



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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Dear Sir/Madam

Submission on *Environmental factor guidance: atmospheric processes*

The Northern Land Council (NLC) welcomes the opportunity to provide feedback on the draft *Environmental factor guidance: Atmospheric processes*.

Background

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

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. Under the Land Rights Act, the key functions of land councils include expressing the wishes and protecting the interests of Traditional Owners¹ throughout the land council's region.

The NLC is also a native title representative body under the *Native Title Act 1993* (Cth) (Native Title Act). In this capacity, the NLC also represents the Aboriginal people of the Tiwi Islands and Groote Eylandt.

Aboriginal people make up more than 30 per cent of the NT population, with almost 80 per cent living in remote or very remote areas – the same areas where major development projects are most likely to have substantial impacts. They have freehold title rights to around 50 per cent of the NT via the Land Rights Act, with most of the remaining land mass and some sea country subject to native title rights and interests.

Access to the natural resources of these areas, and their free, safe and assured use, is one of the basic rights and expectations articulated through both the Land Rights and Native Title Acts. Any impact on the natural environment that threatens access to or use of resources will have personal, social, economic and cultural implications for the Aboriginal people that rely on these resources. Simply put – Aboriginal Territorians are

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.

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involved in, and affected by, development proposals more often and to a greater degree than the rest of the population. The substantial rights and interests of Aboriginal people, and the disproportionate risks they face, place them in a unique position that should be considered by all proponents and decision-makers.

Comments on the draft atmospheric processes guidance

Adaptation to climate change

Aboriginal people in remote regions of the Northern Territory – where projects subject to this guidance are most likely to occur – are particularly vulnerable to the impacts of climate change. Rising temperatures and sea levels, together with increased variability, frequency and intensity of climatic events, will further widen the disadvantage gap across health, food and water security, housing and livelihoods. Ultimately, unless both people and ecological systems can adapt to and mitigate the direct and indirect impacts of climate change, remote Aboriginal communities will be at risk of forced relocation.

The need for adapting to climate change is recognised in the document ‘Referring a proposal to the NT EPA’, which identifies the values that should be considered by proponents relevant to the atmospheric processes factor as being:

- a contribution to the NT’s greenhouse gas emissions;
- adaptation to a changing climate; and
- capacity of communities and country to respond or adapt to climate change.

Despite this, the draft atmospheric processes guidance makes no mention of adaptation to climate change and offers no guidance to proponents as to how the second and third points may be assessed and addressed. Rather, it focuses entirely on greenhouse gas emissions.

As the NLC noted in our submission to the draft ‘Referring a proposal to the NT EPA’, if a project could impact a community’s need or capacity to adapt to climate change, it is important that this be captured. This does not only relate to greenhouse gas emissions; indeed, the draft atmospheric processes guidance notes the NT EPA will consider ‘the potential for an action to exacerbate the impacts of climate change (for example, cumulative impacts associated with displacing species already under threat from shrinking habitat due to a changing climate)’. However, this is not discussed further and, again, there is no guidance for proponents on how this should be dealt with in their referral. Likewise, the displacement of species could have a cumulative impact on the capacity of a community to adapt to climate change, as could other project impacts such as the availability of water or land clearing.

There may also be potential for a project to have positive impacts on a community’s capacity to adapt to climate change, particularly where community consultation and/or agreement-making has been well-considered and comprehensive. Such positive impacts should also be included.

Greenhouse gas emissions thresholds

Section 3 of the draft guidance references the NT government policy ‘Greenhouse Gas Emissions Management for New and Expanding Large Emitters’, but the relationship between that policy and this draft guidance is unclear. While this is clarified later in the document, it would be helpful to include earlier, when the large emitters policy is first mentioned.

The NLC has previously expressed concerns to the NT government about the high thresholds for both industrial and land use activities that trigger environmental assessment under the large emitters policy. The objective of the atmospheric processes guidance is to contribute to the NT government’s target of net zero emissions by 2050. It is hard to see how this target can be achieved with the current thresholds.

While the NLC recommends the adoption of lower thresholds, we strongly support the NT EPA’s decision to adopt the NT government’s thresholds as a guide only and to retain the flexibility to call in actions that do not meet the thresholds.

We recommend the NT EPA calls in proposed actions where:

- the action has a significant level of emissions for both industrial and land uses but does not reach the threshold for either; or
- the action has significant scope 2 and 3 emissions, but does not reach the threshold for scope 1 emissions.

The NLC is also concerned about the lack of guidance to date on cumulative greenhouse gas emissions (such as where a development proposal comprises several linked projects planned at different locations or times). We recommend the guidance clarifies the NT EPA will not tolerate proponents breaking a large proposal into smaller components in a deliberate attempt to avoid reaching the thresholds and triggering an impact assessment.

General duty of proponents

Section 4 of the draft guidance (legal context) references the general duties of proponents under section 43 of the *Environment Protection Act 2019*; however, only three of the general duties are listed. Given, as noted above, the disproportionate impact of both large emitting projects and climate change on Aboriginal people, the remaining general duties should also be included, namely:

- (a) to provide communities that may be affected by a proposed action with information and opportunities for consultation to assist each community's understanding of the proposed action and its potential impacts and benefits;
- (b) to consult with affected communities, including Aboriginal communities, in a culturally appropriate manner;
- (c) to seek and document community knowledge and understanding (including scientific and traditional knowledge and understanding) of the natural and cultural values of areas that may be impacted by the proposed action;
- (d) to address Aboriginal values and the rights and interests of Aboriginal communities in relation to areas that may be impacted by the proposed action.

These duties are particularly relevant given the requirement under the atmospheric processes factor for proponents to consider adaptation to climate change.

The NLC also recommends that section 7.3 of the draft guidance (greenhouse gas abatement plan) refers proponents to the NT EPA's stakeholder engagement and consultation guidance, and particularly the advice on Aboriginal engagement.

Interaction with other guidance documents

The NLC notes the interconnected nature of all NT EPA themes and factors, and recommends this connection be mentioned in every factor guidance document; an impact on any one theme is likely to have an impact on some or all of the others. This is especially the case for Aboriginal people. A flow-chart showing where the guidance document sits within the broader assessment and approval process would also be helpful.

If you have any questions regarding this submission please contact Diane Brodie, Policy Team Leader, via email diane.brodie@nlc.org.au or telephone 08 8920 5204.

Yours faithfully



Joe Martin-Jard
CHIEF EXECUTIVE OFFICER

15 July 2022