



**NORTHERN
LAND COUNCIL**

**Submission to Department of Environment, Parks & Water
Security in response to the consultation paper on
Greenhouse Gas Emissions Management for New and
Expanding Large Emitters.**

February 2021

About the Northern Land Council

The Northern Land Council (NLC) was established in 1973. Following the enactment of the *Aboriginal Land Rights (Northern Territory) Act 1976*, the NLC became an independent statutory authority responsible for assisting Aboriginal people in the northern region of the Northern Territory (NT) to acquire and manage their traditional lands and seas.

A key function of the NLC is to express the wishes and protect the interests of traditional Aboriginal owners throughout its region.

The Land Rights Act combines concepts of traditional Aboriginal law and Australian property law and sets out the functions and responsibilities of the land councils. The NLC is also a Native Title Representative Body under the *Native Title Act (Cth) 1993*.

The NLC represents more than 36,000 Aboriginal people. Within its jurisdiction, the NLC assists Traditional Owners¹ by providing services in its key output areas of land, sea and water management; land acquisition; minerals and petroleum; community development; Aboriginal land trust administration; native title services; advocacy; information and policy advice. Relevant to this submission is a responsibility to protect the traditional rights and interests of Traditional Owners with interests over the area of the NLC, which is constituted by more than 210,000 square kilometres of the land mass of the Northern Territory and 85% of its coastline.

The NLC's vision is for a Territory in which the rights and responsibilities of every Traditional Aboriginal Owner are recognised and in which Aboriginal people benefit economically, socially and culturally from the secure possession of their lands, seas and intellectual property. Our mission is to assist Aboriginal people in the northern region of the Northern Territory to acquire and manage their traditional lands and seas, through strong leadership, advocacy, industry engagement and management.

Discussion

The Northern Land Council (NLC) welcomes the opportunity to offer feedback and recommendations in response to the Department of Environment, Parks & Water Security (DEPWS) draft policy consultation paper on greenhouse gas emissions management for new and expanding large emitters.

This draft policy consultation paper, together with the introduction of the NT *Environment Protection Act 2019* (the EP Act) was a long-overdue and very useful step forward for environmental protection in the NT. However, the NLC believes climate change and greenhouse gas emissions should be included in these reforms and in the absence of fully developed policy document inclusive of implementation plan it is very difficult to adequately reflect the views, rights and interests of Traditional Owners in the management and use of their traditional lands and waters.

Aboriginal people are significant stakeholders in the areas where activities with large greenhouse gas emissions may occur and therefore exercise a significant role as owners, managers and investors in the development and ongoing management of natural resources in the NT.

¹ For the purposes of this submission, the term Traditional Owner includes traditional Aboriginal owners (as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*, native title holders (as defined in the *Native Title Act 1993*) and those with a traditional interest in the lands and waters that make up the NLC's region.

Aboriginal people are also particularly vulnerable to the impacts of climate change as a result of rising temperatures and water levels and increased variability, frequency and intensity of climatic events which will widen the disadvantage gap related to health, housing, livelihoods and wellbeing.

As such, the development and implementation of legislation, policy, planning and regulatory processes relating to large emitters may have significant implications for Aboriginal people.

The NT Government's draft Environmental Offset Policy 2010² identifies, as one of its defining principles that 'participation with communities and stakeholders is critical', noting the need to 'ensure effective and active participation of stakeholders in decision-making about offsets'. This principle should also be reflected in the development of climate change legislation and associated offsets framework.

We urge the NT Government to engage with Land Councils in a consistent and ongoing manner, and to work together in the development of all aspects of any climate change policy and regulatory reform framework.

Section 1: General Comments

To achieve its target of net zero greenhouse gas emissions by 2050, the NLC believes the NT Government (NTG) will require legislation, policy and policy instruments (e.g. regulations and guidelines) related to a range of climate change related issues, including emissions from large emitters. It is unclear how the draft *Greenhouse Gas Emissions Management for New and Expanding Large Emitters* policy fits into this broader framework, or what further instruments are planned to support implementation of this policy.

The NLC believes several key elements essential to an effective policy are currently missing from the draft Greenhouse Gas Emissions Management for New and Expanding Large Emitters policy.

The NLC is concerned that the draft policy paper provides clear evidence that greenhouse gas emissions policy development remains in its very early developmental stages in the NT. There is little evidence that the large body of evidence to inform policy development, existing policy analysis (NT and other jurisdictions) to identify current best practice, has been used in the development of this draft policy.

Further, the consultation paper does not provide sufficient detail in relation to how it will contribute to achieving the net zero target; or what monitoring and decision support tools and guidelines will be developed to assist regulators, developers and stakeholders understand how the proposed greenhouse gas emissions policy will be developed, implanted and assessed for performance over time.

This draft policy document appears to be largely about risk assessment, management and mitigation, where risks are assessed as being unacceptably high. For this policy the focus is on risks posed by greenhouse gas emissions from large emitters in order to achieve the stated environmentally sustainable development goal (EP Act 2019) and to achieving net zero NT greenhouse gas emissions (aspirational) by 2050 (NT Climate Change Response – Towards 2050, DCM, 2019).

Acknowledging that a large body of climate change and greenhouse gas emissions documents exists, as well as specific recommendations that relate to greenhouse gas emissions from the Hawke Review and Pepper Inquiry, it is recommended they should be reviewed and considered in the development

and refinement of this policy. Also informative is the recommendations responding to climate change risks in the Northern Territory as outlined in *Increasing Climate Change Resilience in the Northern Territory and Mitigating Climate Risk* (Lede, 2019) Report.

NLC Recommendations

Recommendation 1: Policy Impact on Aboriginal Engagement

The NLC recommends that the greenhouse gas emissions policy needs to further explore and explain current and potential links to:

- (a) How the values and concerns of Aboriginal people will be considered in the development and implementation of this policy;
- (b) How Aboriginal people and their representatives can contribute to the policy development process;
- (c) How Aboriginal people might contribute to greenhouse gas emissions related risk mitigation measures e.g. GHG emissions offsets.

Recommendation 2: Linking climate change policy to environmental regulatory reforms

The NLC recommends that the greenhouse gas emissions policy needs to explain its links and relationship to other related legislation, policy and policy instruments (e.g. development approval guidelines, regulations – related to EPA) and explain how existing policy can incorporate greenhouse gas emissions management, or to develop new greenhouse gas emissions related policy instruments.

Section 2: Specific comments on paper

This Section provides comments and suggested improvements that are reflected in the NLC recommendations.

1.1. Introduction

The introduction to the draft policy states:

In performing its statutory obligations under the Environment Protection Act 2019 (EP Act), the Northern Territory Environment Protection Authority (NT EPA) may undertake an environmental impact assessment on new projects or expanding projects. Depending on the project, the NT EPA may consider the predicted greenhouse gas emissions of the project during the assessment process and may recommend conditions in the draft Environmental Approval that address greenhouse gas emissions for the Minister for Environment's consideration. (p.4)

The draft policy consultation paper reflects a discretionary methodology and lacks guidance on who will be responsible for the monitoring and compliance of large emitters activity, the criteria for assessing how emissions will be calculated and the requirement for an implementation plan or regulatory process to determine how emitters will progressively reduce emissions to meet the net zero emission target by 2050.

If the policy remains discretionary then NLC suggests this policy should outline a trigger for when a greenhouse gas emission risk assessment will be necessary and how that will determine approval conditions.

Recommendation 3: Linking climate change policy to environmental regulatory reforms

The NLC recommends that the greenhouse gas emissions policy document needs to explain the proposed greenhouse gas emissions risk assessment process and risk mitigation measures (where required) that will be undertaken by the NT EPA.

1.2. Greenhouse gas emissions

Development of greenhouse gas emissions policy is made more difficult by the lack of supporting legislation, regulations, guidelines and plans. For example the EP Act 2019 makes no reference to 'climate change' and refers to 'changing climate' (Part 4, Division 1, 42). The terms 'climate change' and 'greenhouse gas emissions' do not appear in the Environmental Protection Regulations 2020.

As noted in Recommendation 3, there is currently a lack of clear link between climate change and greenhouse gas emissions and the EP Act 2019, EP Regulations 2020. Because of this, there is a greater need for policy consultation documents, like this one, to clearly spell out how DEPWS (and the Northern Territory Government more broadly) plans to align climate change policy generally and greenhouse gas emissions policy in particular with existing legislation, regulations and guidelines.

NLC recommends the policy document sets clear, time-bound, greenhouse gas emissions targets to enable the NTG to achieve its net-zero greenhouse gas emissions by 2050 aspirational target and suggests the following things would be useful:

- Baseline data for greenhouse gas emissions across the NT.
- A basic understanding of how these baseline measures vary over space and time.
- A basic understanding of what natural sources of greenhouse gas emissions are in the NT.
- An understanding of what the highest risk sources of human induced greenhouse gas emissions are in the NT and how they can be avoided, mitigated or managed to produce an acceptable level of greenhouse gas emissions risk.
- Related to all of the above items, a process or system that can be used in the development approval and regulatory process that considers whole of life and cumulative risk and impacts of greenhouse gas emissions.
- A risk assessment system within the development approval process capable of using the greenhouse gas emissions evidence made available from the above items.

Recommendation 4: Achieving net zero emissions by 2050

The NLC recommends that the greenhouse gas emissions for large emitters' policy (and any related greenhouse gas emissions or climate change policy) outlines the legislative, policy and policy instruments that will be used to achieve this policy goal.

The basic information requirements outlined in Recommendation 3 and 4, are needed to assess the risks and prescribe or review proposed measures to make risks acceptable.

For greenhouse gas emissions risk management this needs to be an ongoing, long-term monitoring and compliance program that is consistent with the types or locations of the risk assessments that need to be made.

Information from this monitoring program needs, in our opinion to be independent of anyone with a vested interest in the land use that has a potential significant impact on greenhouse gas emissions in the NT.

Recommendation 5: Greenhouse gas emissions monitoring risk assessment

The NLC recommends (a): the policy needs to include an outline of a plan and proposed methods overview to monitor and report greenhouse gas emissions; (b) how DEPWS plans to use this information to establish baseline greenhouse gas emissions data; and (c) how DEPWS and the NT EPA will use this greenhouse gas emissions data in the development approval process and reporting progress towards the net zero emissions for the NT target.

1.3. Application of the Policy

NLC is concerned that in the *Application of Policy* section there is little explanation of how the assessment and regulatory process will work. In addition, there is also no explanation provided regarding:

- How DEPWS will decide which development or land use proposals will be subjected to an EPA greenhouse gas emissions risk assessment and potentially risk mitigation management measures
- Why and how Scope 1 and Scope 2 thresholds were developed and why Scope 3 emissions are excluded.

Given the limited detail related to the policy aims and its implementation NLC identified the following concerns and questions:

- If the stated aim is net zero NT greenhouse gas emissions by 2050, what is the scientific basis for these different triggers?
- It is unclear if all large emitters will be required to comply with the policy.
- How will NTG assess and regulate overall and cumulative greenhouse gas emissions e.g. where a development proposal is comprised of several smaller applications in space and or time?
- Will DEPWS apply the user pays principle, as specified in the EP Act 2019, within the risk assessment, development approval and regulatory process?
- Why is the Scope 1 large emitters trigger for large greenhouse gas emissions related to industrial activity (100,000 tonnes CO₂e); considerably less than that for land use (500,000 tonnes CO₂e)? Given this has the potential to lead to a large increase in NT greenhouse gas emissions, what appears to be an arbitrary decision by DEPWS, seemingly giving some developers less greenhouse gas emissions accountability than others, needs to be better explained.
- Pastoral land use is known to be a major source of greenhouse gas emissions. Where does pastoral land use fit into the greenhouse gas emissions guidelines?

The policy should focus is on risks posed by greenhouse gas emissions from large emitters in order to achieve the stated environmentally sustainable development goal (EP Act 2019) and to achieving net zero NT greenhouse gas emissions by 2050³. Answering the questions above and including this information in future policy documents related greenhouse gas emissions from large emitters will improve the quality of the policy.

1.4. Expected Management Action

The NLC strongly supports the requirement for large emitters to develop a Greenhouse Gas Abatement Plan (GGAP), including targets. However, there appears to be no requirement for the GGAP to include an outline of actions that will be taken to achieve those targets, nor is there any guidance on how this should be undertaken.

The policy also lacks a section on monitoring and compliance framework to give confidence and a trajectory on how the emitters will achieve the net zero target. The NLC is interested in knowing what monitoring and decision support tools and guidelines will be developed to assist regulators, developers and stakeholders understand how the proposed greenhouse gas emissions policy will be developed, implemented and performance assessed over time.

Large emitting activities often occur in remote areas of the NT and have a disproportionate impact on Aboriginal people. Given this, and in keeping with Recommendation 1 of this submission, we recommend the following text be included in the GGAP section of the policy:

“When developing a GGAP, consideration must be given to complying with the NT EPA’s stakeholder engagement guidelines, and particularly requirements relevant to Aboriginal engagement. Aboriginal knowledge may also be valuable in assisting to identify ways of mitigating or reducing emissions.”

Recommendation 6: Emissions reduction action plan

The NLC recommends amending the policy to ensure developers are required to include in their Greenhouse Gas Abatement Plan an action plan detailing how they intend to achieve emissions targets.

Recommendation 7: Monitoring and Compliance

The NLC recommends a monitoring and compliance regime that addresses the developers obligations are in relation to meeting greenhouse gas emissions target. For this to occur we believe the following information, related to monitoring and compliance, needs to be included in the proposed policy:

- (a) Provide an evidence-based reason for setting greenhouse gas emissions CO₂e levels that trigger the requirement for a Greenhouse Gas Abatement Plan.
- (b) Clarify if all potential large greenhouse gas emitters development proposals will be assessed and be required to use greenhouse gas emissions risk mitigation plans or measures e.g. offsets.
- (c) Explain how it deal with potential risks caused by large greenhouse gas emissions from existing land use (e.g. pastoral) or current projects (e.g. hydraulic fracturing)
- (d) Contain triggers mandated under the EP Act 2019
- (e) Contain triggers that can be applicable to any development or land use proposal across all Scopes (1, 2 & 3).
- (f) Contain safeguards, mandated under the EP Act 2019 which take into account total cumulative greenhouse gas emissions (i.e. across all projects) AND greenhouse gas emissions across individual projects which are related by time or development, location or proposed land use.

- (g) Contain Greenhouse Gas Abatement Plans Guidelines that are evidence-based, have a scientific basis and are supported by Regulations mandated under the EPA Act 2019.
- (h) Clearly state how regulatory decisions are made and by whom.
- (i) Explain the mechanism by which approvals, monitoring and reporting data are made publicly available.

Recommendation 8: Aboriginal engagement in developing the Greenhouse Gas Abatement Plan

The NLC recommends the policy be amended to direct developers to comply with the NT EPA's stakeholder engagement guidelines, particularly those relating to Aboriginal engagement, when developing their Greenhouse Gas Abatement Plan.

1.5. Policy Review

A key element in any environmentally sustainable development related policy is a mandated process to review how well a policy is working and clearly stated, time-bound targets are being achieved through a monitoring, evaluation, reporting and improvement process.

The Northern Land Council agrees that this Policy needs to be aligned with changes in international obligations and Australian Government policy and regular reviews are critical to assess whether greenhouse gas emissions activities are within 'scopes', target and that Greenhouse Gas Abatement Plans are monitored and independently evaluated to ensure emitters are compliant through an enforcement regime.