

Comments on Referral and Draft Terms of Reference (TOR)

Sun Cable Pty Ltd – Australia-ASEAN Power Link



Preamble

The Aboriginal Areas Protection Authority (the Authority / AAPA) is a statutory body established under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT) (Sacred Sites Act) and is responsible for overseeing the protection of Aboriginal sacred sites on land and sea across the Northern Territory. The Sacred Sites Act stems from section 73(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act (1976)* (Cth) which establishes both the legislative basis for the protection of sacred sites and the powers of the Northern Territory Government to establish a body to administer that protection. The protection of Aboriginal sacred sites is recognised by the Northern Territory Government and the broader Territory community as an important element in the preservation of the Territory's cultural heritage for the benefit of all Territorians. The Authority seeks to strike a balance between the protection of sacred sites and development in the Northern Territory.

General questions

| Question | Response from the Authority |
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| 1. Does the proposed action have the potential to have a significant impact on the environment (social, cultural, physical, biological, and economic)? | Yes, there is potential for significant impacts to cultural values associated with sacred sites throughout the Proposal area. |
| 2. Do the referral and draft TOR address the relevant NT EPA environmental factors and objectives that could potentially be significantly impacted, and the specific significant impact/s? | The factor relating to the Authority's interests is Culture and heritage. This has been appropriately included in the referral and draft TOR. |
| 3. Do you consider an EIS is an appropriate method of assessment to address your identified impacts? | <p>The Authority has no comment on the appropriate method of assessment under the EP Act, however acknowledges that implementation of this Proposal has the potential to significantly impact cultural values associated with sacred sites over a large area.</p> <p>The appropriate mechanism for addressing potential impacts to sacred sites is for the Proponent to consult with the Authority and obtain relevant Authority Certificates issued in accordance with the <i>Northern Territory Aboriginal Sacred Sites Act 1989</i>. The Authority considers that if the Proponent obtains and complies with Authority Certificate/s over the whole Proposal area, it would give some certainty that:</p> <ul style="list-style-type: none">the potential for significant impacts to sacred sites would be minimal and |

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| Question | Response from the Authority |
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| | <ul style="list-style-type: none"> the NT EPA's environmental objective for Culture and heritage, in relation to sacred sites, would be met. |
| 4. Does the draft TOR contain the appropriate information requirements the proponent must include in the EIS to address your identified impacts? | See comment 8 in the table below. |

Specific comments:

| Comment ID | Document / section / topic | Comment | Suggestion |
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| 1 | Referral 1.2.1, p. 4 | The Referral states, in the section on the Northern Territory Aboriginal Sacred Sites Act 1989: 'The AAPA... is responsible for assessing applications [for Authority Certificates] by consulting the relevant Aboriginal custodians'. | Note that direct consultations with relevant custodians form only part of an assessment of an application for an Authority Certificate. |
| 2 | Referral 1.2.1, p. 5: item on Aboriginal Land Rights (NT) Act 1976 | The Referral states: 'If works are to be undertaken on Aboriginal freehold land, a sacred site clearance certificate will be obtained from the AAPA' | Note that a certificate from the Authority (AAPA) is not a 'clearance' certificate. The Authority recommends obtaining certificates for the whole Proposal area, not just for Aboriginal freehold land, as outlined in comment 4. |
| 3 | Referral 1.7 | The Authority is not included in either Table 5 or Table 6 as a stakeholder for current/future consultation. The Authority confirms that it has had, and intends to continue to have, direct consultations with the Proponent in regards to sacred site protection related to this Proposal. | The Authority recommends the Proponent continue this engagement. |
| 4 | Referral 2.1.2, p. 50 | The Cultural heritage section states 'Authority Certificates will be secured for the project as required with the AAPA...' The Authority considers that the Authority Certificate application process is the appropriate mechanism for | The Authority recommends that the Proponent obtain Authority Certificates for the whole Proposal area including solar farm, OHTL, VSC station site, land-sea joint station (and underground cables), and subsea cable within NT waters. |

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| | | ensuring the right custodians are consulted about sacred sites and their protection. The process also includes the development of conditions, including restrictions on works, to appropriately protect sacred sites. Once an Authority Certificate has been issued, the Proponent must adhere to the conditions of the Certificate to protect sacred sites. | |
| 5 | Referral 2.1.3, p. 53 | <p>The Cultural heritage section states:</p> <p>‘The AAPA identifies six sacred sites in the Darwin Harbour (Inpex 2010), four of which may be in the vicinity of the subsea cable. Those sacred sites in the vicinity of the project area include three rocky areas or shoals on the western side of the Darwin Harbour, and an underwater sand and rock bar outside the mouth of the Harbour, north of the Cox Peninsula (Inpex 2010).’</p> <p>‘The subsea cable will avoid known heritage sites through design and is aligned with the existing gas pipelines through the harbour where possible, thereby avoiding impacts to marine heritage where possible, including sacred sites.’</p> | The Authority suggests that the Proponent obtain Authority Certificates as outlined in comment 4 above. |
| 6 | Referral Table 11, pp. 68-69, Culture and heritage section | The Potential impacts column does not list the potential for direct and indirect disturbance to Aboriginal sacred sites and their cultural and spiritual values, due to construction, operation and maintenance activities | The Authority suggests this is addressed in the final TOR as outlined in comment 8 below. |
| 7 | Referral Table 11, pp. 68-69, Culture and heritage section | <p>The Avoidance and Mitigation column states:</p> <ul style="list-style-type: none"> • ‘Sacred site assessment and secure of an Authority Certificate from AAPA for registered and recorded sacred sites’ • ‘Design of infrastructure to avoid identified Aboriginal and non-Aboriginal heritage sites’ <p>The Authority considers that obtaining and adhering to Authority Certificates is the appropriate mechanism to avoid and mitigate impacts to sacred sites.</p> | Note that an Authority Certificate would also address additional sacred sites not previously recorded or registered in the subject land (including sea). |

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| | | The Authority considers it is appropriate to design infrastructure to avoid impacts to sacred sites. | |
| 8 | Draft TOR, 2.8 NT EPA Factor 5.2 Culture and heritage | Cultural values associated with sacred sites are not specifically mentioned as being potentially impacted by the Proposal. | <p>In the final TOR, this could be included in an existing dot-point, as illustrated in italics below:</p> <ul style="list-style-type: none"> • ‘Direct and indirect disturbance to traditional and/or contemporary Aboriginal values (<i>including sacred sites</i>) or uses of land (e.g. hunting and ceremonial use) due to construction, operation or maintenance activities’. |