PROPERTY COUNCIL of Australia

PROPERTY COUNCIL OF AUSTRALIA

# Northern Territory
# Position Paper

PROSPERITY | JOBS | STRONG COMMUNITIES

## Core Interests

1. Land Taxation
2. Property Levies
3. Central Business District Decentralisation

## Policy Reform Agenda

1. The Car Parking Levy Saga
2. Double Taxation of Past Car Parking Contributions
3. Land Development Corporation Reform
4. Local Government - Competitive Neutrality Policy
5. Local Government - Development Consent Authority
6. Special Purpose (Limited Life) Accommodation
7. Building Code Reforms - Vacant Older Buildings
8. Planning Commission - Area Plans
9. Brownfield Residential Development and Densification
10. Property Crime and Anti-Social Behavior

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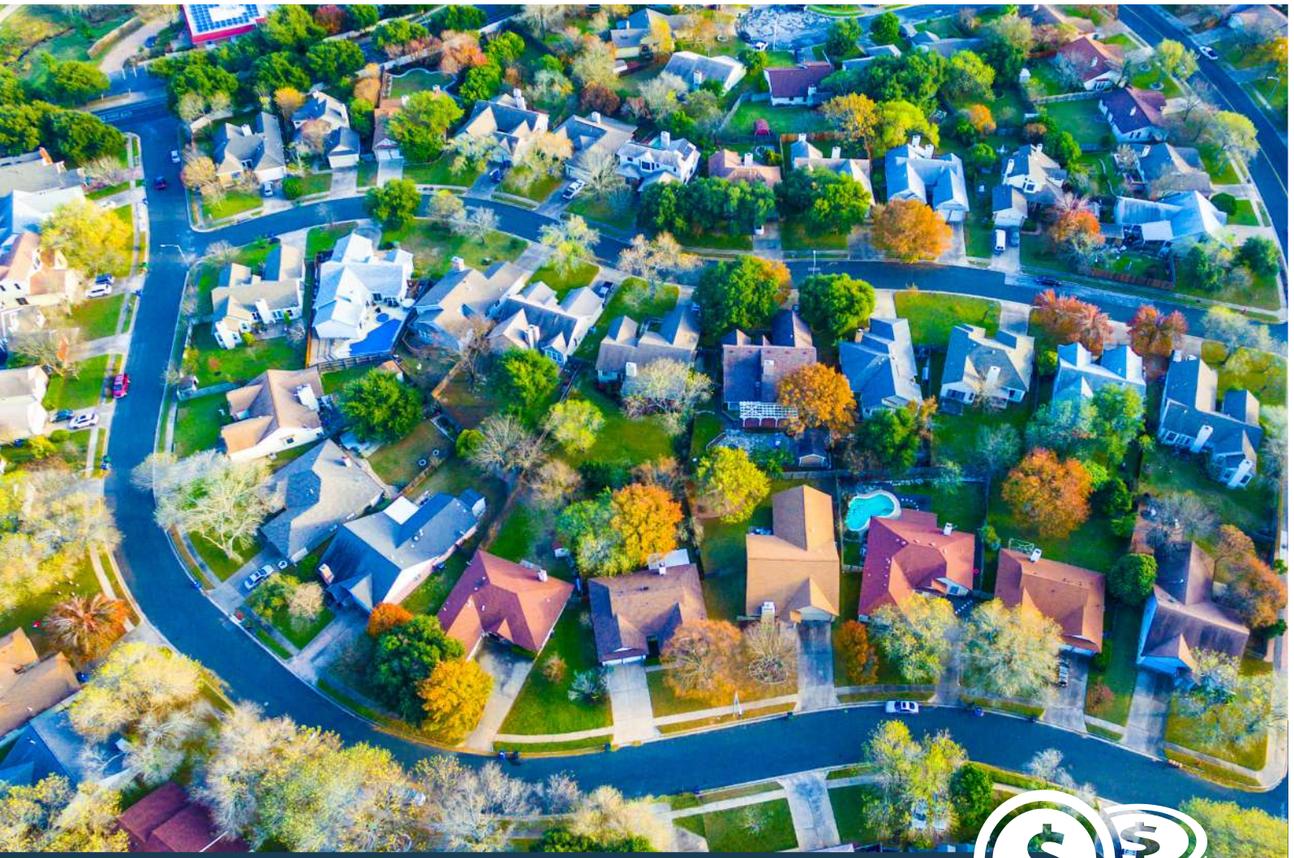
# 1 Land Taxation

**The introduction of Land Tax in the Northern Territory is a red line, core interest of the Property Council NT. Regardless of the advocacy concerns for a land tax's efficiency, equity, and cost burden, the political price would be high for any NT Government seeking to implement such a tax.**

Once the usual exemptions (primary residence, local governments, crown land, agricultural land, and indigenous land) are recognised and factored in, we are talking about 1% of NT properties, which provides neither an effective nor an efficient base to underpin a taxation regime.

Fundamentally, the Northern Territory has an expenditure problem, not a revenue problem. The NT's Taxation Revenue per Capita in 2022 was $18,503 ($3.55b from GST + $1.011b from other sources). The Northern Territory Government's recent commissioned report on budget Repair states that:

> "On the expenditure side, the Territory Government requires comprehensive cultural change to improve the integrity of the budget process and hold ministers and chief executives accountable for the financial performance of their respective portfolios and agencies. These changes to long-standing practices, which have been evident for more than a decade, are fundamental to placing the Territory on a path to fiscal sustainability."
>
> (A Plan for Budget Repair – Final Report 2019.)



# 2 Property Levies

**Both existing and the introduction of new Property Levies are of core interest to Property Council NT.**

Historically, property levies in the Northern Territory have either been abused (Car Park Levy - 1982) or have arisen as a result of poor policy and populism (Activation Levy – 2019, ceased in 2022). It reflects poorly upon any Northern Territory Government who simply resorts to financial penalties to solve problems, instead of proper policies, reforms and co-operative dialogue with the property sector.



# 3 Central Business District Decentralisation

**The history of the Darwin Business Central District has been one of premature and misguided decentralisation of its commercial activities, institutions and governmental services.**

These past decisions included the relocation of core retailing functions, tourism infrastructure (NT Museum), Casino (Mindil Beach), University (recently rectified with the new CBD Campus), hospital, and government offices. It is unequivocal that the densification of both activities and people creates activity at scale, which supports new businesses and employment opportunities. Strong central business districts are a key and critical economic driver for the Northern Territory's growth. With a population of less than 250,000 people (i.e. limited scale opportunities), a policy failure of decentralisation is the height of economic mismanagement, which only results in lower economic development and outcomes.

# Phasing out the Darwin City Parking Levy

The Darwin Central Business District Levy ("Levy") was introduced in 1983 with the objective of funding the construction and operation of the Westlane multi-story carpark.

From the outset the administration of the Levy was fraught with ratios used to determine the Levy liability of businesses in the Darwin Central Business District applied retrospectively.

Since its introduction, the Levy has increased from $117 per annum to $246.82 per annum. According to Darwin City Council there are currently 335 properties paying the levy.

The Property Council NT opposes the enduring operation of the Levy.

Council's 2021/22 Annual Report discloses funds held presently under the CBD Carparking Shortfall – Rate Levy Account as $13,771,000. During that financial year $1,123,000 of additional funds were contributed by way of the Levy.

It was never the intention for the Levy to accumulate funds. The Levy was simply intended as a mechanism for funding the liability incurred by the construction and acquisition of the Westlane Car Park.

**It is clear from the financial reporting there is no enduring rational for the operation of the Levy.**

In 2021, Darwin City Council undertook a review of the Levy and determined that if an equivalent once-off cash in lieu contribution was used at the time the Levy was introduced it would have been set at $7,500 per shortfall.

This now means that by 2023 an established property that commenced paying the Levy in 1983 will have achieved parity with Darwin City Council's nominated figure ($7,500).

A further review of the Levy is currently underway, with Darwin City Council expected to deliver a report in 2023.

The Property Council calls on City of Darwin to immediately commence phasing out the Levy for properties that have reached that $7,500 parity amount.

We further call on the Northern Territory Government, as the Legislative administrator of the Levy, to legislative reform to ensure the phasing out of the Levy.

For further background information please refer to **Appendix 1**, **page 28**.

Property Council NT
**Recommendations**

1. **The Northern Territory Government inserts the following new subsection under Section 240 (Imposition of Parking Rate) of the Local Government Act 2019:**
   - **"240 (4) the municipal parking rate levied on individual Rateable land cannot exceed a period of more than 40 years."**

   This proposed amendment simply recognises that a property that commenced paying the levy in 1983 will have reached parity with the once-off equivalent capital contributions by 2023 (40 years).

2. **Enable properties who commenced paying the Levy to make payment to the City of Darwin of $7500, less payments already made, to absolve future liabilities to the Levy.**

# Double Taxation - Past Car Parking Contributions

**There is industry concern over the systemic penalisation of properties that undergo redevelopment in the Northern Territory,creating a drag on economic activity and revitalisation outcomes. These concerns can be summarised as follows:**

- The Northern Territory Planning Scheme imposes minimum car parking requirements per 100m2 of developed area;
- The minimum car parking requirement is a worthwhile mechanism that is designed to provide car parking for the corresponding demand generated by a development; and
- There is no provision within the Northern Territory Planning Scheme for the recognition and offset of a property's past car parking contributions (payments) when determining a planning application's carparking shortfall (if any).

The Northern Territory Planning Scheme provides a framework for delivering a minimum amount of car parking spaces, which is based upon assumed demand from a development of its corresponding type. This is not unreasonable, as most developments will in fact generate a real need for those car parking spaces.

If the minimum car parking requirements were not in place, this would create car parking problems in the vicinity of the development and/or in the general area. The current framework provides an effective solution for this problem by requiring a development to either provide that minimum car parking requirement onsite or pay a formulated amount to the relevant Local Government Authority (car parking contributions).

Car parking contributions in the Northern Territory have historically been enforced by way of either a Car Parking Shortfall Levy or a Car Parking Shortfall (Once-Off) Capital Contribution. These payments are made directly to the relevant Local Government Authority. Payments are generally calculated on the construction costs for providing those (shortfall) car parking spaces by the Local Government Authority. The only significant difference between the two is the period in which those payment is made, i.e. upfront (Once-off Capital Contribution) or over time (Shortfall Levy).



# The Car Parking "Double Taxation" Problem

The easiest way to demonstrate this double taxation problem is by way of simplified examples.

### Example 1 - Historic Development:

A Planning Application was submitted for the construction of a 300m2 restaurant in the Darwin Central Business District (Zone CB). The Planning Scheme requires 2 car parking spaces per 100m2 for a Restaurant development in Zone CB. This means that a total of six car parking spaces were required to meet the Planning requirements for this historic development.

These six car parks were either provided on-site by the developer or the equivalent of six car parking shortfall contribution payments were made to Darwin City Council (the relevant Local Government Authority) to build those six car parking spaces. In any event, six car spaces will be physical provided or provisioned from this historical Restaurant development by either the developer or Darwin City Council.

Now where this problem arises (double taxation) is in the future, when this property is redeveloped. Assume that the above mentioned historic Restaurant development (Example 1) is now past its useful economic life and needs to be demolished. The developer then decides to build a new 300m2 retail shop on that property and submits a planning application. The overall car parking outcome will be fundamentally different depending upon how the car parking was provided for within Example 1 (i.e. by the developer or by Local Government).

### Example 2.1 - (Car Parks provided by the Developer):

A Planning application is submitted for the new 300m2 retail shop. The Planning Scheme would again require six car parking spaces to meet the minimum car parking requirements for the new retail shop development (2 car parks per 100m2).

This new requirement for six car parking spaces onsite can either be met from the original six car parking spaces from the previous restaurant development (i.e. not demolishing them) or can be built as part of the construction of the new shop. However, only six car parking spaces in total are provided for the property's current car parking generation demands.

### Example 2.2 - (Car Parks provided by Local Government):

A Planning application is submitted for the new 300m2 retail shop. The Planning Scheme would again require six car parking spaces to meet the minimum car parking requirements for the new retail shop development (2 car parks per 100m2).

The developer is required to make a further payment(s) for six car parking shortfalls generated by the redevelopment. Resulting in (the payment for) twelve car parking spaces for the property's current car parking generation demands.

What is clearly demonstrated by Example 2.2 above, is that each time a property is redeveloped, an additional six car parking spaces would be constructed or provisioned for their future construction, i.e. 6 to 12, 12 to 18, 18 to 24.

This problem undermines the principle and objective of a minimum car parking regime, which is a development should provide car parking either onsite or via payment to a Local Government Authority to meet its **current** car parking demand. Given the past development no longer physically exists, it is no longer generating any rational demand for car parking spaces.

This form of "double taxation" for car parking is illogical and undermines commercial feasibility for the redevelopment of sites. Therefore, the Property Council proposes that where a development application is lodged (similar to example 2.2 above), that the Planning Scheme NT expressly provides provisions for the consideration of previously contributed car parking spaces when assessing that development's potential car parking shortfall (if any).

Whilst the Property Council NT acknowledges that waivers can be applied for with respect to a development's car parking shortfall, this is purely a discretionary mechanism and does not provide the certainty needed to support investment in redevelopment.

Property Council NT
**Recommendations**

1 **Insert provisions within the Planning Scheme NT to offsets a site's historical car parking contribution(s) from an applicant's car parking shortfall assessment, where evidence has been provided that the property has either:**

**a) Paid the Car Parking Shortfall Levy (achieved once-off cost parity); or**

**b) Previously paid for Car Parking Shortfall (Once-Off) Capital Contributions.**



# Land Development Corporation Reforms

**There is property industry concern over the operation and governance of the NTG's Land Development Corporation ("LDC"). These concerns can be summarised as follows:**

- A lack of independent oversight of the LDC's development operations; and
- Perceptions of market power abuse and direct competition by pursing small non-strategic developments.

## Background: Legislative Intention (LDC Scope)

The LDC is a statutory body created in 2003 after the enactment of the Land Development Corporation Act (NT) 2003. The LDC has consistently been framed as a vehicle for providing **strategic** industrial land to the marketplace.

When the Northern Territory Government created the LDC in 2003, it had an oversight and safeguard mechanism, which ensured that its market position did not lead to abuse, nor overly agitate the private sector. By its very nature, the LDC's operations directly effects both private sector developers (project viability) and investors (asset value / rental yields).

In 2014, the Northern Territory Government amended the legislation to remove the requirement for a full time and permanent advisory board.

This amendment removed the sole independent oversight into the LDC's operational framework. Which has sadly led to increased concerns and negative industry perceptions over how "strategic" and worthwhile LDC's development operations are presently.

## Checks, Balances and Proper Governance

The Property Council NT supports LDC's fundamental role of providing land and development opportunities to **achieve strategic outcomes** on behalf of the people of the Northern Territory. However, as a principle, where there is market intervention by a government, there needs to be corresponding, appropriate and reasonable levels of checks and balances.

For further background information please refer to **Appendix 2**, **page 35**.

Property Council NT
# Recommendations

## Improving Governance

1. That the 2014 amendments to Part 3 (Advisory Board) be repealed and restored to its original intention of providing for a full time permanent Advisory Board.

2. That the Minister re-establishes the Advisory Board.

## Strategic focus:

1. That the following definitions be inserted into the Act in relation to Section 6 (Functions of Corporation):

**a) Industrial Businesses** means a business that:

i. is of strategic value to the Northern Territory;

ii. is not currently operating within the Northern Territory; and

iii. requires land greater than 1 hectare in size for their operations.

**b) Residential Developments** means a development that:

i. achieves a positive social outcome for the community, such as:

- affordable housing;
- social housing;
- disability housing;
- market leading housing (sustainability);
- market leading housing (environmental);
- market leading housing (design); or
- in a regional area where the private sector is not capable of meeting market demand.

# Local Government - *Competitive Neutrality*

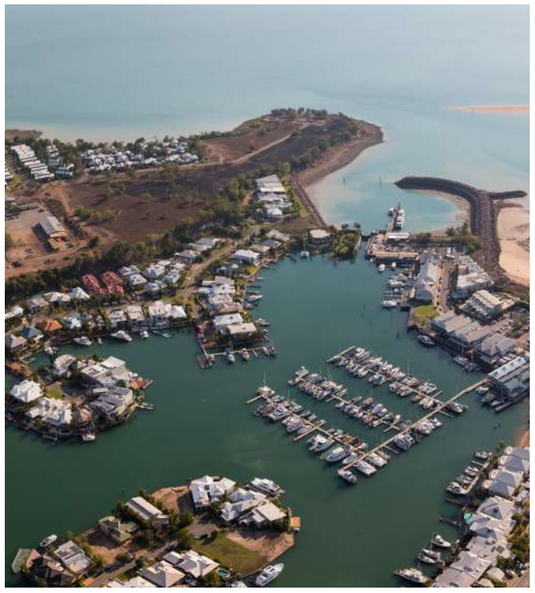
**There is property industry concern over Darwin City Council's continued agenda of commercialisation of their assets, which could lead to increased direct competition with the private sector. These concerns can be summarised as follows:**

- Darwin City Council actively considering developing and selling commercial, retail or residential strata titled premises to the public; or
- Darwin City Council leasing commercial and retail premises to the public.

Local Governments have a sizeable competitive advantage over their private sector counterparts (property developers and property owners). These advantages include but are not limited to:

- nil or subsidized asset acquisition costs;
- cheaper capital financing;
- receipt of government grants;
- subsidisation of management and corporate overhead costs;
- subsidisation of maintenance and repair costs; and
- taxation exemptions.

Local Governments business activities, where they compete directly against the private sector, should at a minimum, face the same commercial environment and costs as the private sector. The Property Council NT does not in general support any non-strategic public sector competition with the private property sector.





## NTG Competitive Neutrality Policy

The Northern Territory Government's Competitive Neutrality Policy ("**CNP**") 2020 states:

> **"Competitive neutrality requires that significant government business activities should not enjoy competitive advantages over their private sector competitors simply by virtue of public sector ownership."**

Northern Territory Government Business Divisions (e.g. the Land Development Corporation) must adhered to principles of Competitive Neutrality. Whilst the Land Development Corporation competes directly against private sector property developers, they are at least bound to conduct their operations in line with the Northern Territory Government's CNP. Local Governments in the Northern Territory are not currently subjected to the CNP.

> **"…has limited relevance in relation to local government, since no significant local government business activities have been identified in the Territory. Therefore, there are no entities to which the competitive neutrality, public monopoly and prices oversight reforms…could apply."**
>
> (Northern Territory Government Competitive Neutrality Policy 2020)

Local Governments in other jurisdictions are required to adhere to competitive neutrality principles. These include Queensland, Victoria, South Australia, New South Wales etc.

## Other Relevant Regulatory Framework: Local Government

Local Government bodies are governed by the Local Government Act (NT) 2019. The Act under section 267 (Power to deal with and dispose of property) grants Local Governments power to deal (e.g. lease) or dispose of property. Section 267 (1) states that: "Subject to the Minister's guidelines, a council may deal with or dispose of property of which the council is the owner."

There are four (4) guidelines currently in force under the Act. These include:

- Guideline 1: Local Authorities
- Guideline 2: Appointing a CEO
- Guideline 3: Borrowing
- Guideline 4: Assets

These guidelines do not contain any provisions to deal with Local Governments competing against the private sector or to adherence to principles of competitive neutrality.

Property Council NT

### Recommendations

1. **That amendments to the Local Government Guideline (No.4 – Assets) be made to mandate principles of competitive neutrality apply when Local Governments deals with or dispose of their land or building assets.**

# Local Government - *Development Consent Authority*

**The property industry sees an opportunity for improvement in the operation of Local Governments' representation on the Development Consent Authority ("DCA"). These improvements can be summarised as follows:**

- When a DCA (local government) representative is a party to hearing a development application (where there is a perceived conflict of interest) this results in perceived:
  - additional and unreasonable scrutiny;
  - stricter interpretations of the planning scheme; and
  - more onerous conditions being imposed upon an applicant than is normal.

The DCA is established under Part 8, Division 1 of the Planning Act NT (1999) ("the Act"). Section 89 (a) & (b) of the Act provides that within a council area, the Minister must appoint: ***"Two (2) community members nominated by local government council...[and]...one alternate community member nominated by local government."*** The remaining DCA division membership is comprised of two more specialist members (plus one Chair, and one Deputy Chair). These provisions lead to councils having significant representation on the DCA within their division (local government area).

The Property Council NT notes that there are some restrictions with the appointments under section 89 by a local government; this is encapsulated at Section 89 (3), which states that: ***"An employee of a local government council is not eligible to be appointed as the community member for that local government council."*** This provision currently results in the appointment of current sitting local government councillors as the community representative of the DCA.

In order to maintain confidence in the DCA process and improve the assessment of development applications, the Property Council believes the criteria for electing community representative to the DCA should be reviewed.

Property Council NT

**Recommendations**

**1 That the Planning Act NT (1999) be amended to:**

a) Disqualify a ***"community member nominated from council"*** from hearing or sitting on an application where the local government body is the applicant; and

b) There is no quorum at the Authority Meeting where ***"community member[s] nominated from council"*** is granter than or equal to 50% of members present.



# Special Purpose (Limited Life) Accommodation

**The Northern Territory is facings a significant shortage in housing, particularly over the short term (18 – 24 months), with immediate rental accommodation required to house workers and alleviate current worker shortage. A summary of current conditions is as follows:**

- The principle policy focus of the Northern Territory Government is on the creation of new permanent rental accommodation, which means there is no policy solution addressing the short and near term; and
- Without rapid solutions to provide immediate housing for workers economic activity will stagnate over the next 18 – 24 months, and limit industries ability to delivery longer term housing solutions.

The current development framework (Planning Scheme and Building Code) cannot distinguish or make reasonable concessions between a development that is intended to be permanent and a development that is intended to have a short-limited life (say 10 years or less). This is particularly acute when accommodation is ancillary to a major project or as a short-term market led response to general rental accommodation shortages.

This leads to higher and unnecessary costs which does not reflect the fundamental nature of these specific types of developments. For example, should a major project's workers camp need to provide all the required long-term amenities that are either not essential, cosmetic or ideological in nature? These requirements result in higher capital costs that impact on commercial feasibility and furthermore, does not in any meaningful way address a genuine problem or issue. A worker's camp's useful life is limited to the completion timeframe of the associated major project, making longer term considerations both impractical and unnecessary.

These same regulatory issues create longer timeframes for solving pressing marketplace imbalances. For instance, the Northern Territory currently has a rental accommodation and industry wide worker shortage. Both issues impact upon each other, as the Northern Territory cannot attract workers when it does not have enough available rental accommodation. It takes realistically around 24 months to turn off new residential developments, assuming there is the demand from investors (increasingly difficult during monetary tightening cycles). This leaves the Northern Territory with no short-term marketplace mechanisms to solve the rental accommodation problem. As a result, existing businesses struggling for workers will have little alternative but to either scale down or close. It further impacts new capital investment decisions for existing business expansions or new business commencements.

The marketplace has a significant number of vacant buildings and/or floors that could be repurposed to act as a short-term solution for worker accommodation. However, regulatory impediments, that are reasonable

and suitable for permanent developments, either bar or make it uneconomical to pursue such short-term limited life developments.

Whilst we acknowledge that government departments may have concerns over the monitoring and enforcement of limited life developments, we believe that this could be overcome by changes to occupancy certification. Presently occupancy certification is in perpetuity (i.e. until building changes use (classification) or it is demolished). Instead, a fixed period occupancy certificate could be created and issued for limited life developments.

Property Council NT
**Recommendations**

1. **To undertake a review of the Planning Act (and Planning Scheme) and Building Act (and Building Code) to consider exemptions or concessions for limited life accommodation developments.**
2. **Develop effective and low-cost compliance mechanisms to ensure that such limited life developments are not abused or become permanent.**



# Building Code Reforms – Revitalisation of Vacant Buildings

There is property industry concern over the lack of practical and reasonable reforms to the Building Code to assist in the repurposing of long-term vacant commercial buildings to other commercial uses. These concerns can be summarised as follows:

**The Northern Territory has had the highest level of commercial vacancies in Australia for over a decade, being consistently over 20%. This has led to:**

- **Suppressed and lower economic activity and outcomes;**
- **Increased graffiti and anti-social behavior; and**
- **Lower activation and amenity outcomes for the community.**

The National Building Code **('The Code")** provides for the classification of buildings into 10 specific classes. Each class of building has its own compliance standards for which a new development must meet in order to receive a certificate of occupancy. In addition, any existing building will also trigger full compliance with the Code when it seeks to change its use (change of classification). The Code is regularly updated and amended, generally adding higher and more mandatory cost requirements.

The compliance burden for older (and usually long term vacant) buildings is therefore extremely high. There is no commercial feasibility to change these older building's use (classification), which is why older buildings generally remain vacant.

In August 2017, the South Australian Planning Minister issued a comprehensive guideline to assist its departments and agencies on requirements for upgrading existing older buildings for health and safety. This initiative was undertaken by the South Australian Government in order to assist the revitalisation of older and vacant buildings. It created certainty and flexibility around what older buildings would be reasonably required to upgrade in order to comply with the Code. A copy of the Minister's Guideline can be found on the South Australian Government Website:

Ministers Specification SA Upgrading Health and Safety in Existing Buildings.pdf

In order to access these concessions, a proponent must establish that a change of use (classification) would be technically infeasible. This is based upon the cost impact of certain compliances features of the Code. A summary of this mechanism (technical infeasible) is as follows:

"**Technically infeasible** means an alteration that has little likelihood of being accomplished

Because:

1. the proposed alteration would require the removal or alteration of an essential load-bearing structural frame member and to strengthen the building to accommodate its removal would cause unjustifiable hardship; or
2. other existing physical or site constraints prohibit modification or addition of elements, spaces or features necessary to fully comply with the minimum requirements of the Building Code (including access); or
3. the cost of upgrading an affected part and the principal entrance to be accessible will exceed 20% of the total cost of proposed alterations and other alterations carried out over the previous three years; or
4. the cost of providing accessible sanitary facilities will exceed 20% of the total cost of the proposed alterations and other alterations carried out over the previous three years."

Ministers Specification SA Upgrading Health and Safety in Existing Buildings.pdf

Please note that Property Council NT is not advocating for any reform or changes to the current NT Planning scheme. Recent reforms to interchangeable uses have already facilitated the effective repurposing of vacant buildings from a NT Planning perspective.

Property Council NT
**Recommendations**

1. **To adopt and incorporate a similar regime in the Northern Territory as the Minister's Specification SA (Upgrading health and safety in existing buildings) August 2017 for buildings that have remained vacant for a period greater than 3 years.**

# Planning Commission - Area Plans

**There is property industry concern over the lack of transparency with developers applying for Exceptional Development Applications to change a property's zoning, where that new zoning is contrary to the NT Planning Commission's Area Plan. These concerns can be summarised as follows:**

Zoning changes (Contrary to an Area Plan):

- Creates investment uncertainty;
- Trivialises Area Planning and the role of the Planning Commission;
- Increases perceptions of corruption within the industry; and
- Leads to potential unforeseen market distortions.

This problem was historically referred to as "spot zoning" and was meant to have been addressed by the establishment of both the Planning Commission and Area Plans.

When an applicant seeks to change the existing zoning of a property, they must submit an Exceptional Development Application in accordance with Section 40 of the Planning Act (NT) 1999 **("the Act").** Exceptional Development Permits are decided by the relevant Minister as opposed to the Development Consent Authority. The Minister must take into account a number of matters when deliberating on that decision. Section 42 (1) of the Act states that: "In deciding whether to grant or vary an exceptional development permit under section 40, the Minister must take into account the matters specified in section 51(1)(d), (h), (j), (k), (m), (n), (p), (r), (s) and (t)."

The foregoing provisions cover: environmental protection (d), merits of the proposed development (h), land capability (j), public facilities in the area (k), public utilities and infrastructure (m), potential impact on existing and future amenity of the area (n), public interest (p), subdivision considerations (q), potential impact on natural, social, cultural or heritage values (r), and other matters it thinks fit (t).

There is currently no legislative requirement for the Minister to **specifically consider** any relevant Area Plan that relates to a property seeking an Exceptional Development Permit.

Property Council NT
**Recommendations**

1. **That a new sub-clause be inserted under the Act (i.e. Section 51 (1)(u)) requiring the Minister to specifically consider, where applicable, any relevant Area Plan; and**
2. **The Minister's Decision addressing each matter under Section 51 be made publicly available.**

# Brownfield Residential Development and Densification

There is property industry concern over the lack of reforms to "Brownfield" redevelopments, to facilitate reasonable and responsible residential densification within established suburbs. These concerns can be summarized as follows:

- That large residential blocks within popular suburbs are underutilised;
- That responsible population growth within those suburbs are not occurring; and
- That financial access to those popular suburbs is restricted to the highly wealthy.

The NT Planning Commission released a discussion paper in March 2016 titled "Dual Occupancy in Zone SD (Single Dwelling Residential)". A copy of that report is available at:

Dual Occupancy Discussion Paper.pdf

The recommendations of the Planning Commission's 2016 report were adopted by the then Northern Territory Government. Unfortunately, and subsequently, parts of Dual Occupancy provisions were repealed, leading to its complete undermining. The Property Council NT has since 2016 supported Dual Occupancy as a means of delivering diversity in housing choice and affordability for changing demographics as well as a more compact urban form to reduce urban sprawl and maximise efficiencies through existing infrastructure. There is a genuine need and urgency to reimplement the Dual Occupancy regime within the Northern Territory. As issues around housing availability and affordability are likely to increase within the Territory over the short to medium term.

## Property Council NT Recommendations

1. The Northern Territory Government reconsiders the NT Planning Commission's concept of Dual Occupancy for Zone LR (Formerly Zone SD) for blocks larger than 800sqm; and
2. For the NT Planning Commission to undertake further investigation to identify areas within existing Area Plans, which are presently Zoned LR, and have the necessary public infrastructure and amenities in close proximity so as to reasonably accommodate the development of Dual Occupancy on a single block.

# Property Crime and Anti-Social Behavior

There is property industry concern over the current level of property crime and anti-social behaviour throughout the Northern Territory. The repeated responses of “unacceptable" or we're listening to “the experts" is starting to wear thin on both industry and the community. The only metric for policy success in very simple, real and tangible results. Just plain and simple facts and statistics. Whilst the Property Council NT acknowledges that criminal reforms are outside our scope of expertise, recommending key performance indicators, accountability, and expectations are not.

### Property Crime Statistics as at 30 September 2022

**Category**
**Crime against Property**

**Rate per 100,000**
**10,503.7**

**Percentage change (YOY)**
**17.75%**

### Property Crime Statistics (Decade Average)

| | Respective September (YoY) | Rate Per 100,000 |
|---|---|---|
| .1. | 2013 | 7,922.0 |
| .2. | 2014 | 7,532.8 |
| .3. | 2015 | 8,016.4 |
| .4. | 2016 | 8,086.2 |
| .5. | 2017 | 8,690.0 |
| .6. | 2018 | 8,951.0 |
| .7. | 2019 | 8,486.7 |
| .8. | 2020 | 7,682.5 |
| .9. | 2021 | 8,920.4 |
| .10. | 2022 | 10,503.7 |
| **Decade average** | | **8,479.2** |

Whilst the word “perceived" is bandied around in relation to crime and people's general feelings of safety, the above statistics clearly dispels that political caveat. Property Related Crime in 2022 is 24% higher that the decade average. The results from current government policies are also unequivocal, they are not working.

In addition to the foregoing, two Northern Territory cities (Alice Springs and Darwin) currently occupy the unenviable positions of being in the top 5 highest crime / unsafe areas in Australia.

| Rank | City | Crime Index | Safety Index |
|---|---|---|---|
| 1 | Alice Springs | 75.08 | 24.92 |
| 2 | Rockhampton | 67.88 | 32.12 |
| 3 | Cairns | 61.46 | 38.54 |
| 4 | Darwin | 60.80 | 39.20 |
| 5 | Townsville | 57.59 | 42.41 |
| 6 | Toowoomba | 56.15 | 43.85 |
| 7 | Geelong | 55.65 | 44.35 |
| 8 | Ballarat | 54.25 | 45.75 |
| 9 | Wollongong | 51.65 | 48.35 |
| 10 | Newcastle | 48.08 | 51.92 |

Property Council NT
**Recommendations**

1. **The Property Council NT believes that it is not unreasonable nor unrealistic for Property Crime to be at or below the Decade Average of 8,479.2 per 100,000 people.**
2. **The Property Council NT recommends that an immediate starting place would be to review existing penalties for the unlawful use of a motor vehicle in the context of both ram raids on business premises and on police vehicles.**

# Appendix One – Phasing Out the Darwin City Parking Levy:

## Further Background and History

**It is now time for legislative reform to ensure that the Darwin Central Business District Car Parking Levy ("Levy") begins phasing out from 2023.**

By 2023, an established property that commenced paying the Levy in 1983 will have achieve parity with the equivalent once off cash-in lieu, being $7,500 (circa 1990 equivalent payment). The foregoing figure of $7,500 was nominated by Darwin City Council after their 2021 review of the Levy. Whilst we disagree in principal with its use, i.e. nominating a 1990s figure ($3,500 was a historically closer figure contemplated in 1985 by Darwin City Council's own consultants for cash-in-lieu payments) for the sake of expediency and finalisation of this issue, we reluctantly accept $7,500 as the point in which parity will ultimately be reached.

This parity recognition now creates a fundamental inequity and injustice for those properties (and commercial tenants) that continue paying the Levy after meeting the $7,500 threshold. The forgoing has all been acknowledged by the Darwin City Council, whom is currently reviewing the matter with a further report due in 2023.

The following are the relevant extracts from Darwin City Council's Ordinary Council Meeting Agenda from 13 July 2021:

> "In 2013, a Darwin CBD Parking Strategy was endorsed by Council and included Policy Statement 1.3 noting that 30 May 2021 is the point at which the local rate levy achieves parity with the equivalent one-off parking contribution and the local rate levy system is ended." …
>
> "The lowest one-off contribution in endorsed Contribution Plans over the last 38 years is $7,500. No landowners have reached parity of $7,500 and therefore there is inequity between levies and one-off contributions. " …
>
> "It is estimated that parity will be reached for the landowners who commenced paying the levy in 1983 in 2023." …
>
> "A thorough review of individual landowner and developer contributions will be completed over the next 12 months."

Sadly, there is genuine concern that Darwin City Council has no real appetite or intention to start ending the Levy from 2023.

However, ultimately it was the Northern Territory Government that introduced and legislated the Levy, it will be the Northern Territory Government that enables it continued collection (post 2023). Whilst the Northern Territory Government does not receive a single cent from the Levy, they will receive the resentment and public umbrage of property owners and tenants if this Levy remains in place after meeting the $7,500 equivalent threshold.



# Car Parking Levy History

A succinct background to this sorry saga can be found in A Financial Strategy for Provision of Parking in Darwin CBD (1986). The relevant extract is as follows:

> "Darwin's first multi-storey public carpark [Westlane] began operations in 1981. Owned and operated by the Darwin City Council, the 443-space was constructed to compensate for the loss of on-street parking resulting from the conversion of a section of the main commercial street to a pedestrian mall and to accommodate an anticipated increase in future parking demand in the core of the CBD. The carpark was not considered financially viable even at the planning stage, but it was believed that in the long term it would generate a surplus on its operations."

The Northern Territory Government in the late 1970s decided that a multi-story car park was highly desirable and ultimately necessary as part of the Mall redevelopment. They then proceeded to construct the Westlane multi-story carpark, with the intention of transferring the development to Darwin City Council upon completion.

In order to facilitate the transfer and associate loan repayment (interest and capital) they introduced in 1982 legislation amending the Local Government Act (NT). The legislation grants local government council's powers to charge a special levy for a specific purpose. Thus, the Darwin Central Business District Car Parking Levy was born.

Upon the introduction of the legislation, an arbitrary and retrospective basis was utilised to select properties within the Darwin Central Business District to pay the Levy. That methodology was borrowed from the newly introduced Car Parking Ratios from the 1979 Town Plan for Darwin.

The car parking ratios were specified under Regulation D94 of the NT Town Planning Act. They provided that a new development must provide the following on site car parks:

| Commercial | Institutional | Residential |
|---|---|---|
| 3 car spaces per 100m² of Floor Area | 2 car spaces per 100m² of Floor Area | 0.6 car spaces per Dwelling Unit or Suite |

The foregoing car parking ratios were then retrospectively applied against all existing buildings in the Darwin Central Business District to establish their individual Levy liability. In 1983 payment of the Levy commenced with the amount per car park shortfall set at $117 per annum. Since 1983 and for each subsequent year the Levy has been charged. Currently, the levy is set at $246.82 per car park shortfall per annum. According to Darwin City Council there are 335 properties paying the Levy in the Darwin Central Business District.

# The Levy - An Act of Retrospective Bastardry

**Retrospective taxation in Australia has seldom occurred and has generally only been utilised to address the questionable legality of certain historical business activities.**

For instance, the most famous example (and arguably justified) was the retrospective legislation and taxation changes to address the "Bottom of the Harbour schemes". Then Senator Don Chipp commented on retrospective tax law during the debates on legislation for the Bottom of the Harbour schemes:

> "Good heavens; give politicians the chance to legislate retrospectively and we will open a Pandora's Box. I find that quite frightening. On this occasion a Pandora's Box is opened in the excuse of catching the filthy people who cheat on tax. It is done for a noble purpose, one might say, and I agree. But I have never been one to subscribe to the view that the end justifies the means. That sort of proposition leads one down a track which is fraught with disaster. That is the track that every tyrant in history has gone down; that is, to make illegal today something which was legal last year."
>
> (Commonwealth, Parliamentary Debates, Senate, 1982, Vol S96 2594)

The unequivocal fact is that property owners currently subjected to the Levy, obeyed the law as it was at the time of construction of those buildings. This very point was noted during the Northern Territory Government debates on the bill introducing the Levy: "Prior to the 1978 Darwin Town Plan, there was no requirement for property owners or developers to provide carparking in this particular area. After the 1978 Darwin Town Plan, there were the waiver provisions." (Parliamentary Debates – 16 March 1982 – Minister Harris – Port Darwin)

This is, and remains, the main grievance of the Property Council NT with the introduction of the Levy. This criticism has been consistent over the entire forty years the Levy has been imposed:

> "Building owners and developers in the CBD have actively opposed the levy from the time of its introduction. Major criticisms include:
>
> - the Council did not consult with building owners prior to assuming the debt;
> - buildings constructed prior to introduction of the levy satisfied the relevant parking provision requirements;..."
>
> (A Financial Strategy for the provision of Parking Darwin Central Business District, Alexiou and Symons – 1986)

This outrageous abuse of legislative power must now start coming to an end and the Levy phased out from 2023 so that we can finally close the door on this shameful historical chapter of the Northern Territory Government.



# Justification and Operation of the Levy

It is a matter of fact, that the Levy was introduced by the Northern Territory Government to fund loan repayments (land and construction costs of Westlane Car Park) by Darwin City Council. However, "It is Council's opinion that while the Westlane Car Park debt gave rise to the introduction of the local rate, there is no link between the extinguishment of this debt and on-going use of the local rate." (Darwin City Council Twenty Ninth Ordinary Meeting (16 July 2013) Agenda)

This unfortunate misunderstanding has arisen due to the poor drafting of the Regulations (Local Government (Darwin Car Parking Local Rates) 1982), which did not reflect the true intentions of the legislators.

Whilst Darwin City Council is correct in saying that the Levy regime itself does not cease upon the extinguishment of the Westlane Car Park loan; however, the Levy was only to be charged when capital debt (from the construction of car parking) happened. Since there was no further car parking related construction (or acquisition) debt, the Levy amount per car parking short fall should have reverted to $0.

The Northern Territory Government's intention for the Levy is clearly articulated from the Bill's (Local Government Amendment Bill (Serial 155)) Second Reading Speech (26 November 1981), wherein Mr. Perron stated that:

> "This bill seeks to amend the Local Government Act to increase the flexibility available to local government councils in raising **revenue for specific purposes.**"

> "The council proposes to make immediate use of these rating powers to levy a rate, payable during the current financial year, **to cover commitments associated with the West Lane car-park.**"

During the subsequent associated Parliamentary Debates (16 March 1982) of the Bill (Serial 155), Mr. Harris also confirmed the intention of the Levy and stated:

> "That is the main purpose of this bill. It enables the Darwin city council to impose a special levy on the property owners of the central business district **to assist with payment for the West Lane car-park.**"

Darwin City Council's position on the Levy was encapsulated in their tabled Position Paper from the 1984 Car Parking Workshop (Workshop on carparking in the Central Business District of Darwin (1984) – Council's Position on C.B.D. Parking), wherein they stated:

> "**Council does not have a formal policy statement or document on car parking as such.** The situation is rather analogous to the development and evolvement of law wherein many previous decisions, documents and papers have been prepared, considered, debated and determined the last eight to nine years. This produces the present approach to car parking by council."
>
> "Obviously the levy is set at a level which meets the **deficit in expenditure and revenue.**"
>
> **"The extension of this action is that the levy is distributed over the total shortfall bays and that in the event that revenue exceeded expenditure there would be no deficit and hence no need to charge a special levy."**

Darwin City Council subsequently engaged their own professional consultants in 1985 to advise them on the contents and format of their first formal strategy for Darwin's Central Business Car Parking. That report titled "Darwin Central Business District: Traffic Management and Parking Strategies" (Final Report) (November 1985) by Pak-Poy & Kneebone Pty Ltd ("The 1985 Report") and unequivocally stated that:

> "The levy was introduced in 1981 **as a means of offsetting the debt repayment** for the $4 million loan undertaken by council to provide parking facilities in the CBD." (Page 89)

As can be seen from the forgoing, there is clear evidence from numerous sources (Northern Territory Government, Darwin City Council, and related engaged professionals) that the Levy Amount was intended to merely operate to offset the Westlane Car Park acquisition debt.

The Westlane Car Park debt to the Northern Territory Government was discharged many years ago. Darwin City Council has had no debt (in relation to car parking) since they discharged the Northern Territory Government loan for Westlane Car Park.

# Perpetuity vs Parity

In 2013 the issue of equity and fairness of the Levy being imposed in perpetuity was examined. The Darwin CBD Car Parking Strategy (June 2013) ("The 2013 Report") by Tonkins Consulting provided that the Levy should end on 30 May 2021 as it will have reached cost parity with the current car parking short-fall regime. The 2013 Report stated:

> **"30 May 2021 is the point at which the local rate levy achieves parity with the equivalent one-off contribution and the local rate system is ended."**

The 2013 Report's recommendation of ending the Levy was noted and accepted by Darwin City Council at their Twenty Ninth Ordinary Meeting of the Twenty First Council (16/7/2013):

> "It is Council's opinion that while the West Lane Car Park debt gave rise to the introduction of the local rate, there is no link between the extinguishment of this debt and on-going use of the local rate. However, the continued use of two (2) systems is considered confusing, creates an administrative burden and, as affected landowners had no say in its introduction, it has always been unpopular. **The draft Parking Strategy therefore recommends its removal through phasing out, over a period of time."**

> "A previous report to Council showed that someone paying the local rate would have paid the same amount as someone making an in-lieu contribution as per the Contribution Plan. This is assuming that the former had been paying the local rate since 1981 and that the latter was calculated in 1991, when the Contributions Plan was brought in. **The draft Parking Strategy has recommended 2021 as the year when the local rate system should cease to operate. It also recommends reviewing the incentive offered to exit the local rate system."**

At Darwin City Council's Ordinary Council Meeting held on 13 July 2021, they again considered the matter, as cost parity had occurred (30th of May 2021). At this meeting Darwin City Council regrettably moved the goal posts further down the track with their views:

> "THAT Council note, that a review of the parking levy has been completed and no landowner in the Darwin CBD reached parity on 31 May 2021…
>
> THAT Council note, that **no landowner will reach parity until post 2023** and for others this may be even post 2035."

# Logical inconsistencies of the Car Parking Levy (post 1982)

There are technically two methods of paying for car parking shortfalls in the Darwin Central Business District:

1. Landowners can be charged an annual levy through the Local Government (Darwin Parking Local Rates) Regulation, which as of 1 July 2021 has now transitioned to the Local Government (General) Regulations 2021; and
2. Developers can be charged a one-off parking contribution under the Northern Territory Planning Act.

The last property to be placed under the Levy method (according to Darwin City Council) was in 2009. Since 2009, buildings that were developed in the Darwin Central Business District and applied for and received legally valid waivers and concessions for car parking shortfalls have not been subjected to the Levy.

This is in stark contrast to properties constructed before 1979 (no planning requirement for any car parking) or properties developed between 1979 and 1981 that received legally valid concessions and waivers, both of whom were retrospectively found liable for the Levy in 1982.

We are in no way advocating for those properties (developed post 2009), which legally received waivers for car parking shortfall to be placed on the Levy, we are simply pointing out the fact that this historical Levy and the properties subject to it, have genuine grievances that go towards the fundamental issues of inequality and fairness.



# Confusion with having two Darwin CBD Car Parking Regimes

On 26th of May 2020, the Minister for Infrastructure, Planning and Logistics amended the NT Planning Scheme (Amendment No.547). This amendment changed the number of car parking spaces necessary for Commercial Uses in Zone CB from 3 per 100m2 to 2 per 100m2 of developed area.

Unfortunately, the Local Government (General) Regulations were not amended at the same time, nor indeed have they ever been properly reviewed since their introduction in 1981. The Regulations currently remain at the historical higher rate of 3 per 100m2 car parking spaces for Commercial Uses in Zone CB.

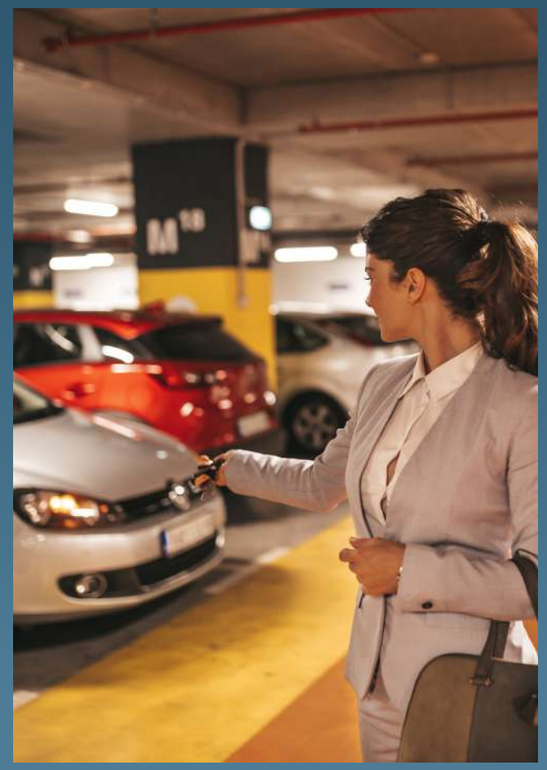
As noted previously, the basis for the Levy's 3 carparking spaces per 100m2 of Floor Area (Commercial) was taken from the 1979 Darwin Town Plan. The Building Owners Management Association (B.O.M.A., S.A. Division, the precursor to Property Council NT) at the time noted that the requirement for 3 carparking spaces per 100m2 of floor area in connection with the Levy was grossly excessive.

> **"The application of Regulation 94 has such a profound effect on office and warehouse developments that efficient use of land sites makes it impossible to provide the number of off-street car bays required and hence any developments "waivers" either in whole or in part.**
>
> **The question that must be asked is why should Darwin with a population of 65,000 people and approximately 35,000 registered vehicles have Car Parking Regulations THREE TIMES more stringent than Brisbane and Melbourne."**
>
> (Workshop on carparking in the Central Business District of Darwin (1984) – Building Owners Management Association Submission)

Due to the 2020 amendment of the NT Planning Scheme, a 33.33% penalty now applies to properties that are subjected to the Levy. As they are paying a levy for 3 car parking spaces (per 100m2), where new developments (post May 2020) are now only required to either provide 2 car parking spaces (per 100m2) or pay a once off shortfall payment for those 2 car parks spaces.

This inconsistency creates both a fundamental inequity and furthers confusion over the two different car parking regimes operating fairly within in Darwin's central business district. This very confusion was noted by Darwin City Council at their Twenty Ninth Ordinary Meeting of the Twenty First Council (16/7/2013). The relevant extract is as follows:

> **"…the continued use of two (2) systems is considered confusing, creates an administrative burden and, as affected landowners had no say in its introduction, it has always been unpopular."**



# Abuse of the Levy

As can be seen from Darwin City Council's latest published Annual Report (2020/21). The CBD Carparking Shortfall – Rate Levy Account as at 30 June 2021 held funds of $13,771,000. During that financial year $1,123,000 of additional funds were contributed by way of the Levy.

As clearly demonstrated above, it was never the intention for the Levy to simply accumulate massive amount of funds, but as a mechanism for funding the liability incurred in connection with the construction and acquisition of the Westlane Car Park.

Furthermore, the Annual Report discloses revenue generated from all Car Parking activity in 2020/21 of:

| | |
|---|---|
| Parking Fines: | $1,182,000 |
| Car Parking Fees: | $4,168,000 |
| | **$5,350,000** |

The $5,350,000 revenue raised from car parking activity is allocated to general revenue, it is not tied to spending on either car parking maintenance, car parking related costs, providing new car parking or on the Darwin Central Business District generally.

The foregoing "general revenue" is deeply inconsistent with Darwin City Council's written 1984 position on how the Levy Amount was to operate:

**"Several factors would contribute to reducing the levy and these would include an increased number of shortfall bay brought about by new developments; loss of off-set bays on vacant land; increased patronage and revenue from the car parks all of which coupled with the effects of inflation would reduce the real cost of the levy in the future."**

(Workshop on Carparking in the Central Business District of Darwin (1984) – Council's Position on C.B.D. Parking)

With respect to the forgoing, it's worthwhile noting that the Levy Amount has never decreased since its inception in 1982 to the present date.



# Appendix Two – Land Development Corporation Reforms:

## Second Reading Speeches

"The Chief Minister announced the formation of a new land corporation in November 2001, principally to develop and manage the proposed industrial estates at East Arm, Middle Arm and Glyde Point. The concept of an industrial and commercially oriented land corporation was developed to ensure the Territory is in the **best position to take advantage of major industrial projects due to commence or accelerate this year.** The projects include the completion of the Adelaide to Darwin rail link, the completion of Stage 2 of the East Arm Port and onshore and offshore oil and gas projects. It is through the provision of support for these major industrial activities and appropriate linkages that the Territory economy will continue to grow and prosper."

(Second Reading Speech – Mr. Vatskalis – 2003 Bill)

"While the new Land Corporation will be able to deal in real property and issue leases and licences, it will not be exempt from the **Planning Act** or any other laws of the Territory. **It must be seen to operate in as much of a commercial manner and on similar grounds for business it might be perceived to be competing with.**

**The corporation will have an advisory board of five members with a maximum of two public sector employees with the balance of the board drawn from the private sector.** The prerequisites for appointment are to have a proper qualification or experience or knowledge…".

(Second Reading Speech – Mr. Vatskalis – 2003 Bill)

"In 2003, this government created the Land Development Corporation as a commercially oriented land agency, **with the primary aim of providing strategic industrial land associated with the port, rail, oil and gas industry.**"

(Second Reading Speech – Dr. Burns – 2009 Bill Amendment)

"The Land Development Corporation was established in 2003…with the primary aim of **providing strategic industrial land associated with the port, rail and oil and gas industries.**"

(Second Reading Speech – Mr. Giles – 2014 Bill Amendment)

"The amendments proposed will provide the minister with the ability to convene an expert advisory board **as required** in relation to major projects or developments…"

(Second Reading Speech – Mr. Giles – 2014 Bill Amendment)

PROPERTY COUNCIL of Australia

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