

Our ref: 33-D25-725

Dear Territory Coordinator,

RE: SUBMISSION ON THE TERRITORY COORDINATOR BILL 2024

Thank you for the opportunity to make a submission on the Northern Territory Government's proposal to establish the Office of the Territory Coordinator. This submission is made in consideration of the draft Territory Coordinator Bill 2024, the Guide to the Territory Coordinator Bill and the related Consultation Paper.

Summary of recommendations

In order to maintain public confidence in the environmental impact assessment process and to accelerate economic development in the Territory, the Northern Territory Environment Protection Authority (NT EPA) makes the following recommendations on the draft Territory Coordinator Bill 2024:

- The Bill be amended so that the Minister is the decision-making authority for prioritisation, progression and decision requests, on the recommendation of the Territory Coordinator.
- The drafting of clause 64(3) be broadened to ensure that it applies to circumstances where the NT EPA undertakes an assessment of a proposal on behalf of the Commonwealth and that assessment is not covered by the bilateral agreement between the NT and the Commonwealth Governments.
- The Territory Coordinator play a role in assessing project viability, with the ability to quickly signal when a project does not appear to be in the Territory's interests.
- The Bill include a requirement for the periodic evaluation of both the implementation, performance and outcomes of the Office of the Territory Coordinator.

About the Northern Territory Environment Protection Authority

The NT EPA is an independent statutory authority established by the *Northern Territory Environment Protection Authority Act 2012* (NTEPA Act). The NT EPA is a skills-based board comprising between 4 and 7 members appointed by the Administrator of the Northern Territory. The NT EPA's role is to:

- conduct environmental impact assessment (EIA) under the *Environment Protection Act 2019* (EP Act) and Regulations

- manage waste and pollution in accordance with the *Waste Management and Pollution Control Act 1998* and *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*
- provide advice and report to the Minister for Environment about matters affecting the environment, including environmental policy and legislation.

The NT EPA's objectives are to:

- promote ecologically sustainable development
- protect the environment having regard to the need to promote ecologically sustainable development
- promote effective waste management and minimisation strategies
- enhance community and business confidence in the environmental protection regime of the Territory.

In performing its functions, the NT EPA must:

- encourage community involvement and engagement
- ensure transparent processes and provide certainty to business
- integrate both short and long term economic, environmental and social equity considerations in its decision making.

The NT EPA has a clear role in supporting the economic development of the Northern Territory and ensuring the environmental impacts of development are managed sustainably, and to acceptable levels.

The Chief Executive Officer of the Department of Lands, Planning and Environment (DLPE) provides the NT EPA with access to staff and facilities to enable it to properly exercise its powers and perform its functions. The NT EPA also draws upon expertise from across government agencies.

The NT EPA is not subject to the direction or control of the Minister in the exercise of its powers or the performance of its functions (section 9 NTEPA Act). The proposed ability of the Territory Coordinator to direct an independent statutory authority is contrary to this intent and a departure from the existing governance and accountability arrangements between parliament, statutory authorities and the public service.

The NT EPA is committed to efficient processes and decision making. The EP Act establishes statutory timeframes for all environmental assessment and approval decision and process steps. The NT EPA and DLPE report on their performance in meeting these timeframes, with 74% of statutory timeframes met in 2023-24. The NT EPA's ability to meet statutory timeframes can be impacted by the number of proposals under assessment, competing priorities, the level of resources available and the timing of information provided to the NT EPA by government agencies and proponents.

Accelerating economic development

The Guide to the TC Bill refers to the need to unlock and accelerate critical investment and economic development in the NT in a context of increasingly complex, multi-purpose and multi-proponent projects. This is consistent with the NT

EPA's observation that development proposals are becoming more complex, involving new technologies and with increased expectations on the management of environmental impacts and engagement with the community.

The NT EPA supports the NT Government's desire for effective strategic coordination of projects that will bring significant economic benefit to the NT. The NT EPA can attest to the benefits of focused coordination of complex projects and foresees a key role for the Territory Coordinator in assisting proponents to understand and navigate regulatory requirements. This includes early and ongoing management of proponent's expectations about process and environmental information requirements and timeframes, including the resourcing they need to commit, and assisting decision-makers and advisors in understanding business imperatives.

The effectiveness of the Territory Coordinator in delivering its functions will depend on cooperative and constructive relationships between the Territory Coordinator, decision-makers and agency Chief Executive Officers, along with careful management of proponent expectations.

In the NT EPA's experience, efficient and effective assessment and approvals are most likely to be achieved with a focus on early planning and consideration of environmental matters. The Territory Coordinator can play a valuable role in encouraging such an approach. Early and appropriate siting of development is particularly critical to avoid potentially significant impacts and/or provide sufficient time to consider mitigation measures.

Approval decisions under the EP Act and other NT environment and resource legislation must be evidence-based, informed by the best available science and expertise. Environmental Impact Assessment (EIA) is a knowledge-dependent process. Approval timeframes and the quality of assessments and decisions can be improved through strategic investment in collecting and collating the environmental data required to support decisions - with greater access to and sharing of such data. There is an important role for the Territory Coordinator in assisting the prioritisation of data collection and management and to support data sharing across industry.

Proposed powers of the Territory Coordinator

The Bill proposes a range of powers for the Territory Coordinator to coordinate and deliver significant projects with varying degrees of intervention in the processes and decisions of other bodies of officers.

The NT EPA understands the use of these powers is intended to streamline existing regulatory approval processes rather than bypass them. The NT EPA's expectation is that most of the work of the Territory Coordinator can and should involve coordination and cooperation with decision-makers and agencies, without relying on the interventionist powers proposed in the Bill.

As highlighted by the NT Planning Commission, the imperative to shorten approval timeframes risks decisions being made without an understanding of the critical issues. The approach most likely to deliver the shortest approval timeframes and

ensure that critical issues necessary for a sound decision are dealt with, thereby reducing risks to government, would be to collaborate with the Chief executives of the entities involved.

The NT EPA does not anticipate or foresee a requirement to use the interventionist powers for NT EPA business. One of the NT EPA's objectives is to enhance community and business confidence in the environmental protection regime in the NT. Confidence can be undermined if EIA processes are poorly implemented, either by the NT EPA or with the intervention of the Territory Coordinator through the use of the proposed powers.

In principle, the proposed powers should be used in a targeted and judicious manner so as to maintain confidence in decision making and regulatory processes, and to preserve the statutory independence and expertise of the NT EPA. Where necessary and appropriate to support the economic development of the Northern Territory, the proposed powers should only be used following genuine consultation, with sufficient lead time provided to enable proper consideration of circumstances, implications, and unintended consequences, for example judicial reviews which will severely impact approval timeframes and the execution of projects.

The proposed ability of the Territory Coordinator to direct an independent statutory authority is a departure from the existing governance and accountability arrangements between parliament, statutory authorities and the public service. As proposed, the Territory Coordinator, a public servant, would be able to direct a statutory authority that has intentionally been established so that it is not subject to the direction of the Minister in the exercise of its powers or performance of its functions. The NT EPA supports the recommendation of the NT Planning Commission to amend the Bill so that the Minister is the decision-making authority for prioritisation, progression and decision requests, on the recommendation of the Territory Coordinator.

Prioritisation, progression and decision requests

The NT EPA welcomes the ability for the Territory Coordinator to request it to prioritise certain projects. Noting that this may impact the timing of environmental assessment and approval processes for other projects and therefore the need to manage proponent expectations more broadly. As proposed in the Bill, such requests should be published so that it is clear that the NT EPA is prioritising its work at the request of the Territory Coordinator.

Progression and decision requests may assist in expediting approvals for significant projects and would be particularly useful in aligning multiple assessment and approval processes for complex projects. Such requests would need to consider the statutory timeframes established by the EP Act.

The NT EPA is committed to efficient EIA processes and has an ongoing focus on reducing assessment timeframes without compromising environmental outcomes. Since the EP Act commenced in 2020, significant efficiency improvements have been made compared to the previous *Environmental Assessment Act*. The average timeframe to complete an assessment and grant an approval involving the proponent

and other stakeholders as required under the EP Act is 19 months compared with an average of 32 months to complete an assessment under the previous *Environmental Assessment Act*.

The NT EPA's capacity to prioritise projects, to progress their assessment /decision, and to make a decision within a specified period, is dependent on several factors that the NT EPA can influence but does not control. This includes the resourcing provided to the NT EPA by DLPE, and the ability of proponents and advisors to the NT EPA to work to timeframes and information requirements. To support proponents, the NT EPA is proactive in its engagement and in providing guidance on the information requirements for EIA.

Step-in notices

The Bill proposes that the TC would be able to step-in to take responsibility for a statutory decision or process in the place of the responsible entity. The Guide to the Territory Coordinator Bill states that step in notices are intended to ensure statutory processes and decisions are made in a timely way, in situations where delays in decision making have occurred or a decision request has not resolved the issue. Given the statutory timeframes under the EP Act, it appears unlikely this power would be required to expedite the EIA and environmental approval processes and decisions. The NT EPA notes that stepping into processes or decisions of the NT EPA would remove the independence and expertise that the NT EPA brings to those processes and decisions which may undermine confidence in the environmental regulatory system.

Exemption notices

Similarly, it appears unlikely that the proposed exemption notice power would be applied to environmental assessment and approval processes, given there is no intention to bypass regulatory processes that have a clear application to a project's activities. It is unclear when it would be appropriate to use this power other than to avoid duplication of regulatory processes where appropriate and where legislative objectives can still be met, although it is acknowledged that with novel and complex projects there may be exceptional circumstances where excluding the application of a law, or part of, is appropriate.

The Bill rightly prevents the exemption power from being applied to a process or decision under the EP Act that relates to an assessment under a bilateral agreement with the Commonwealth. There are circumstances where the NT EPA undertakes the assessment of a proposal on behalf of the Commonwealth (i.e. an accredited assessment under the *Environment Protection and Biodiversity Conservation Act 1999*) that is not covered by the bilateral agreement between the NT and the Commonwealth. The drafting of clause 64(3) should be broadened to apply it to such circumstances.

Territory Development Areas

The NT EPA is supportive of the proposal for the Territory Coordinator to identify, coordinate and facilitate implementation of Territory Development Areas. This would

introduce a new statutory approach to area based strategic planning that has the potential to deliver significant economic and environmental benefits. It would enable the consideration of significant environmental issues early in the planning process, informing decisions on the location of development that is often a secondary consideration in development project planning. The designation of a Territory Development Area should provide a basis for allocation and prioritisation of resources to the collection of environmental data to inform planning and environmental decisions. An area-based approach can also deliver benefits in identifying, assessing, and managing cumulative impacts of development in a region.

Other matters

The NT EPA is supportive of the proposed role of Territory Coordinator to provide the Minister with strategic advice on the effective delivery of the Coordinator's functions.

Like other regulatory bodies, the NT EPA is a 'project taker' that is required to process proposals submitted to it in accordance with the EP Act and Regulations. This may at times mean the NT EPA and supporting agencies apply resources to projects that may or may not, be economically viable. The NT EPA supports the recommendation of the NT Planning Commission that the Territory Coordinator play a role in assessing project viability, with the ability to quickly signal when a project does not appear to be in the Territory's interests.

The NT EPA also supports the NT Planning Commission's recommendation that the legislation include a requirement for a periodic evaluation of both the implementation, performance, and outcomes of the Office of the Territory Coordinator.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Dr Paul Vogel', with a horizontal line underneath.

DR PAUL VOGEL AM
Chairperson

16 January 2025