



13 July 2022

Our ref.: EZ21156

Northern Territory Environment Protection Authority  
 Level 1, Arnhemica House  
 16 Parap Road  
 Parap 0820

## Re: Review comments – Draft Guidance for Environmental Factor – Culture and Heritage

To Whom It May Concern,

EcOz Environmental Consultants thanks the Northern Territory Environment Protection Authority (NT EPA) for the opportunity to comment on the draft guidance for the Culture and Heritage environmental factor, which aims to assist proponents during an environmental assessment process under the *Environment Protection Act 2019* (EP Act). EcOz has significant experience in environmental impact assessment in the Northern Territory, and has reviewed the draft context with this past experience in mind. EcOz engage specialist sub-consultants to undertake archaeological surveys and consultation in regards to cultural values and heritage on all proposals. These specialists, Ben Keys and Richard Woolfe, from Earth Sea Heritage Surveys, have also provided comments contained herein in relation to the guidance.

In general, we note that the guidance does not clarify the expectations of the NT EPA in regards to the information or level of detail required to address the objectives of the environmental factor, nor is there guidance on what would be considered to constitute a significant impact to culture and heritage. While it is noted that these vary on a case-by-case basis, it would be valuable to provide some level of guidance on those aspects.

Specific feedback for various aspects of the guidance is provided below:

| Section  | Comment/feedback   |
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| 2.1 Requirement to refer a proposed action to the NT EPA | While there is value in highlighting the general duty of proponents under Section 43 of the EP Act, it is unclear how 43(g) 'waste management hierarchy' relates to the culture and heritage factor. Suggest it is removed.  |
| 3.1 Cultural aspects                                     | <ul style="list-style-type: none"> <li>• Suggest clearer definitions are provided to inform the reader, perhaps in table format or in a list of definitions at the start of the document. For example 'culture' seems well defined, but 'heritage' uses the word 'culture' in the definition, which is confusing given the factor is 'culture' and 'heritage'.</li> <li>• Suggest definitions from relevant legislation (e.g. <i>Heritage Act 2011</i>) are used rather than dictionary definitions.</li> <li>• Suggest 'significant impact' is defined (here or elsewhere in the guidance) as per the EP Act.</li> <li>• Suggest it is made clear that heritage refers to both Indigenous and non-Indigenous places/objects etc.</li> <li>• It would be helpful if the guidance provided some examples of each of the aspects defined, for example:               <ul style="list-style-type: none"> <li>○ Aboriginal Sacred Sites</li> </ul> </li> </ul> |

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|---|--|
|   | <ul style="list-style-type: none"> <li>○ Aboriginal archaeological places</li> <li>○ Aboriginal archaeological objects and artefacts</li> <li>○ Declared heritage places or objects</li> <li>○ Cultural landscape features (i.e. places with ‘cultural value’ but not necessarily historic or archaeological value)</li> <li>○ Historic places (e.g. European heritage sites)</li> </ul>   |
| <p>3.2 Legislative mechanisms</p>                                   | <p>The descriptions of legislation are unclear and could be improved. For example:</p> <ul style="list-style-type: none"> <li>● The description of the <i>Native Title Act 193 (Cth)</i> does not, in the first instance, explain what native title is, and the Indigenous Land Use Agreements, which are a substantial and important process, are not explained.</li> <li>● Listing the rights of native title holders is not particularly informative in the context of the guidance, and the content around the relationship between NT pastoral leasehold land and native title is confusing.</li> <li>● The <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i> is only discussed in relation to sacred sites, which is not the only (or main) intent of the legislation. Suggest content is added on the process for granting of Aboriginal freehold land, and powers granted to Aboriginal land councils (e.g. the Northern Land Council and Central Land Council). This process has significant implications for proponents in regards to what activities can occur on Aboriginal freehold land, and the processes required for negotiations with Aboriginal land holders. The guidance should include proponent’s need to engage with relevant land councils regarding their proposal.</li> <li>● In general, the process that is required to be followed under each piece of legislation, and the application of the acts, needs to be better explained.</li> </ul>  |
| <p>4 Considerations for conducting a cultural impact assessment</p> | <ul style="list-style-type: none"> <li>● Suggest content is added on the differentiation between a cultural heritage assessment and a cultural impact assessment, what is involved in each and who the relevant ‘professional’ is (e.g. archaeologist for cultural heritage assessment and anthropologist for cultural impact assessment).</li> <li>● The section does not mention consultation with land councils, which should be done early in the project planning phase where relevant.</li> <li>● It is implied that the Heritage Branch only has information on Indigenous heritage sites. It should be made clear that the Branch is also a repository for non-Indigenous sites. Moreover, reference to particular government departments (i.e. DTFHC) should be avoided because these change frequently.</li> <li>● Suggest content on significant impact in dot-point 2 is moved to after dot-point 5 to maintain logical process. I.e. identify values, identify and assess potential impacts, identify mitigation measures, then identify potential significant impacts</li> <li>● Suggest recommending that cultural heritage surveys be undertaken by suitably trained professionals (i.e. archaeologists), with and/or in consultation with Traditional Owners, cultural monitors or other representatives.</li> <li>● It is also often good practice to engage with and include Traditional Owners, cultural monitors or other representatives (e.g. ranger groups) during other surveys undertaken for the proposal (for example, ecology surveys). This depends on the nature and scale of the activity, and location in proximity to Aboriginal land, Native Title etc. but is worth mentioning that it is appropriate, and indeed required, in many settings. Inclusion of Indigenous representatives in surveys also provides opportunity to identify or be informed about culturally significant areas, landscape features etc.</li> <li>● Suggest recommending proponents also consult the following guidelines: <ul style="list-style-type: none"> <li>○ <i>Ask First, A guide to respecting Indigenous heritage places and values</i> (Australian Heritage Commission 2002)</li> <li>○ <i>Engage Early Guidance for proponents on best practice Indigenous engagement for environmental assessments under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (2016)</i></li> <li>○ <i>Practice Notes for the Australian ICOMOS Burra Charter 2013</i> (the “Burra Charter”).</li> </ul> </li> </ul> |

Thank you again for the opportunity to provide feedback on this Draft Guidance.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Helen Dwyer', is positioned below the closing text.

**Helen Dwyer**  
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