



NORTHERN LAND COUNCIL

Our Land, Our Sea, Our Life

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Dear Sir/Madam

Submission on *Environmental factor guidance: culture and heritage*

Thank you for the opportunity to provide feedback on the draft *Environmental factor guidance: culture and heritage*.

The Northern Land Council (NLC) understands the guidance will be the primary tool to assist proponents in assessing whether to refer a proposed action to the Northern Territory Environment Protection Authority (NT EPA) on the basis of the action's likely impacts on Aboriginal cultural values. As such, this document should provide clear guidance for proponents to identify culture and heritage impacts and develop strategies to avoid or mitigate those impacts. In the NLC's view the draft guidance does not do this, presenting a risk for both Aboriginal people and proponents.

The NLC strongly recommends the guidance be redrafted, in collaboration with land councils and consistent with national and international leading practice.

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. Relevant to this submission, land councils also have a function to 'assist

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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Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land) in the area of the Land Council’.

The NLC is also a native title representative body under the *Native Title Act 1993* (Cth) (Native Title Act) and has functions to represent native title holders, including in consultations and negotiations relating to Indigenous land use agreements, future acts, rights of access and other matters relating to native title. 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 Northern Territory population and have freehold title rights to around 50 per cent of the Northern Territory 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 has cultural implications for the Aboriginal people that rely on these resources.

Almost 80 per cent of Aboriginal people in the Northern Territory live in remote or very remote areas – the same areas where major development projects are most likely to have substantial impacts. Due to the close relationship between Aboriginal values, identity, culture and the broad concept of ‘country’, negative impacts and damage to country are readily noticed and strongly felt in the Aboriginal community.

The substantial rights and interests of Aboriginal people in the Northern Territory, and the disproportionate risks they face, must underpin guidance on culture and heritage.

Concerns

NLC’s key concerns about the draft guidance are:

- It is unclear whether the guidance applies to all cultural values or only to sacred sites and heritage places. Aboriginal culture and heritage encompasses both the tangible and intangible and includes a vast range of cultural values such as access to hunting, fishing and collection of bush foods/medicine; culturally important plants and animals; carrying out ceremonies, cultural practices and traditional responsibilities on country; livelihoods; laws; and stories. Protection of cultural values in the draft guidance is limited to values that are already protected under legislation; this does not provide sufficient protection to these values.

To address issues in the document with the definition of cultural values and approaches to cultural protection, the NLC recommends drawing on the extensive body of work available on these subjects. This includes the cultural heritage management standards outlined in *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander Heritage in Australia*², the findings of the Inquiry into the destruction of Indigenous heritage sites at Juukan Gorge³, and relevant international instruments relating to the protection of cultural heritage.

- Any assessment of culture and heritage impacts of proposals must involve consideration of the rights of Aboriginal people under the Native Title and Land Rights Acts, as well as consideration of their rights under agreements made under these acts. As drafted, Section 3.2 on ‘Legislative mechanisms to protect cultural values’ (particularly the sections on these two acts) fails to adequately explain the framework of Aboriginal property rights in the Northern Territory or how this framework interacts with cultural heritage issues. These sections also include a number of inaccuracies.
- The draft guidance does not recognise the statutory functions and expertise of land councils. Proponents should be encouraged to contact relevant land councils for advice regarding engagement

² <https://culturalheritage.org.au/resources/dhawura-ngilan-vision-and-best-practice-standards/>

³ Commonwealth of Australia 2021, ‘A way forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge’,

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf;fileType=application%2Fpdf

with Aboriginal people, cultural protection requirements and impact mitigation measures. For actions on land which may be subject to native title rights and interests, entering into an agreement regarding the protection of cultural heritage in project areas can help to reduce risk.

- There is very little practical guidance for proponents, to assist them to identify, assess and address a proposed action's impacts on Aboriginal culture and heritage.

The NLC is keen to work with the NT EPA to ensure these issues are resolved in a revised *Environmental factor guidance: culture and heritage*.

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

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