could also include or reference design guidelines for awnings.

Council and the Development Consent Authority should determine a process for the provision of landowner's consent for development applications proposing an awning over the road reserve.

A broader pedestrian safety issue is that of crime prevention through environmental design (CPTED). There is little argument to the proposal that the design public places whether on public or private land should comply with CPTED principles. Draft guidelines have been prepared by the Department of Planning and Infrastructure and the intention is to reference these guidelines from the planning scheme.

The community's enjoyment of urban places rests in part on the visual quality of the city's built form and streetscapes. This is primarily an urban design issue that can be addressed by measures such as: buildings addressing the public domain (minimize the impact of blank walls, loading docks etc); building design to have a pedestrian scale, a 'tropical character', and provide an 'active' interface with the public domain.

Recommendations 9 and 10

That the Darwin City Council maintain a streetscape strategy that includes a thematic street-based landscaping strategy, a pedestrian corridor plan that identifies linkages and the footpaths that should be provided with a continuous awning; and that includes or references design guidelines for awnings over pedestrian corridors.

That the planning scheme be amended to require development in the CBD to provide awnings over pedestrian corridors as identified in the streetscape strategy adopted by Darwin City Council and in accordance with the awning design guidelines of that authority.

Landscaping and the Commercial Use of the Public Domain

In 2004 Darwin City Council endorsed a draft Central Darwin Streetscape Strategy, and a CBD Landscape Manual is currently under review. These documents potentially provide a definitive statement of the tree planting and streetscape expectations for each city street.

Existing landscaping and proposed planting themes are often compromised by the provision of vehicular access, loading facilities and footpath widening for commercial uses associated with new development.

In various studies and consultation carried out recently in relation to Darwin's CBD, the tropical outdoor lifestyle is recognised as a primary attribute of the city. The 'al fresco' dining that has developed in the city over recent years is a valued and growing element of this urban lifestyle.

There is little scope within the planning scheme to promote or control the commercial use of public space. The responsibility for implementing enabling policy for the streets and parks of the CBD lies with Darwin City Council. Policies supporting 'al fresco' dining have been endorsed by Council and the completed Streetscape strategy is soon to be endorsed.

Council's Streetscape Strategy (incorporating the Landscape Manual) could be included as a referenced guideline under the Planning Scheme (that is, added to draft schedule 3) and development provisions could refer to the Strategy, where relevant, to allow and encourage development applications to respond and contribute to the city's streetscapes.

Recommendation 11

That the planning scheme be amended to reference any streetscape strategy adopted by Darwin City Council for local roads or by the NT Government for Territory roads, and to require development in the CBD to accommodate and respond to those strategies.

Tropical Character

There is a consensus of support for the city to have a tropical character. Although not defined, respondents variously proposed that tropical character is constituted of landscaping and tree planting (sustainable use of native species), a tropical livable environment, indoor/outdoor living, provision of shade, a tropical look to architecture, building fabric, and Darwin as a unique tropical destination.

The proposed amendments to the planning scheme include requirements for: awnings over pedestrian corridors, generous verandahs, passive climate control, landscaping at street level, and an active interface with the public domain. In combination these provisions are likely to promote building design that contributes to a tropical character or at least to have a relevant and recognizable regional style.

As proposed, the draft clause 8.2 of the NT Planning Scheme has the following purpose and provisions which would go some way towards achieving better 'urban design' outcomes.

Draft NT Planning Scheme - Clause 8.2 - ...Development in Zones...(CBD)

The purpose of this clause is to promote site-responsive designs of commercial, civic, community, recreational, tourist and mixed use developments which are attractive and pleasant and contribute to a safe environment.

The design of buildings in zones HR, CV, CB, C, SC, TC, OR, CP, FD and T should:

- preserve vistas along streets to buildings and places of architectural, landscape or cultural significance;
- be sympathetic to the character of buildings in the immediate vicinity;
- minimise expanses of blank walls;
- add variety and interest at street level and allow passive surveillance of public spaces;
- maximise energy efficiency through passive climate control measures;
- control on-site noise sources and minimise noise intrusion;
- conceal service ducts, pipes, air conditioners, air conditioning plants etc;
- minimise use of reflective surfaces;
- provide safe and convenient movement of vehicles and pedestrians to and from the site;
- provide convenient pedestrian links (incorporating access for the disabled) to other buildings and public spaces;
- provide protection for pedestrians from sun and rain;
- provide for loading and unloading of delivery vehicles and for refuse collection;
- provide landscaping to reduce the visual impact and provide shade and screening of open expanses of pavement and car parking;

- provide facilities, including public toilets, child minding facilities, parenting rooms and the like where the size of the development warrants such facilities; and
- provide bicycle access, storage facilities and shower facilities.

Design Review Panel

Local architects and the building designers have expressed support for a design review panel to assess development against criteria such as: context; scale; built form; density; energy efficiency; landscape; pedestrian amenity; safety and security; and aesthetics.

Some larger urban jurisdictions have introduced variously structured design review panels to provide expert assessment of the design performance of development proposals, especially with regard to urban design, heritage and amenity. Review panels tend to be used with outcome-oriented codes that have less defined development controls or performance measures.

Experiences in other jurisdictions

Adelaide City Council has an **Urban Design Advisory Panel** which is an advisory body responsible for providing urban design advice to the Council and fostering higher standards of design. The panel comprises 10 members with expertise in architecture, landscape architecture, urban arts, engineering, social & urban planning, and provides advice in relation to:

- Significant development proposals,
- Precinct & major site design issues,
- Urban design guidelines for built form and the public realm, and
- Makes recommendations in regard to amending the Adelaide Development Plan.

For local government in NSW the SEPP 65 Design Quality of Residential Flat Development provides for **Design Review Panels** to be constituted by the Minister. The function of a panel is to give independent advice to:

- the consent authority on a development application for residential flat development specifically on the design quality in accordance with the design quality principles,
- consent authorities and applicants before and after lodgement of development applications,
- councils on the design content of draft LEPs, DCPs masterplans, and policy,
- councils on other initiatives to improve achievement of the design quality principles; and
- to contribute to the understanding of design quality and improve achievement of design quality principles by making public its advice.

A panel may also review provisions of existing LEPs & DCPs.

The City of Sydney, under LEP 1996 Clause 28D(2)(c), has a **6 member jury** (3 members appointed by the applicant, and 3 appointed by the consent authority) for the erection of a building exceeding 55 metres in height or development on a site exceeding 1,500m².

The Jury must engage in a competitive process and must undertake a design competition or prepare alternative designs on a competitive basis.

Perth City Council, under City Planning Scheme 2004, No 2, appoints a *Design Advisory Committee* for the purpose of considering, and advising the Council with respect to applications. The Committee is to be consulted where an application seeks to increase a site's permitted plot ratio, and may be consulted on other design matters relating to development. Consultation with southern jurisdictions has resulted in mixed comments.

Some Council assessors support the use of a panel, and offer examples of where design panels have improved development proposals. Others suggested applicants commonly offer non-compliant or overdeveloped proposals, either as a baseline for negotiation, or as a means of the designer avoiding conflict with the client developer.

Cases of civil action have been claimed against panel members in NSW (Parramatta, North Sydney Councils) This demonstrates the vulnerability of panel members in an environment where subjective decisions can affect the profitability of development. The NSW Department of Infrastructure Planning and Natural Resources (DIPNR) is investigating probity and liability issues for panel members appointed by the Minister under SEPP 65. Detailed investigation regarding the protection of panel members from civil action from their comments and recommendations should be undertaken prior to any panel being established.

If the new Planning Scheme does not produce the better urban design outcomes envisaged, it may be necessary to consider a design review panel.

Also for extraordinary developments, which fall outside the scope of the Planning Scheme or are of Territory-wide significance (eg. the Waterfront Development), an urban design panel could provide comment on such a proposal.

Local Options

Any expert review panel established in the NT should include wide range of professionals such that building designers, architects, town planners, engineers, landscape architects and urban designers are represented. A mix of practitioners and academics would be preferable. At the same time the scope and structure of any design review group would need to be commensurate with Darwin's development industry and building design expertise.

A code of conduct would be desirable to support the objects of the panel, and to avoid conflicts of interest, bearing in mind the relatively the small development industry in the Territory.

To fit with the current assessment process in the Territory, any panel should remain an advisory panel to the consent authority. The panel could offer professional advice not available within the composition of the authority.

Any local expert review panel should seek to comply with the following criteria:

- Be an advisory body to the consent authority;
- Assess proposals against the planning scheme, and relevant supporting documents;
- Comprise professionals recognised by their professional bodies;
- Be broad in its professional composition;
- Benchmark the expected improvement in built form and urban design;
- Be at no cost to the community; and
- Make recommendations within the normal time period for development assessment.

Alternately the professional determination of applications could be enhanced by augmenting the existing development assessment process in one or more of the following ways:

- Development Assessment Services (DIP) could further develop its professional staff (eg. post grad. in urban design) or broaden its professional base through additional staff. The latter option could be a periodic secondment from the local design industry.
- An urban design sub-committee could be established by the DCA (similar in operation to the current Vegetation Clearing Committee which advises the Litchfield Division).
- The Government Architect has provided an 'expert review' function for the Waterfront Development at the Wharf and could be used in a similar fashion for future major developments.
- An urban design advisory panel could be established by the Capital City Committee to provide comment on issues relating to the Capital City Charter.

There are concerns with the establishment of a local panel of experts. The Territory should proceed cautiously. Other jurisdictions including the NSW Department of Infrastructure Planning and Natural Resources (DIPNR) have confirmed that design review panels are costly. The fees for professionals on review panels can be expected to be up to \$250 per hour. DIPNR is investigating the issue of cost in association with panels established under SEPP 65.

In addition, the Territory is proud of its short process time for development assessment. This timeframe could be jeopardised by any expert review process.

The project focus group considered this issue at length and support the establishment of an urban design advisory panel by the Capital City Committee to provide comment on issues relating to the Capital City Charter.

Recommendation 12

That an urban design advisory panel be established to monitor the performance of the NT Planning Scheme provisions for the CBD zone, especially with regard to achieving the desired outcomes of the Capital City Charter, and to report to the Capital City Committee.

Development Assessment Process

A detailed discussion of the NT development assessment process in the context of the DAF *Leading Practice Model* was provided to the focus group and, notwithstanding opportunities for improvement, the NT processes demonstrated a good level of 'fit' to the DAF model. Some options to improve process are considered further.

The DAF model advocates the development of provisions that are clearly linked to stated policy intentions. The draft NT Planning Scheme contains *planning principles* which are broad expressions of NT Government's commitment to outcomes of land use planning and development control. The Capital City Charter contains statements of policy specific to Darwin's CBD, which are not reflected scheme's draft planning principles. At Part 2, clause 4 of the draft scheme, relevant policy of the Charter could be usefully included, providing supporting policy for proposed development provisions specific to Darwin's CBD.

Recommendation 13

That the draft NT Planning Scheme (at Part 2, clause 4) be amended to reflect the commitments of the Capital City Charter.

The DAF Model *Leading Practice 2*, promotes objective rules and tests which are clearly linked to stated policy intentions and result in *consistent and predictable* outcomes. The inclusion of the proposed development provisions and refinement of the existing draft provisions to more closely comply with the *Leading Practice Model* will support greater consistency in the determination of development applications within the CBD and thereby provide greater certainty to the industry.

Recommendation 14

That the draft NT Planning Scheme (at Part 4, clause 8) be amended to include, where possible, objective rules and tests to support consistent and predictable assessment of development applications within the CBD zone.

Capital City Charter Central City Planning Project Project Brief

Purpose

The purpose of this project is to:

- (a) review the existing development controls applicable to the Central Business Darwin Zone of the Northern Territory Planning Scheme (Darwin Town Plan 1991); and
- (b) to provide the NT Government and Council options for the introduction of any amendments to the Planning Scheme that are perceived as desirable.

Any proposal to amend the Planning Scheme must be in a format that is consistent with the draft consolidated NT Planning Scheme.

Project Team

The project team will comprise an officer from each of the Department of Infrastructure Planning and Environment and from the Darwin City Council. Each agency will cover its own costs.

Tasks

Research

The project team must be familiar with existing:

- development controls in the Darwin Town Plan;
- proposed controls under the draft NT Planning Scheme;
- relevant DCC codes and by-laws including any parking contributions plan or parking strategy;
- relevant policies of the Development Consent Authority.

The project team must research development controls within the relevant planning schemes relating to a selection of other jurisdictions; eg

- Adelaide City
- Geelong
- Newcastle
- Brisbane
- Dandenong
- Paramatta

Synthesis

Provide a report on options for the introduction of development controls that consider but are not limited to:

- Plot ratio – including bonus scheme;
- Building height;
- Car parking;
- Site coverage;
- Heritage sites;
- Pedestrian amenity;
- Commercial use of public spaces;
- Landscaping; and
- Noise regulations.

Preferred Option

The project team will within four months of commencement provide a report of the preferred options for the consideration of the Capital City Committee. The team will prepare a presentation to be delivered to the Committee at a time to be determined.

Focus Group

There will be established a focus group to provide guidance and input to the project with membership from the following organisations:

Darwin City Council (Alderman) Chair

Chamber of Commerce

Property Council of Australia

Architects Institute of Australia (NT Chapter)

NT Government Architect

Department of Infrastructure and Environment

At the commencement of the project and at predetermined intervals the project team is to report on project progress and its continuing work will be informed by comment and feedback from a focus group.

STRATEGIC POLICY AND FRAMEWORK AFFECTING THE CBD

Background (Capital City Charter)

CBD development is complicated by the control of public and private land being shared between Council and the NT Government.

In considering policy or 'blue sky' visions for Darwin, one important variance from city planning in the states is the separate land use administration of private and public land. Almost all road reserves and parks in the Central Business District are either vested with or owned by Darwin City Council and the use and development of the city's roads and parks is subject to Council's policies and bylaws. But, the use and development of privately owned and crown land in the CBD is subject to the planning policies and development provisions of the NT Government.

The Capital City Charter responds to this problem by committing Council and Government to work together to achieve more for the community.

This dichotomy of control has not served the community well, and the Capital City Charter is a commitment of the NT Government and Council to "work together with the community to enhance the physical, social, cultural and environmental aspects of Darwin with a focus on the central business area". Government and Council want to achieve a "vibrant and active city centre, a safe community environment, attractive and climatically appropriate construction, improved public spaces, and a community that values its heritage".

The Charter has a central area focus and identifies deliverables for better urban design outcomes.

The Charter identifies deliverables to meet this commitment. For example:

- *Development that respects spatial context,*
- *Public spaces that encourage active use of space by residents and visitors,*
- *Adopting the principles of crime prevention through environmental design,*
- *Developments that consider climate and energy efficiency,*
- *Emphasis on design in the development approvals process, and*
- *Development that appropriately celebrates heritage.*

Existing strategic planning framework

The CBD has a current planning framework.

As the Focus Group noted, a strategic planning framework for the CBD has been developed over recent years by government. The current policies and framework are embodied in the NT Government's *Central Darwin Land Use Objectives* (LUOs), and Council's *Central Darwin Streetscape Strategy*.

Council's strategic CBD framework for public land is the Central Darwin Streetscape Strategy.

Darwin City Council's strategic policy and framework for the CBD public land is contained in its *Central Darwin Streetscape Strategy*, which also incorporates Council's *CBD Landscape Masterplan*. The aim of this policy is to "improve the appearance and amenity of (central Darwin's) streets and public places, create opportunities for people to enjoy Darwin's casual outdoor lifestyle, and facilitate and support economic growth and development by creating an attractive and vibrant setting for development".

The document also intends to "assist developers with the preparation architectural designs and development applications to the Development Consent Authority". Both of these aims accord with the Capital City Charter.

The Government's strategic policies for the CBD form part of the Central Darwin Land Use Objectives (LUOs).

The NT Government's current strategic land use policies for the Central Business District are contained in the *Central Darwin Land Use Objectives*. This document is the culmination of extended community consultation prior to its release in 1996, followed by a review resulting in the 1999 version. In December 2004 the Wharf precinct concepts of the Central Darwin LUOs were further amended by the *Darwin City Waterfront Planning Concepts*.

Germane policy from the LUOs will be embodied in the new consolidated planning scheme.

The LUOs set the Government's policy framework for the planning and development of central Darwin, including the inner city area within the CBD zone of the Town Plan. Several elements of this framework have been superseded as the city has developed to meet current needs. Those strategies and policies that have retained currency will be embodied into the consolidated NT Planning Scheme scheduled for exhibition in February '06.

Melbourne's 'Places for People'

'Places for People' is one model for informing planning policy.

At the second meeting of the Focus Group, Melbourne's *Places for People* was tabled as a model for informing planning policy. This document is an 'installment' in a systematic and long-term urban strategy for Melbourne, and is more a progress report and prospectus of future initiatives than a strategic plan. One would expect such a document to influence strategic policy.

Urban indicators are monitored and future directions suggested.

Places for People is structured in three discrete parts. The first and third assess the performance of the city by comparing key indicators measured in 1993 and then in 2004. The second part comments on works in progress, and makes recommendations for further improvement over the succeeding decade. The document is not in itself a statement of government policy.

Darwin's strategic plans contain similar directions to inform policy and recommendations.

The document's broad recommendations are similar in language and purpose to the deliverables identified in the *Capital City Charter*. The more detailed recommendations are similar to the goals of Central Darwin Streetscape Strategy, and to the statements of intent, land use objectives, and statements of interpretation in the *Central Darwin Land Use Objectives*.

Urban indicators could be employed but should not delay improvement to the statutory framework.

Similar indicators to those employed for Melbourne might be usefully established and measured for Darwin to allow, over time, more accurately informed planning decisions. However, the absence of structured performance monitoring should not preclude amendments to the statutory framework necessary to implement some of the 'deliverables' identified in the Capital City Charter.

Attachment C

COMPARISON OF THE NT DEVELOPMENT ASSESSMENT PROCESS TO THE DEVELOPMENT ASSESSMENT FORUM LEADING PRACTICE MODEL

The Development Assessment Forum (DAF) is a commonwealth government initiative for the harmonisation of town planning practices throughout Australia. An extract from the DAF publication "...Leveraging the Long-Term" is appended to this report as a useful reflection on development assessment in Australia. The DAF is focussed on achieving a nationally consistent approach to ensure more efficient and effective planning processes. The Forum's *Leading Practice Model* is one aspect of the undertaking, and contains the following main elements:

Leading Practice Principles – The Forum believes that adoption of these principles is necessary *to maximise efficiency and deliver certainty* (Page 7, March 2005).

Leading Practices – *Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate it is efficient and fit for purpose* (Pages 1 & 8-11, March 2005).
Leading practice 4 is a model for track-based assessment that proposes - *Six tracks that apply the leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway* (Pages 1 & 31, March 2005).

Notwithstanding identified opportunities to achieve closer compliance, the Territory is found to have a good level of 'fit' to the DAF principles and leading practices. Avenues to improve process are under consideration as the project team prepares draft recommendations for the focus group.

The following is a discussion of the Northern Territory 'fit' to the DAF *Leading Practice Model*.

LEADING PRACTICE PRINCIPLES

The Forum identifies 10 leading practice principles in development assessment. These follow as headings with a comment on the NT assessment process in relation to each principle.

*Focus on achieving **high quality sustainable outcomes**;*

In recognition that the current regulatory regime has become dated, the Territory has substantially progressed a reform agenda that has: recently introduced a revised the Planning Act 2005; will soon implement a single consolidated Planning Scheme for the Territory; and will subsequently expand its coverage and refine its purpose.

The clearer and more precise the regulatory environment is, the more likely that consistent and hopefully, better outcomes can be achieved. To this end, the draft consolidated NT Planning Scheme is scheduled for public exhibition in February next year. These elements of statutory reform will go a long way towards facilitating and encouraging more sustainable outcomes.

*encourage **innovation and variety** in development,*

The current regulatory regime provides little guidance or motivation to or for innovation and variety. For example, it is common practice for residential unit developments to seek substantial variations to development control provisions in order to maximise dwelling yield. This is at the expense of the amenity of the future occupants, existing neighbours and the community more broadly. The development community would argue it is merely responding to market demand and exercising the flexibility in design outcomes permitted under the existing regulatory framework.

It is clear that this debate cannot be resolved under the existing provisions of the Planning Scheme and that reform is required if innovation and variety in development is to be promoted and achieved. The current planning project is part of this reform agenda.

***integrate all legislation, policies and assessments** applying to a given site;*

It has been a consistent complaint of the development industry that the complex layer of independent authorisations required from Government agencies (including local government) adds to the time and hence cost of developments. Government response has been varied but in more recent times the “one stop shop” solution of the eighties has proven less than satisfactory.

Some jurisdictions have sought a legislative solution amending planning and allied Acts so that the requirement for planning approval “triggers” approvals processes of all related legislation. The reported effectiveness of these regimes is mixed. Development assessment practitioners appear the least enthusiastic, citing the inherent delays associated with coordinating inter-agency inertia as a frustration to achievement of the intended goal of streamlining the process.

The Territory has not pursued this course, preferring to maintain the legislative separation of authorisations. This does not appear as a conscious choice so much as an absence of either necessity or demand. Probably the small size of the bureaucracy, the generally high level of inter-agency cooperation, and the centralised development assessment administration obviates the need, at this time, for structural legislative reform.

One “missing link” in the inter-relationships can, however, be identified between the Planning Act and the Environmental Assessment Act. The latter relies on the former to give authority to environmental requirements identified through the PER or EIS processes. A closer link at either the statutory or regulatory levels may be desirable so that environmental outcomes can be mandated.

A second level of tension exists in the relationship between the consent authority under the Planning Act and the legitimate role of local government as a service delivery agent and controller of local roads and parks. Not having development control, local government in the Territory is unable to require compliance with its regulations as a by-product of planning consent. Where its own interests are not otherwise protected this leaves local government exposed to the vagaries of the consent authority. One purpose of the Capital City Charter is to address this dichotomy of control.

*encourage appropriate **performance based** approach to regulation;*

The DAF initiative contains an unexplained tension between this principle and the stated intention for a return to a rule-based assessment regime.

The current NT Planning Scheme could be considered a hybrid to the extent that zone purpose statements and clause objectives have been interpreted as the “performance measure” and the relevant clauses as the “acceptable solution”. This was not the original intent. When the current Darwin Town Plan was originally drafted those statements were envisaged only as descriptive of the intent, not as substantive standards.

The draft new scheme is more specific about its intentions, and describes the clauses as a minimum standard, not as a provision freely variable.

*promote **transparency and accountability** in administration;*

The notions of transparency and accountability are prone to misinterpretation in this context.

Transparency goes to the commitment that, wherever possible, the development assessment process is clear and open to scrutiny. In other words the governing rules at the administrative and technical level are mutually understood by the parties involved and that there is equal, open access to information.

Accountability on the other hand relates to the decision-making process and guarantees that process is equitable, conforms to the rules of natural justice, is (as far as possible) free of real or perceived conflict of interest, and the decision appealable where warranted.

With a statutory requirement for every development application to be advertised, there is no question that the Territory is more open about the application process than any other jurisdiction.

Also the DCA operates as an independent assessing panel and, regardless of any perceptions of the outcomes, meets the model proposed by the DAF. The shortcomings of the DCA that draw criticism are generally the fault of the present “rules” rather than those of the DCA’s deliberations.

*promote a **cost effective** system;*

Cost effectiveness in this context will depend on viewpoint. The broader community would argue that no matter what the cost, an assessment process must deliver high quality sustainable outcomes. The development industry would, on the other hand, assert that a regime that stifles development through over or misguided regulation and increased cost is, regardless of the potential outcomes, of no benefit to anyone.

The Northern Territory experience is perhaps unique amongst the jurisdictions. With a centralised development assessment process it is able to deliver a level of consistency not achievable in the states. Further, the administrative processes provide a processing time more rapid (by far) than is achieved elsewhere. Complaint of delays in the process of development assessment from industry cannot be sustained against interstate benchmarks.

The direct cost of the development application fees and charges is also an issue in other jurisdictions that does not arise in the Territory. Application fees are a token by comparison to those levied interstate.

*promote a model that is **streamlined, simple and accessible**;*

Simplicity in this context translates to the administrative functions and requirements imposed through the development assessment process. The NT system is indeed simple as distinct from simplistic.

The current control plans are relatively clear as to the track available to a prospective project and will be more so with the implementation of the new scheme. The Act is specific about the processes of development assessment and the minimum requirements for a valid application, none of which are onerous for the applicant.

Administratively there is little involved for the applicant (once the application is lodged) beyond erecting the notification on the site. The Authority arranges all other advertising and referrals.

“Streamlined” suggests the elimination of any unnecessary administrative steps and the NT would assert its processes are the leanest in the nation. Advertising of the application occurs no later than six working days after lodgement and can be as brief as within four days.

On lodgement (or even before) the applicant is aware of the meeting date at which the application will be considered by the DCA. Again, depending on the timing of the application in the hearing cycle, the maximum delay is eight weeks.

The decision of the DCA is available to the parties the day after the hearing with (unless the matter has been deferred) the written determination available within two weeks following confirmation of the minutes. Where determination has been deferred pending amended plans, further information or similar, the matter is frequently delegated to the Chairman to determine, once the reason for deferral is resolved.

Any subsequent appeal is dealt with expeditiously and although no time frame is established by the Act, experience shows appeals are generally finalised within two months. Unlike other jurisdictions, the Territory has no backlog of appeals pending.

Accessibility of the development assessment process suggests that all potential parties have adequate information, notification and opportunity to present their case.

Aside from the particular difficulties that geographical remoteness may present, the NT process is accessible to all parties. From the applicant's viewpoint, staff are available to discuss proposals at pre-lodgement and any point thereafter. A "technical assessment" of each application is made to determine areas of compliance and non-compliance with the applicable "rules" within days of lodgement. This ensures the applicant has the opportunity to either address those matters or contest the technical assessment. At the very least the applicant is forecast the issues likely to be on the mind of the consent authority.

For the broader community, each application is advertised in the newspaper and by a large distinctive notice on site. In addition details are currently being finalised to include a locality map with each application advertised in the newspaper. This level of routine public exhibition is unique amongst Australian jurisdictions. All persons who lodge submissions, for or against, are invited to a public hearing and afforded the opportunity to speak.

All statutory documentation is freely available on the web or can be purchased in hard copy at cost price.

*employ **standard definitions and terminology**;*

One of the goals of the DAF is to achieve “harmonisation” of planning controls. An initial project was to identify opportunities to achieve common definitions across jurisdictions.

The Forum's first 14 definitions and resulting work was endorsed by Ministers, including the NT Minister for Planning. Where those definitions are relevant to the NT the new Planning Scheme has, with few exceptions, adopted those definitions. The exceptions relate to wording that was unacceptable to Parliamentary Counsel.

The Territory will similarly consider any further standard terminology developed by the Forum.

*incorporate **performance measurement and evaluation**;*

The model identifies five areas to be addressed in this principle:

Maintain Records

The Territory has recently invested in a replacement database known as ILIS (Integrated Land Information System). As the name suggests, the system is the platform recording all spatial data for the NT Government and is the repository for development assessment records. The Development Assessment Services branch utilises the system to record and monitor all development applications.

As a newly (2003) implemented system it can be confidently asserted that the NT is well placed in records maintenance. In addition ILIS is available to the private sector.

Monitor and Report Performance

Prior to the development of ILIS, the business process for development assessment was mapped, including monitoring and reporting needs. The ILIS system has been designed to deliver all necessary management reports. Performance reports, particularly relating to enforcement actions, but including such matters as determinations made under delegation, are provided to each meeting of the DCA.

Report Lessons to other Decision Makers

This issue is of minimal relevance in the NT given the centralised nature of decision making in the development assessment process.

Undertake Research

This aspect is primarily focussed on the strategic and policy planning arena that underpins the regulatory framework. As a small jurisdiction the NT focuses research to a level that meets its immediate policy requirements and maintains a close watch on policy initiatives in other jurisdictions. The 'scoping' exercise of the current project is an example of this.

*promote **continuous improvement**,*

With the Planning Act 2005 and the development of the new Planning Scheme the Territory is committing to the improvement of the processes and criteria governing development assessment. That work adopts many of the principles of leading practice from around the country and is informed by research work from other jurisdictions and that undertaken by the Territory. Improved administrative processes that support the new Act and Scheme will flow from those initiatives and themselves be supported by the ILIS data base.

*promote **sharing of leading practice information**;*

Although the development assessment process is centralised and local government has no direct role, the sharing of leading practice information with local government and other key stakeholders is necessary, but not an area in which the Territory excels. The issue will be more critical with the introduction of revised legislation and the new scheme.

*provide **clear information** about system operation.*

This is an area where the Territory lags leading practice. While the Territory might assert leading practice in simplicity and accessible processes, it does not exemplify the provision of clear and concise information. There are two aspects to this issue that the Territory needs to address.

Firstly, although all statutory documentation is readily available, it is dated and not uniform or internally consistent. Again the new planning scheme will go a long way to resolving this issue.

Secondly, the advisory information available to applicants and the broader community is not comprehensive. There is room for improvement in this area both in scope and presentation.

LEADING PRACTICES - Policy (1 to 3)

1. *Effective policy development*

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

The NT has addressed this issue in two ways.

Prior to 1993, the then Northern Territory Planning Authority initiated and processed planning scheme amendments (policy), as well as assessing development, with the Minister becoming involved only at the stage of ratification/ rejection of the Planning Authority recommendation. The Planning Act amendments of 1993 and 1999 refocused the role of the Planning Authority to one solely of development assessment, and was renamed Development Consent Authority to reflect its changed role. The role of initiating policy was restricted to an elected representative of Government in the persona of the Minister for Planning. The Planning Act prescribes a comprehensive process of public consultation to which the Minister must adhere.

Secondly, at the administrative level, those Departmental staff involved in the development assessment process were organisationally separated from the strategic planning function. The names of the present “Planning” and “Development Assessment Services” branches reflect that separation. Planning Branch provides professional advice to the Minister on policy.

For almost all urbanised areas subject to planning control, the Territory has developed planning policies in the form of Planning Concepts and Land Use Objectives. The current strategic land use policies for the Central Business District are contained in the *Central Darwin Land Use Objectives*. This document is the culmination of extended community consultation prior to its release in 1996, followed by a review resulting in the 1999 version.

The project team is considering options to amend the planning scheme to improve its ability to achieve policy outcomes for the CBD area. In addition draft policy statements are being prepared in relation to identified issues. The establishment of effective and reasonable policy statements is expected to be a key factor in defending Consent Authority decisions in appeal.

2. Objective rules & tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

Codification of policy as objective tests and rules is an area where the Territory lags leading practice. Most existing development control plans have served their original purpose but no longer reflect government or community expectations. Much of the current controversy in development assessment process outcomes is directly attributable to the inadequacies of current tests and rules. Indeed, many of the provisions of the current Darwin Town Plan have no objective test.

Having acknowledged the inadequacies of the existing plans the NT has, for the last 5 years, actively pursued the development of a single NT Planning Scheme that will rationalise, integrate and consolidate the existing rules into a single entity. The new Scheme is intended to be applicable across the Territory providing for local variations where that is warranted. The new Scheme, scheduled for public exhibition in February 2006, has been the subject of broad and extended consultation resulting in continuous refinement. The draft as it stands is a compendium of rules and criteria

that meet the DAF proposition of technical excellence. Further, the text has been edited in consultation with Parliamentary Counsel, to ensure it is also legally robust.

The draft NT Scheme incorporates three levels of planning policy. Ten Territory-wide planning principles are proposed along with both regional based planning principles and area based planning principles. The single scheme structured around embedded policy will supersede the current tiered framework. Relevant planning principles from current policy have been embodied in the draft Scheme. The new Scheme deliberately avoids the pitfall of expressing the rules as aspirations. The new Scheme articulates an explicit purpose for each provision and expresses the criteria unequivocally.

3. Built-in improvement mechanisms

Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

The Territory does not have built-in systems of formal feedback for either the development assessment process or the technical criteria. The Department of Planning and Infrastructure intends to consider models from other jurisdictions.

LEADING PRACTICES - Assessment (4 to 7)

4. Track-based assessment

***Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision.
 The criteria and content for each track is standard.***

In comparing the NT process to the tracks of the DAF model it should be noted that the DAF model accommodates southern process where development consent for a broad range of relatively minor development is required. Commensurate development in the NT is either exempt from planning control or, subject to compliance with simple criteria, permitted without consent.

Because of this Territory difference, the DAF 'self assess' track does not find an equivalent process stream in the NT. Otherwise the Territory processes fit comfortably into the DAF model:

DAF Model Tracks		Equivalent process stream under the NT Planning Act	'Fit'
1	Exempt	Equates to all development that is specifically excepted from or not included under the planning scheme.	✓
2	Prohibited	Prohibited – cannot proceed (note: for exceptional development proposals prohibited in the zone, the NT has a special process).	✓
3	Self Assess	Equates primarily to minor development not subject to planning control in the NT (ie. 'exempt') - no equivalent process stream.	?
4	Code Assess	Permitted - can always proceed if compliant with statutory rules. Public notice not required. Private sector can certify compliance.	✓
5	Merit Assess	Consent – Public notice required. Open to third party comment. Professional assessment. Determined by consent authority.	✓
6	Impact Assess	Consent - pending advice from others on impact assessment under the Environmental Assessment Act or other legislation.	✓

Addendum 2 tabulates the NT 'fit' and a brief response to each track follows:

Track 1 Exempt

Does not require an application or assessment.

Development which has low impact beyond the site and raises no policy implications.

In the Territory this track includes all land uses and development that are specifically exempted from the planning scheme or not recognised by the planning scheme. The proponent or private sector agencies are responsible for ensuring that development qualifies with statutory regulations and service authority requirements.

Only very minor development that can proceed without a building permit (for example small pagolas, domestic swimming pools and minor non-structural refurbishment), can be 'self assessed' by the proponent. All other development of this nature requires a building permit in the NT and therefore at least the services of a licensed building certifier.

Track 2. Prohibited

Consent cannot be given.

Development which cannot proceed because of specific restrictions in the statutory plan.

This track equates to land uses and development that are defined by the NT planning scheme and listed as prohibited. The Territory has a free 'compliance check' service, if the proponent, certifier or consultant wishes to confirm the prohibited status of a proposal.

In addition, the NT has a special process for assessing development proposals classed as prohibited but potentially demonstrating exceptional merit or circumstances. The Planning Act allows applications for *exceptional development permits* to be processed as if proposed amendments to the planning scheme and to be determined by the Minister.

Track 3. Self Assess

Consent can be issued without specific conditions.

Development which can be assessed against a standard quantitative criteria without the need for professional assistance and can always proceed if the criteria are met.

The DAF model clearly places both the 'self assess' and 'code assess' tracks outside the requirement for public notification. It follows that, if there is no need to allow third party comment, the potential for off-site impact from development in these tracks must be low.

For 'self assess' and 'code assess' the DAF model is clear that development *can always proceed if the criteria are met*, and that a *standard consent will issue*. The latter is not required in the Territory, but a development that can always proceed if code compliant again suggests no potential for adverse impact beyond the site.

In the Territory, the class of low impact development characterised in this track is either exempt from planning control or, subject to compliance with code provisions, permitted without consent. The former fall into track 1 (exempt) and the latter into the next track (code assess), leaving no equivalent process stream to the 'self assess' track.

Others may offer different translations, but while public notice is not required, neither 'self assess' nor 'code assess' can be considered as part of the Territory's 'consent' process stream.

Track 4. Code Assess

Development which can be assessed against standard criteria and can always proceed if the criteria are met. The criteria may be complex or performance based and may require professional advice to demonstrate compliance. Conditional consent can be issued.

This track equates to 'permitted' development in the Territory that typically characterises the purpose for which the land is zoned (for example a detached dwelling in the RL1 zone or a warehouse in the I1 zone) and complies with the relevant code provisions.

Private sector consultants are primarily responsible for checking development compliance. The Territory offers a free 'compliance check' service, for the proponent, certifier or consultant to confirm that a proposal complies with the code. If a development proposes to vary a code provision, the authority's consent is needed and a development application is required.

Also in this track are the *interchangeable uses* in the CBD zone of the Darwin Town Plan.

Track 5. Merit Assess

Development which that may have off-site impact and policy implications. It is likely to be measured against performance criteria and policy objectives, and therefore requires professional assessment. Conditional consent will (or may) be issued.

This track equates directly to the NT process for development that cannot proceed without public exhibition and requires the authority's consent after consideration of all submissions, the relevant control provisions and a broader schedule of matters prescribed by the Planning Act.

Developments which are permitted in the zone but do not comply with all provisions are also processed in this track, as well as significant proposals for which there is no clear definition.

Development in this track is usually complex and applications usually prepared by consultants.

Public exhibition is mandatory and scheduled within a week of lodgement. A code assessment and all submissions are forwarded to the proponent. Applications are usually determined within 6 weeks of public exhibition. The authority is provided with a comprehensive assessment report prepared by qualified professional staff and in the case of the Development Consent Authority a public hearing is held to which the applicant and submitters are invited.

Track 6. Impact Assess

*Development which may have a significant impact on the social, environmental or economic attributes of a locality.
Assessment requires the submission of an impact evaluation in a prescribed manner.
A technically competent reviewer assesses the submitted impact assessment. Conditional consent will issue.*

In the Territory this track is usually triggered by the assessment of a development application as a 'notice of intent' under the Environmental Assessment Act. A review is carried out by *technically competent* others (eg. Office of Environment and Heritage) to determine the level, if any, of environmental assessment to be undertaken. The process of environmental assessment considered necessary must then be completed before the consent authority can determine the application.

Effectively 'track 6' is a process by others that, if required, precedes a 'track 5' merit assessment.

5. *Single point of assessment*

Only one body should assess an application using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.

The NT has a structural advantage over the states in this respect. As the development assessment process is centralised (within the divisions of the DCA), the inconsistent outcomes experienced in the states between the various local governments are reduced. The introduction of the new planning scheme should, in theory, eliminate any inconsistency.

The DAF model does, however, go further recommending that the development assessment process be the single integrated approval mechanism relating to a project. Under this proposition the development permit relates to all necessary approvals with the Planning Act being the trigger that initiates assessments under all other applicable legislation.

Although several other states have adopted such processes and despite the reputed success, there remains doubt at the development assessment level as to its effectiveness. Reports of increased administrative complexity contributing to delay and processing costs are too common to ignore. The NT Government intends to consider this model further, assessing interstate experiences closely, before committing to such a model.

Regardless of the level of statutory integration, the NT nonetheless enjoys an enviable level of cooperation and integration at the administrative level. Notably the DAF model confines referral agencies to those only with a role identified by statute. This has always been the NT practice.

The second stage of the new ILIS system will embed a pre-lodgement identification of referral agencies, which in turn will encourage liaison with service authorities prior to commencement of the development assessment process. The project team is considering options at the administrative level that may further facilitate greater integration of service agency requirements.

6. Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

The robust notification process in the Territory is mandatory for all development requiring consent. This provides full opportunity for third-party involvement in the assessment process. In the national context the Territory process might be considered exemplary of this leading practice principle.

7. Private sector involvement

Private sector experts should have a role in development assessment, particularly in:

- ***Undertaking prelodgement certification of applications to improve the quality of applications.***
- ***Providing expert advice to applicants and decision makers.***
- ***Certifying compliance where the objective rules and tests are clear and essentially technical.***
- ***Making decisions under delegation.***

This leading practice principle should be read in the context of development that is classed as permitted or exempt under the NT Planning Scheme. It follows that there is no mandated role for the private sector in the assessment of developments that require consent authority approval.

However, the private sector, generally through consultants or building certifiers, can and do make judgements regarding whether or not development assessment is required for individual project proposals that are deemed code-compliant and permitted uses in the zone. As the range of permitted uses in the NT is substantially broader than other jurisdictions, comparatively few developments require development consent, and the great majority of sites in the NT are developed entirely with the aid of private sector professional and technical services.

Each development application must be advertised and the consent authority makes all determinations. Under this regime, apart from the initial consideration of whether or not a development assessment is required, there is no opportunity for private sector certification.

In the apparent absence of broad community support, private sector certification within the NT development assessment process is unlikely in the near future. More likely, the range of uses not requiring consent, subject to meeting specified criteria, could be relaxed in some zones. Such a shift in the balance of permitted and discretionary land uses has the effect of placing more development in the hands of qualified private sector certifiers.

LEADING PRACTICES - Determination

8. Professional determination for most applications

Most development applications should be assessed and determined by professional staff or private sector experts.

Although there is no delegation to staff from the DCA (only limited delegation to the Chairman of the DCA) panel assessment is provided for every application within the jurisdiction of the DCA.

The consent authority is serviced by a team of qualified professional staff including planners, urban designers, and environmental scientists. Professional determination of more development applications already occurs in Darwin than in all other capital cities.

For those areas of the NT outside the DCA's jurisdiction, there is no panel assessment but a decision made by the Minister as consent authority or his delegate is now appealable. The Planning Act 2005 has also substituted "call-in" powers for the power to direct the DCA on any individual development application.

As a response to the national trend towards professional assessment through design review panels, the project team is considering options on how a review panel or expanded professional assessment could be established in the Territory.

LEADING PRACTICES – Appeals (9 & 10)

9. Applicant appeals

An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

Applicants have the right of appeal to the Land and Mining Tribunal, which is presided over by a magistrate and is independent of the DCA. As constituted, appeals are intended to be on review rather than de novo. This process satisfies the proposition that appeals be on review but not that a panel conduct them.

Appeals in the Territory are less common and occur in a more timely and cost efficient manner than in other states.

The Planning Act 2005 has introduced a limited right of 3rd party appeal to the Territory. There is no proposal to establish an expert commission to determine appeals against determinations called in by the Minister. All appeals are heard by the Land and Mining Tribunal.

10. *Third-party appeals*

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases.

Unlike any other jurisdiction ALL development applications are subject to public advertisement. In every case therefore, the opportunity for 3rd party involvement is assured. The introduction of a 3rd party appeals has opened a second avenue of involvement where the right to appeal is limited to maintaining residential amenity in residential zones (including SU zones which are primarily residential). Only legal entities and affected residents will qualify to appeal.

The involvement of the community in policy development, both strategic and the criteria affecting development assessment, is also assured in the Territory. The Planning Act is specific in the mechanisms through which the Planning Scheme is amended. There is no avoidance of community participation and, at least within those areas administered by the DCA, a public hearing is assured regarding planning scheme amendments.

“Appropriate governance” of the development assessment process is assured through checks and balances inherent in the system. Administratively, DAS staff do not report organisationally to the DCA and are not subject to its direction. Staff, whose conduct is governed by the Public Service Act, provide independent technical and professional advice to the Authority.

In a statutory sense, although the Authority is subject to the direction of the Minister, any direction regarding a specific application must be tabled in the Legislative Assembly and is therefore open to scrutiny. All development applications are publicly advertised ensuring all interested parties are (or have the opportunity to be) informed.

CONCLUSION

The NT development assessment process is found to have a good degree of 'fit' to the DAF model.

Consideration of the DAF model provides a useful framework for the identification of potential weaknesses in the NT system. Avenues to improve process are under consideration as the project team prepares draft recommendations for the focus group.

Addendum

From “The DAF model of Development Assessment: Leveraging the Long-Term”
Volume 1 (2003)

“Fixing development assessment

As a community we want sustainable, attractive and safe environments. Each development project makes its contribution to that end, and the regulation of development facilitates it. A model for a reformed development assessment system is about the effectiveness of the “levers” used to regulate development to achieve its long-term goals. Hence the title of this report: “Leveraging the Long-Term”.

The effectiveness of the “levers”, to achieve whatever goals are set for them, has generated much debate and revision of legislation. Property and related development is a very large part of the economy, and its regulation – with 3-400,000 development applications determined each year in Australia – is a significant cost to the industry and the community. It is not surprising that fixing development assessment continues to be high on the agenda for governments and many stakeholder groups. Where are we on the path to reform? A reasonable interpretation of recent development assessment history in Australia might be as follows.

Land use regulation, although it has earlier origins, became mandatory in all states during rapid urban expansion from mid century.

The objectives were simple, mainly controlling location by broad land use category, and basic aspects of “amenity”.

There was a drastic shortage of skilled development assessment staff lasting into the seventies, after which there was a rapid expansion of qualified staff.

Partly for that reason, from the seventies the objectives of land use regulation broadened to encompass land development costs and processes, conservation, urban design and transport, and in some cases social and economic issues – all legitimate concerns of government, industry and local communities.

However, the old machinery was not up to the task. Planning schemes got bigger without getting much better. Rules and procedures proliferated, with many of the rules being expressed as aspirations. Discretion increased dramatically. All aspects of all development were caught, and each assessment turned into a policy decision. The time to approve a development application blew out. Reform programs began in all states.

There are now widespread perceptions that development assessment systems are too complex and costly, yet not particularly effective. There is again concern about shortage of staff and skills. Certification is one way to address these issues, and DAF’s recent publication “Extending Private Sector Involvement in the Development Assessment Process” shows how this could be progressed.

DAF’s study of performance and benchmarking found common issues in all states: over-regulation, effectiveness of community consultation, and the education of both applicants and development assessment staff.

The nineties, in particular, were a time of comprehensive and thoughtful revisions of state systems. These are documented in the report “A Compendium of Working Papers on Development Assessment Practices in Australia, New Zealand and Singapore” which was delivered to DAF at the end of March 2003. The working papers describe the systems as they operate in different jurisdictions and allowed us to identify the fundamental processes common to all systems once the surface differences are discounted. The papers describe the significant reform programs taking place in all jurisdictions and seem to demonstrate that there is at present a window of opportunity for accelerated reform, jointly coordinated. Current leading practices are described throughout the working papers.

The working papers also document the diversity of the development assessment systems in the Commonwealth, States and Territories. These systems have evolved and continue to evolve within distinct cultures, tied to strongly held conventions on the one hand and liberally generated new mechanisms and novel terminology on the other. As the State and Territory systems have been improved they have also grown further apart.

To complete the historical view of development assessment, the decades either side of 2000 may come to be seen as a time when, firstly, the existing systems were updated to cope with the new kinds of demand on them that emerged in the eighties and nineties, and when development assessment was re-thought and fundamentally reformed.

*The fundamental reforms are to return to a rule-based system, in which expert assessments (not value judgements) are made against well-formulated criteria (not vague policy), and in which the political process focuses on legislating the criteria (not judging individual projects) and the legal system on legal (not merit) issues.
[Emphasis added]*

There would then be the confidence to concentrate resources on the complex projects and the impacts that matter, while allowing the majority of projects to pass through the system with minimal routine assessment. More skills, not more assessors, are needed. The DAF Model of Development Assessment is a tool to analyse existing systems, to facilitate the rethinking of development assessment and to develop the specifications for new approaches.

The decade after 2000 will see property and its regulation become fully networked, digital and graphic. Development assessment has been slow to move in this direction. The brief history above explains why: the legalistic, paper-based systems, are almost impossible to convert to intelligent machine systems, except in simple ways such as the digital publication and transmission of documents. They cannot be retrofitted or converted as they are.

On the other hand, a rule-based system, in which expert assessments are made against well-formulated criteria, can be engineered for the kinds of technologies which the finance industry now takes for granted. The DAF Model of Development Assessment will contribute to the development of tools for the specification of digital development assessment systems.”

The full text of Volumes 1 & 2 of the model process is available on the DAF website at www.daf.gov.au