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NTLC

NORTHERN TERRITORY LAND CORPORATION

File Ref: NTLC2005/0004-04

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TO WHOM IT MAY CONCERN

The Northern Territory Land Corporation appreciates the opportunity to provide comment on the proposed Environment Protection Bill 2019 and the Draft Environment Protection Regulations 2019. The consultation process undertaken by the Environment agency consultants is also appreciated.

The Corporation understands the need for amendment to the existing regime and also the intent of the draft legislation and regulations. However, the drafts as they stand will have the opposite effect to what we believe the Northern Territory Government intends.

Certainty of process is the key to attracting investment and this was clearly demonstrated by the Territory gaining the Inpex project over Western Australia. The Inpex Project cost significantly more to develop in the Northern Territory with development of an 890 kilometre pipeline from WA to Darwin. Assuming the actual plant would have cost the same in either jurisdiction then the *value of certainty of process* is clear. Inpex repeatedly stated it was the certainty the Territory could provide that was a major factor tipping the investment decision in favour of the Territory.

The lack of certainty of process in the draft legislation is troubling and if it is not addressed, future opportunities for the Territory will be missed and many known potential projects simply stop.

The areas of concern with the legislation are outlined on the attached paper which was in part developed with a practicing environmental consultant. The paper was prepared simultaneously with a request for assessment of how the Northern Territory Land Corporation would progress significant economic and large-scale opportunities in the horticulture sector under the new legislation.

The proposed new legislation represents a significant change in the way in which proposals that may impact the environment are assessed. Although this change will result in a far more rigorous approach to the assessment of proposals, there will also be a commensurate increase in the amount of information required to be collected, collated and reported by the proponent. There will also be significant increases in the costs with the new processes and in the time taken to gain an approval to commence any developments to be assessed.

It is considered that there will be a significant increase in the number of proposals requiring formal assessment, due to the inclusion of the "Accepted Referrals" category which will consequently require further assessment by the EPA. Currently, in the case where an NOI does not trigger the requirement for further assessment under the current legislation, the proposal is allowed to proceed without further requirements under the environmental legislation.

The level of certainty for proponents is likely to be significantly diminished with an ability by the EPA, the CEO and or an "Authorised Environment Officer" to stop work on a project, and or lodge a variation which may impact on the entire process at almost any time, including after an Approval has been granted by the Minister. These broad ranging powers could have a significant impact on a project and apparently without any specific recourse available to the proponent. Again this impacts on the level of certainty and confidence in the process, and the ability for a proponent to move through the whole development process with minimal delays and minimising costs.

Direct costs are going to increase particularly with the new environmental offset provisions, environmental bonds, environment protection levies, ability to recover funds paid out of the environment protection funds, environmental assurance levies and potential costs resulting from criminal proceedings. Indirect costs will increase substantially due to the far more rigorous process which will include environmental audits and formal closure requirements.

As outlined above the Corporation appreciates the opportunity to comment on the drafts and would be pleased to provide comment on any amendments.

Yours sincerely

JOHN COLEMAN
Chairman

28 November 2018

Attachment

Environmental Protection Bill

Part 2 - Principles of environmental protection and management

Division 1 Principles of ecologically sustainable development

Section 20 - Principle of improved valuation, pricing and incentive mechanisms

"(1) Environmental factors should be included in the valuation of assets and services."

This appears to require a proponent to place an economic value on the environmental assets which may occur within the development parcel. A traditionally difficult area which is fraught with subjective views on the value of environmental assets. Whilst the Corporation is not arguing against the principle a number of issues need to be resolved.

- How will a proponent assess the economic value and how will the Department assess that the values provided, are real and appropriate?

  The legislation should set out the mechanisms envisaged to allow an objective economic valuation of environmental assets and the standard / processes of assessment to be undertaken.

- How will such assessments be arbitrated when there is a difference in the values following submission by the proponent?

  It will be interesting to see which area of the NTPS is able to undertake such an assessment and if the NTPS is dealing with a substantive proponent ie another major gas company, how the NTPS's assessment will withstand a challenge at a commercial / legal level.

  The processes need to be ironed out so that the public sector is protected from the sometimes highhanded approach by some proponents and at the same time it is clear to the proponents

- Will these values be used to assist determine the size of bonds and levies associated with a project?

- Will these values be used to assess the value of offsets?

Division 2 Management hierarchies

Section 23 – New bill now includes a provision for environmental offsets.

"(c) if appropriate, provide for environmental offsets in accordance with this Act for residual adverse impacts on the environment that cannot be avoided or mitigated."

- How will the size and value of offsets be determined?

This may mean setting aside land of equal or greater environmental value as an offset to the proposed development. This would have the effect of "locking up" the offset land into the future, which may be problematic if that land was required in future for development.

- How will offsets be managed, and by whom?
- What mechanisms will be in place to protect the offsets into the future?

Large areas of land will require management in terms of fire, weeds and feral animal controls.

- Will offsets ever be allowed to be developed?
- How will the size and value of offsets be determined and arbitrated/negotiated?
- Who will be responsible for the ongoing management of offsets?

Part 3 - Environment Protection Policies

Section 27 Approval of environment protection policy

"The Minister may approve an environment protection policy that has been prepared in accordance with the regulations."

This is an open ended ability to set protection policy "on the run" which effectively reduces certainty for developers.

Although EPPs must be gazetted, there appears to be no third party comment process regarding the content of the policy and or procedures used to develop the policy.

- How will the general public and or proponents be able to contribute to or comment on the development of individual EPPs?

Part 5 Environmental protection declarations

Division 1 Declaration of objectives and triggers

Section 36 Declaration of Territory environmental objectives, and

Section 37 Declaration of environmental triggers

(1) The Minister may declare all or any of the following:

(a) an activity-based referral trigger;

(b) a location-based referral trigger;

(c) an activity-based approval trigger;

(d) a location-based approval trigger.

Currently the detail of the referral objectives and approval triggers are unknown.

- How does Government expect proponents to respond to such ambiguity?

  Many of the areas of the Northern Territory yet to be developed and don't have the base line environmental information to be able to determine objectives and triggers.

- What is to occur first? A baseline assessment by the NTG so that the objectives and triggers can be provided to a proponent?

- Or is the proponent expected to undertake a baseline study then get the trigger information then prepare a proposal accordingly, meaning applications will not be able to be lodged until a notice of declaration is made?

  It is noted that there is a third party consultation on objectives and triggers.

Division 2 Declaration of protected environmental areas and prohibited actions.

This will allow formal declaration of conservation areas, e.g. Howard Sandplains Protected Area, East and West. Impacts on any existing development and or on land held and identified for potential future development will result from this new provision, albeit this is a current practice adopted by the NTG, e.g. Howard Sand Plains Protected Areas was declared without any apparent legislative basis.

Third party consultation on protected environmental areas and prohibited actions is included.

- Who will be responsible for the ongoing management of protected areas?

Part 6 Environmental impact assessment process

Division 3 Referral and assessment of proposed action

Section 66 Referral if application made to statutory decision-maker

"(2) The statutory decision-maker:

(a) may refuse to consider the application until the action is referred to the NT EPA under this Division and a decision is made on the referral; and

(b) must take all reasonable steps to encourage the proponent to refer the action to the NT EPA."

This provision removes the requirement under the current Act for a statutory decision maker or service authority to refer an application to the NT EPA if it is considered to be required. This is a positive inclusion in the new legislation as often an "application" to a statutory decision maker, such as a development application, requires a different level of information compared to a formal referral under the environmental legislation. It will now be the responsibility of the proponent to

refer a project, albeit the NT EPA has greatly increased powers to "call in" projects as well. Statutory decision makers can refuse to grant licenses and or permits under their own legislation if they believe the project requires a greater level of environmental scrutiny, such as via the Environmental Legislation.

Section 68 Call-in notice

"(1) If the NT EPA believes that a proponent is taking an action that should be referred to the NT EPA under section 63, it may by written notice request the proponent to refer the action under that section within the time required by the notice.

(2) If the NT EPA believes that a proponent who has referred an action to the NT EPA has or is proposing to vary the action, it may by written notice request the proponent to give notice of the variation to the NT EPA under section 67 within the time required by the notice.

(3) Subsections (1) and (2) apply whether or not a statutory decision-maker has made a decision authorising the action."

This is a new "power" under this bill.

- What right of appeal is there in relation to this section? I.e. if an approval has been provided by a statutory decision maker, what avenue is open for a proponent to argue that it should NOT be referred or "called in" by the NT EPA?

Division 4 Approval notice for actions under environmental approval for strategic proposal

75 Consultation on application

"*Before making a decision on an application under section 73, Minister must:*

(a) consult with the following in relation to the application:

(i) the NT EPA;

(ii) any relevant statutory decision-maker; and

(b) consider any comments received from them within the time specified by the Minister."

Consultation with statutory decision makers is often the primary delay with the whole EIA process. This section does NOT specify a timeline for this process.

- Why is this timeline being left to the Minister to decide for each and every referral and NOT as a statutory timeline, as is the case for a range of other processes?

  This could allow a Minister to delay a decision for political expediency rather than due process.

Part 7 Environmental approval

Division 5 Conditions of approval

Section 96 Conditions imposing financial requirements

"(1) A condition may require the approval holder to provide an environmental protection bond in accordance with Part 9 Division 1.

(2) A condition may require the approval holder to pay an environmental levy in accordance with Part 9 Division 2."

This is a new provision which will mean additional costs imposed on proponents, and may mean significant additional costs, e.g. the Bond applied under the *Mining Management Act* for the McArthur River Mine is almost $500 000.

- How will the Bond be calculated?
- Will there be a risks based approach to the calculation of bonds?
- Will there be a process to allow a proponent to dispute the size of a bond determined by the EPA?
- Will there be an expiry date on an environmental approval?

Division 7 Amendment of environmental approval

Section 104 Amendment of environmental approval

"(1) The Minister may amend an environmental approval:

(c) if the Minister becomes aware of information that was not available to the Minister at the time of granting the approval and the Minister would have imposed different conditions on the approval if the information had been available; or

(d) if information becomes available indicating a new threat or change in circumstance relating to the environment which in the opinion of the Minister necessitates, or would otherwise benefit from, an amendment to the conditions of approval; or"

This has an impact on the level of certainty a developer has in regard to the existing approval for a proposed project.

- What are the potential sources of information?

  There are campaigners / activists who will see this as an invitation to continue with their actions until a Minister gives in. It allows for political decisions to overturn environmental approvals given by a previous Minister.

This may in fact be a mechanism of pseudo third party appeals?

- What process will be in place to allow the proponent to respond to any "new" information?

Division 8 Revocation of environmental approval

Section 105 Revocation of environmental approval

As above; what are the potential sources of information that may lead to a revocation?

Does this provision have the potential for pseudo third party appeals?

Section 110 Revocation at request of approval holder

(1) This section applies if a proponent requests the Minister to revoke an environmental approval on the basis that all remediation, rehabilitation and closure requirements of the approval have been met.

This section requires an approval holder to formally end the entire process by applying for the revocation, which allows all statutory decision makers to impose additional conditions to be applied prior to the issuance of a revocation.

This may require considerable amount of work to be done by the approval holder that is currently not required under the current Act, for example the provision of an environmental audit along with request for revocation.

Remediation, rehabilitation and closure requirements should be set at the commencement of the project, if there is an ability to alter these conditions at the end of the project, how can a developer prepare project budgets?

- Why include this extra step?
- What is the difference between a revocation and a closure?
- Will there be an expiry mechanism built in to an environmental approval?

Part 8 Environmental offsets

Section 119 Environmental offsets framework and guidelines

"(1) The Minister may establish an environmental offsets framework for the use of environmental offset measures under this Act or an Act prescribed by regulation."

This provision has the potential to add significantly to the cost of developing land whereby environmental offsets may be required. This may mean that other parcels of land may need to be purchased and or land "set aside" to provide for the required offsets.

Although there will be an offsets register held by the CEO, who will be responsible for the long term management of those offsets?

- Who will pay for the long term management of offsets?

Part 9 Financial provisions

Division 1 Environmental protection bonds

Section 123 Amount of bond

"(1) The Minister must determine the amount or value of the environmental protection bond to be provided."

This is a new provision and may limit the ability for smaller companies to undertake works where an environmental approval is required.

- In the case of the NT Land Corporation, will a bond be required?
- Will there be a risk management approach used to determine the need for and the size of bonds?
- Will there be an appeals mechanism where agreement regarding the size of the bond cannot be reached?

Division 2 Environment protection levy

This is a new tax which will be payable by "most" proponents to fund Government activities related to environmental research and remediation. No information is provided as to the size of the new tax or how it will be calculated. This will cause a considerable disincentive to undertake development in the Northern Territory as it will be seen as simply another tax to fund work undertaken by Government agencies.

- How will Environment Protection levies be applied?
- Will consultation with proponents be undertaken regarding the calculation of levies?
- How will the size of levies be calculated?
- Will there be an appeals mechanism in the case where agreement on the size of the levy cannot be reached?

Division 3 Environment protection funds

Section 133 Recovery of amounts paid out of fund

(2) The CEO may recover the amount expended from the fund from the person who was responsible for:

(a) the environmental emergency; or

(b) the environmental harm that required the remediation or rehabilitation; or

(c) the action from which the environment was protected.

(3) The amount may be recovered as a debt due to the Territory.

(4) Any amount recovered under this section must be paid into the fund from which the expenditure was made.

Given that the fund will be made up from the levies applied to approval holders in the first instance, If the approval holder is the subject of the recovery of funds, surely that would consequent a form of "double dipping", particularly in the case where a bond is also held to cover the costs of the above mentioned actions. i.e.

"*The purpose of an environmental protection bond is to secure:*

(a) the approval holder's obligation to comply with this Act and the environmental approval; and

(b) the payment of the reasonable costs and expenses of the Minister or the CEO taking action to prevent, minimise or remediate environmental harm caused by the action to which the environmental approval applies; and

(c) the payment of the reasonable costs and expenses of the Minister or the CEO taking action to complete rehabilitation of the site to which the environmental approval applies or any area affected by the action; and

(d) the payment of any amount payable to the CEO by the approval holder for anything done by the CEO under this Act in relation to the approval holder's obligations under this Act."

- Why wouldn't funds for this work be taken from the Environmental Protection bond?

  The application of bonds, unrecoverable levies and then an additional ability to recover funds for work done by Government agencies represents a significant disincentive to invest in development in the NT and creates a high level of uncertainty with regard to overall project costs.

Part 10 Review by NT EPA and environmental audits

Division 3 Environmental audit requirements

Given that both the EPA and the CEO can direct an environmental audit to be undertaken, it is considered likely that environmental audits will be required in many, if not all circumstances, including prior to the revocation of an Approval or the issuance of a Closure Notice. This is a considerable and added burden placed on an approval holder and will increase overall costs of the process in general.

Section 148 Retention and production of audit documentation

(*1) An environmental duty holder must retain the prescribed documents relating to an environmental audit until the end of the last of the following periods after the audit report was produced to the NT EPA or CEO:*

(a) 5 years;

(b) the period prescribed by the regulations for that class of audit;

(c) the period (not exceeding 10 years) determined by the NT EPA or CEO in relation to the audit and notified to the environmental duty holder.

This provision seems to be antiquated in the current age of digital technology where the Government Department would store all environmental audits, probably in perpetuity.

- Why require the environmental duty holder to retain the same documentation?

Part 11 Enforcement

Division 1 Environmental officers

This role holds substantial powers and responsibilities.

- Apart from police officers, what training and qualifications will be required for environmental officers to be appointed?

Division 4 Closure notices

Section 182 Closure notice

"*(1) This section applies if the Minister considers on reasonable grounds that as a result of anything done or that has occurred at a site to which an environmental approval applies before the expiration or revocation of an environmental approval relating to the site, ongoing investigation, monitoring or management is or will be required at the site following the expiry or revocation*."

It is unclear as to whether a closure notice can be given even after the expiry of an approval and or the revocation of an approval.

- Is there a "sunset clause" related to the issuance of closure notices after the expiry or revocation of an approval?

- How does this relate to sites that may require subsequent environmental approvals to be issued? For example, once a subdivision has been completed the end land use may require a new environmental approval to be issued for that activity.

- Does this mean that the approval holder for the in initial sub division stage is no longer able to be issued with a closure notice or be held accountable for subsequent environmental impacts?

Division 5 Closure certificates

Section 193 Criteria for closure certificate

"(1) The Minister may by Gazette notice determine criteria to be met by an approval holder before a closure certificate can be issued in relation to an action."

The ability to apply additional criteria for closure at the end of the process further erodes business certainty and may impact heavily on project budgeting.

- In the case of a closure notice, is a revocation of an approval also required?

- Wouldn't closure criteria be documented at the commencement of the process, i.e. contained within the original referral and or SER/EIA?

Section 196 Requirement to provide financial assurance

"(1) The Minister may require an applicant for a closure certificate to pay an amount as financial assurance.

(2) The amount must be determined taking into consideration the potential future liability and costs of remediation if the remediation carried out by the approval holder fails.

(3) The amount paid is not refundable."

This appears to be yet another levy (tax) and again appears to "double up" on the requirement for an Environmental Bond and or the environmental protection levy.

- What criteria will be used to determine the need for this financial assurance and the size of the levy?

- Why wouldn't part or all of the Bond be retained in the case where there may be future liabilities as a result of the project?

Part 12 Civil proceedings

Division 2 Civil penalties and directions

Section 227 CEO may recover civil penalty

"(1) The CEO may recover an amount as a civil penalty from a person if the CEO is satisfied that the person has committed an offence by contravening a provision of this Act that is a strict liability offence.

(2) The amount may be recovered as an alternative to criminal proceedings.

(3) The amount may be recovered by negotiation or by application to the court under this Division."
This clause appears to give the CEO similar powers to the courts.

- Given the considerably large maximum penalty amounts, why has this clause been included?
- Why not leave civil proceedings to the courts?

Section 239 Time for bringing proceedings under this Division

"*Proceedings for an order under this Division may be commenced at any time within 3 years after the date of the alleged contravention."*

3 years seems to be a very long period and leaves project proponents / approval holders in potentially financially liable positions for an extensive period of time after the project has been completed, and even after closure certificates have been issued.

- Is this consistent with other NT or interjurisdictional legislation?
- Why not align the time period with the standard defect liability period of 2 years?

Part 13 Offences, penalties and criminal proceedings

Division 3 Criminal proceedings

Section 251 Who can commence proceedings

"(1) An environmental officer may commence a proceeding for an offence against this Act."

- What qualifications and experience will environmental officers be required to have in order to be appointed? E.g. Diploma of Government Investigations.
- How will Government ensure that all authorised officers undertake an objective assessment of a project without any personal bias?
- What appeals process will be in place to question the actions of an authorised officer?

Section 252 Time for commencing prosecution

"A prosecution for a specified environmental offence must be commenced not more than 3 years after the later of:

(a) the date on which the offence was committed; and

(b) the date on which evidence of the offence first came to the attention of the CEO or the NT EPA, as the case requires."

3 years seems to be a very long period and leaves project proponents / approval holders in potentially financially liable positions for an extensive period of time after the project has been completed, and even after closure certificates have been issued.

- Is this consistent with other NT or interjurisdictional legislation?
- Why choose 3 years? 2 years is the expiry period for Development Permits and the standard defect liability period.
- Why not align the time period of 2 years.
- Will approval holders who have handed over a site to new developers remain liable for the 3 years period, e.g. An initial approval holder may undertake the subdivision of an area and subsequent approval holders may be further developing the same land.

Summary

The proposed Environmental Protection Legislation will add considerably to the overall reporting and financial burden associated with any development which will be required to undertake the processes associated with the new Act. This will no doubt impact negatively on the competitiveness of the NT to attract developers. All of the new costs borne by developers will of course be passed on to the end consumer which will also add to the overall affordability of living in the NT. This seems to be in direct opposition to the current activities by the NT Government whereby it is trying to reduce costs and attract more business and more people to the NT. It has been noted that one of the reasons that the Inpex "Ichthys" project chose the NT over WA was due to the less rigorous regulatory environment; if this decision was to be made under the proposed new regulatory Environment the project would not have been undertaken in the NT.

It is considered highly likely that the new legislation will require proponents to provide a significant amount of additional proposals to require an Environmental Approval after referral, compared with the current legislation. Although the number of referrals is likely to increase only slightly, dependent upon the yet unpublished objectives and triggers for referral, the new legislation requires that referrals are either accepted, as being required under the published triggers or refused if they do not meet any of those "triggers" and therefore the referral "was not required to be made". Whereas currently the decision as to whether a referral is required to be processed under the Act involves consideration as to whether a Public Environment Report or an Environmental Impact Statement is required; in many cases those additional processes are NOT required, and the process is at an end, albeit with conditions imposed in some cases.

Will there be commensurate large increases in resources to cater for the increase in not only assessment but also a large increase in compliance activities? If so is intended that these new resources will be funded from the Environmental Protection Levies, Assurance Levies etc.?

The new legislation will also mean a significant increase in the cost of undertaking any development which requires an approval to be issued. These costs will be likely to include a bond for the development to be lodged, an environmental levy imposed, potentially financial assurance to be provided once the project has been completed and, in most cases, it is likely that an environmental audit will be required to be undertaken, at least at the end of the project if not during the project as well. This will make it extremely difficult to cost projects and add to the overall level of uncertainty for developers.

This new legislation will not only increase the "Red and Green Tape" associated with development projects but will also add significantly to the costs of development both in regard to bonds and levies but also to the development of the amount of reports and audits that will be required. Once again the level of uncertainty will be significantly increased. How will proponents be able to finance large projects when the costs involved in these new processes will remain unknown with respect to the possibility of a Bond, an environmental protection levy, an environmental assurance levy and possibly civil penalties, none of which will be able to be determined prior to the lodgement of the Referral and consequential Environmental Impact assessment.

Questions which should be asked prior to the introduction or acceptance of this wide ranging new legislation should include:

- How can these new costs be absorbed?
- Will there be insurance available to cover the potentially unforeseen costs?
- What are the mechanisms available to developers to limit overall liability?
- What impacts will all of these additional costs have on the cost of doing business in the NT?
- What impacts will all of these additional costs have on the overall cost of living in the NT?
- Has a formal cost impact assessment been undertaken? And if so what was the outcome from that assessment?
- Will this legislation impact on the level of certainty of doing business in the NT?
- Will this legislation result in the loss of business in the NT due to the lack of certainty and the increased costs and time required to gain environmental approvals?

Concerns are also held in relation to the new proposed powers associated with the CEO and the Environmental Officers, who do not appear to have to be trained and or qualified as environmental investigators, but will be able to impact heavily on a project, if in their view the project is not being undertaken in an environmentally sensitive and or sustainable manner.

ENVIRONMENT PROTECTION REGULATIONS

Part 2 Concepts in Act

Section 5 Methods of environmental impact assessment

"(1) The methods of environmental impact assessment that may be required for a referred action are:

(a) assessment by referral information; or

(b) assessment by supplementary environmental report; or

(c) environmental impact statement assessment; or

(d) assessment by inquiry.

(2) An assessment by inquiry may be conducted separately or with any other method of environmental impact assessment."

This is a change from the current legislation which allows for a Public Environment Report or an Environmental Impact Assessment. The "referral" appears to be similar to the current "Notice Of Intent" except that if it is accepted it will now be published and will require a formal "Environmental Approval" to be issued, which will have conditions attached and may attract both a Bond and Levies. This would also require that a formal "revocation" or Closure certificate will need to be applied for once the development has been completed. It is likely that an

environmental audit will be required to be submitted along with an application for revocation and or a closure certificate.

Unless the referral is not accepted due to the decision that the referral "was not required to be made", this will add considerably to the overall process compared to current practice, where a large number of NOI's are deemed not to trigger the EIA. It would be expected that most referrals will be "accepted".

Part 4 Referral of proposed actions

Division 2 Consideration of referral

Section 20 Decision whether to accept referral for standard assessment

(1) The NT EPA must accept or refuse to accept a referral for a standard assessment within 20 business days after the referral is made.

(2) If the NT EPA does not make a decision under sub regulation (1) within the required time, the referral is taken to be accepted.

This default of "acceptance" appears unreasonable considering the relatively short timeframe for consideration.

- A question which should be asked would be why not have a default of "referral NOT required" if a decision cannot be made within a reasonable time frame?

- Why is there an automatic acceptance?

Division 3 Accepted referral

Section 26 Notice of accepted referral

"(4) The submission period must be not less than 20 business days after the date of the notice."
Maximum timelines are set for publication but only a minimum timeline for submissions has been set.

Although submission timelines can be set by the Minister, what guarantees are given for a **maximum** time for submissions to be made?

Part 5 Environmental impact assessment

Division 2 General provisions for environmental impact assessment

Section 43 NT EPA to have regard to Territory environmental objectives

The NT EPA must have regard to the Territory environmental objectives in carrying out an environmental impact assessment.

Does this therefore require that the Territory Environmental Objectives will be required to be published prior to any decision regarding the level of assessment? If so, wont the Territory Environmental Objectives need to have been finalised prior to the introduction of the new legislation? This also applies to the "triggers for acceptance which will also be required prior to the introduction of the new legislation, or proponents won't be able to determine whether a project will be required to be referred or not!

Section 50 Power to require proponent to meet certain costs of assessment process

- If costs are to be met by the proponent will there be a consultation process as to the likely costs and work to be undertaken, prior to the EPA obtaining the information required via independent review?

Division 3 Assessment by referral information

Section 58 Proponent to publish supplementary environmental report

"The proponent must publish the supplementary environmental report in the manner and within the period determined by the NT EPA."

- Why is the proponent required to publish a notice and make the report available themselves when other documents will be published by the EPA?

- Why wouldn't the SER be published on the EPA website like all other reports and as is currently the case with PER's and EIA's?

Section 61 Consultation with Government authorities

"(2) The submission period must not be less than 20 business days from the date the invitation is given."

Currently one of the major delays in process is due to the time taken to receive submissions from other Government authorities.

- Why is there a maximum time period only and not a minimum time period for submissions from other Government departments?

Division 6 Environmental impact statement assessment process

Section 90 Publication of draft environmental impact statement

"(1) The proponent must publish the draft environmental impact statement in the manner determined by the NT EPA."

- As per section 56, why would these documents NOT be published on the EPA website as is currently the accepted practice?

  This change means that parties interested in seeing the various developments being undertaken in the NT will have to go to different website to get the information published.

- Will there be a list of current assessment processes on the NT EPA website with links to the location of the documents?

- Why has this requirement NOT been included in the Regulations?

(1) The submission period must be not less than 30 business days after the date of the notice.

- Will there be a maximum period specified by the NT EPA? Why has this period NOT been included in the regulations?

Section 92 Copy of draft environmental impact statement to be given to Government authorities

"The proponent must give a copy of the draft environmental impact statement to any Government authority that the NT EPA specifies."

- Given that all documentation will be required to be lodged with the NT EPA, why wouldn't the EPA distribute the Draft EIS to other Government authorities as is currently the case?

  Difficulties can be experienced with the provision of documents which are larger than the email limit of 10Mb, whereas the EPA can distribute large documents via internal Government systems without that size constraint. There are also considerable restrictions within the Government systems to be able to accept documents submitted via "cloud" technology.

Section 96 Publication of supplement (and)

(1) The proponent must publish a supplement prepared under regulation 95 in the manner determined by the NT EPA.

Section 97 Notice of supplement (and)

(1) The proponent must publish notice of the supplement.

Section 98 Copy of supplement to be given to Government authorities

(1) The proponent must give a copy of the supplement to any Government authority that the NT EPA directs.

- As above, why the change to notification and publication of documents as a responsibility of the EPA to the proponent?

117 Consultation

(1) The NT EPA must:

(a) give a copy of the draft assessment report, draft environmental approval or draft statement of unacceptable impact to any relevant statutory decision-maker; and

(b) invite the statutory decision-maker to make a submission to the NT EPA on the draft report, approval or statement within the period specified by the NT EPA.

(2) The NT EPA may:

(a) give a copy of the draft assessment report, draft environmental approval or draft statement of unacceptable impact to the proponent; and

(b) invite the proponent to make a submission to the NT EPA on the draft report, approval or statement within the period specified by the NT EPA.

The provision of the draft assessment report and draft environmental approval to the statutory decision makers to provide yet further comment seems to be an unnecessary and time consuming additional process.

- What timelines will be imposed for such comment to be made by statutory decision makers?

- How many iterations will be allowed, assuming that if changes are made as a result of comment from Statutory decision makers, the updated version will be distributed again?

- Why would the draft assessment report and draft approval be compulsorily provided to statutory decision makers but not to the proponent, i.e. the NT EPA "MAY" give a copy.

- What appeals process is available to proponents in the case where the conditions of approval are considered to be unreasonable?

Part 7 Variation of actions

Division 3 Process for variation after assessment report completed

Section 157 Application of Division 3

This Division applies if a notice of variation is given under section 64 of the Act:

(a) after the assessment report on the action is prepared by the NT EPA; and

(b) before an environmental approval is granted by the Minister for the action.

This provision appears to allow for the entire process to be paused and potentially a whole new process started at the point just prior to the issuance of the Approval by the Minister!

This will result in a very high level of uncertainty for proponents in the entire process.

Division 4 Variation after environmental approval granted

As above, however this provision allows for a variation even after approval. The process is potentially endless under these provisions.

Part 9 Registration of environmental auditors

The whole move to rely on the environmental auditing model appears to be a shift of responsibility away from the agency to environmental auditors. Given the individual liability of an environmental auditor for the potential impacts of a project, audits of any project and in particular large projects, will no doubt increase overall costs significantly. Auditor insurance levels will be very high and those costs will need to passed onto the proponent.

Summary

These regulations will substantially increase the administrative burden placed upon all proponents who will be required to have a development assessed under the *Environment Protection Act*. The requirement to notify and publish environmental assessments is likely to cause confusion and make access to the process by the general public more difficult than is currently the case, with documents all published on the EPA website.

Timelines will most likely be considerably extended to navigate through the process and the level of certainty will be significantly eroded with the ability of the EPA to impose variations at any stage, including after an approval has been granted by the Minister.