
SUBMISSION NO. 34

PERSONAL SUBMISSION
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I do not wish to appear before the committee

SUBMISSION FOR NT ENVIRONMENTAL PROTECTION AGENCY

According to Johnston (1991) the functions of the Western Australian Environmental Protection Authority are:

"... conducting environmental assessment, initiating measures of protecting the environment, promoting awareness of environmental issues, receiving input from the community on environmental matters, coordinating activities, whether governmental or otherwise that are necessary to protect or otherwise improve the environment in the State and promoting and conducting planning and environmental management." (pp 259 Johnston, 1991)

ARGUMENTS FOR AND AGAINST THE ESTABLISHMENT OF AN EPA

FOR:

Economic Development of the Territory

As a central tenet of Northern Territory Governments strategy for developing the economy, the streamlining of the current development approval process should be reviewed to incorporate stakeholder expectations.

"In summary, people were looking for an efficient, effective and economic outcome. By efficient, the criterion to judge success was seen as being the time taken to issue approvals. By effective, people meant a process that had community and proponent support and delivered results in an open and transparent manner. By economic, people wanted to see reasonable costs to both community and proponent in working through a process that actively promoted sustainable development." (pp 62 GWA 2002)

These expectations include transparency of process and sustainability. Transparency by involving and informing stakeholders of the decision making processes. Sustainability by ensuring that resources and the environment are not impacted for short-term gain, which in the longer term may be an impost on the taxpayer.

The dual objectives of a resource based economy and stakeholder acceptance is difficult to attain if agencies with responsibilities for 'sustainability' have inconsistent

policies in relation to management of the activities, especially in relation to environmental protection and management objectives.

For the proponent, the management of the environmental assessment process is an introduction to the regulatory process in the NT. The operation of the environmental approvals system is important to gain the confidence of proponents that the Northern Territory Government is capable of handling project proposals in an efficient and timely manner. Co-ordination of the approvals process by a centralised government agency is also critical to providing consistent advice on any issues related to assessment process. An objective of the EPA should be to take:

...the approach that it would work with proponents to modify projects so that they are environmentally acceptable, rather than reject proposals. (Pp 41 GWA 2002)

Strategic Environmental Assessment and Policy Development

A tenet of all Northern Territory governments, irrespective of political persuasion, has been to promote the economic development of the Territory. It would be reasonable to expect that the same edict will be a central tenet of future Territory governments. Changes in community expectations and attitudes toward environmental protection and the importance of resource development to the Territory economy in the future will need to be managed by incumbent governments.

With the exception of large development proposals determined to warrant assessment under the Northern Territory *Environmental Assessment Act* (EAA), most activities are assessed by agencies with jurisdiction for the activity.

Currently Northern Territory government agencies with statutory requirements for environmental management develop environmental management policy independent of each other. This permits an inconsistent approach to environmental management across inter-agency jurisdictions. It is not known whether all agencies with responsibilities for environmental management have environmental management policies and procedures relevant to their areas of responsibility. However, it is known that limited consultation has occurred between agencies in relation to consistency of environmental management policy development. Therefore, there is a need for a centralised agency to develop and provide policy direction for environmental protection objectives in the Northern Territory. The centralised agency responsible for environmental policy development should also be custodian of and administer formalised environmental assessment of proposals, which trigger the EAA. This will provide for consistency of approach to environmental protection from an administrative and operational perspective. It is recommended that this centralised agency be in the form of an Environmental Protection Agency (EPA) due to the functions the agency would be required to fulfil.

Policy direction provided by an Environmental Protection Agency (EPA) would assist decision makers in the Northern Territory Public Service to take a consistent approach to matters relating to established environmental protection objectives. Policy direction would also permit a consistent approach to strategic environmental assessment.

In relation to strategic resource planning the Western Australian Government identified that

"...to maintain the ambient environmental quality, the government will need to develop regional resource management plans that encompass existing resource use

and take a long-term view of what is appropriate and sustainable, against which new proposals can be considered.” (pp 108 GWA 2002)

The above can be achieved through use of environmental protection objectives or similar developed by an EPA in consultation with NT agencies.

Future planning for development in the Northern Territory has already commenced. The Glyde Point industrial park and associated utilities corridor are examples of this, however, this is but one of many development issues that will require forward planning. Planning for future development should include strategic environmental assessment to assist in setting aside areas for future perceived land use requirements. The Litchfield Shire Land Use Plan goes some way toward this objective for the Darwin region. However,

“In planning ahead, there is limited value in simply zoning land that is selected for industrial development. It is necessary to undertake as many assessments of social and cultural implications of future development as practicable, and obtain as many approvals as possible, including environmental approvals, so that a later project can readily locate on an industrial site within the zoned land.” (pp 110 GWA 2002)

Prior to commencing strategic environmental assessment environmental protection objectives should be developed to provide the basis for a consistent policy in relation to development areas. A centralised agency (such as an EPA) dedicated to this task would be able to formulate environmental protection objectives and develop a consistent set to environmental protection policies and procedures.

Cumulative Environmental Risk from Small Projects

In relation to resource development there a considerable number of smaller projects which do not trigger assessment under the EAA. In isolation, environmental impacts related to these activities may be of minor significance. When viewed as a group it can be appreciated that the cumulative impacts may be significant and environmental risk increased. The same could be argued for all agencies, which regulate activities not assessed under the EAA. It is acknowledged that regulation of environmental management for these activities is the responsibilities of the agency. However, ‘self assessment’ and approval of activities may also be a potential problem from a stakeholder perspective.

In a fiscally constrained environment there are limited funds for agencies to conduct their operational functions and ensure staff are appropriately trained. This is currently the situation in which most NT agencies find themselves. As a consequence, for numerous small activities it is unlikely that inspectors will visit the site on a frequent basis (at least annually).

If an EPA is to be developed in the Northern Territory it should be provided legislation to enable independent environmental monitoring and review of any activity.

Agency Objectives

There are two problems associated with agencies having responsibilities for environmental protection both linked to perceptions by stakeholders. The first is corporate objectives. It is difficult to remove stakeholder perception of promoting the benefits of resource development in preference to environment management.

The second is the already pessimistic view that stakeholders have of environmental management by NT government agencies. This statement is made even in consideration of the Freedom of Information laws. Indeed this is one the reasons why this paper is being written in the first instance. It is testament to this problem of stakeholder perception.

All agencies 'promote' their area of responsibilities eg, Department of Business, Industry and Resource Development industry and resource development, Department of Primary Industries and Fisheries, fisheries and agriculture. To paraphrase the sentiment of William Ruckelhaus First Administrator of the United States Environmental Protection Agency on December 7 1972, 'an Environmental Protection Agency has no obligation to promote industry, agriculture or commerce'.

Future Issues Requiring Centralised Assessment Process

Social Issues and Sustainability

In relation to social issues and sustainability, The Review of the Project Development Approvals System – Final Report (GWA, 2002)) amongst other issues, identified the following regarding environmental impact assessment.

“Social issues are implicitly assumed to be able to be resolved as a consequence of the detailed consideration of the proposal once it has an environmental approval. This means that social issues are dealt with in an ad hoc fashion that is not integrated or at all transparent to the public or the proponent.” (pp 46 GWA, 2002)

and

“The handling of social impacts is a substantial weakness in the present approvals system. There is no formal and transparent process that allows the community and decision-makers to simultaneously consider the economic, social and environmental issues associated with a proposal.” (pp 46 GWA, 2002)

If stakeholders are to be confident in the assessment process and concur with the process outcomes, the issues of sustainability and social impact will need to be addressed in greater detail.

Economic analysis

Regulators assume that the proponent has already considered the viability of the project and by submitting documentation for approval consider that the proposal will be economic. This assumption requires analysis by the regulator. Impact statements usually identify the benefits to NT economy. There are cases where projects have proved to be sub-economic and the taxpayer is now paying for management of these sites. Though initially the project benefited the NT economy, as more public money is required to manage the site the gap between economic benefits versus disadvantages is closing. Hence the need to review of the cost effectiveness of proposals before approvals to commence are finalised.

For the above reasons responsibility for assessment of sustainability, social impact and economic analysis of an activity should be centralised into one agency. As established in the Western Australian Government report into the development approvals process (GWA 2002). The issues of social impact of proposals and sustainability will be elements of the environmental assessment process, which the community will expect to be incorporated into the approval process. It is unrealistic to

expect independent government agencies to maintain staff with skills to assess social impacts or sustainability elements of project approvals.

AGAINST:

Difficulties with Subsuming Environmental Management Responsibilities to an EPA

If proposed, to remove environmental functions from the legislation for regulation by an EPA would be difficult from an operational and administrative perspective.

This problem is analogous with those states which already have functioning EPAs and the solution has been Memoranda of Understanding (MOU) between agencies for example, the Western Australian Environmental Protection Authority administers that Environmental Protection Act only, leaving other state government agencies to administer environmental management responsibilities through the MOU.

MOUs already exist between Northern Territory Government agencies. If an EPA is to be set up it is suggested that the existing MOUs between government agencies, which relate to environmental management responsibilities, be reviewed. The objective of the review is to determine if MOUs between government agencies remain relevant.

There is also a problem of public perception with the MOU. A submission to the review into the development approvals process conducted by the Western Australian Government 2002 identified the following:

“When legislation creates a potential problem of overlap and duplication, agencies have used administrative processes, most notably MOUs, to minimise this problem. These are seen as effective responses but some submissions were concerned that the arrangements were not transparently prepared and not available to the public. As MOUs cannot change legislation or regulation there seems no need for them to be prepared in a public manner, but it seems reasonable that they should be available to the public when finalised to ensure transparency of operation.” (pp 77 GWA, 2002)

OPTIONS FOR THE STRUCTURE OF AN EPA, TAKING INTO ACCOUNT THE GEOGRAPHY, DEMOGRAPHY AND FINANCIAL RESOURCES OF THE NT: AND

Demography

It can also be assumed that the demography of the NT and the preferences across the population for or against the development of an EPA are varied. Traditionally the NT population has had a lower average age than the remainder of Australia. There are estimates that the population of Darwin will increase over time. However, it is unlikely that the demography of Darwin's population will change rapidly within the next decade for amongst other reasons, harshness of climate and limited opportunity. In relation to the development of an EPA in the Northern Territory, as the overall population ages, there will a growing percentage of the demographic that will expect an EPA to be an element of the government infrastructure.

Financial Considerations

For the current proposal the following economic assumptions are provided.

- The Northern Territory Government will be fiscally restrained;

- The implementation or structure of an EPA will be dependent on the cost associated with developing the agency; and
- The government considers resource development and management as an important element of the Northern Territory's future development.

Though economic factors may be the dominant factor, the formation of an EPA must anticipate the future community expectations regarding environmental management and align community expectations with the government's development focus.

If an EPA is to be implemented, funding should be guaranteed for the first five years. The objective of secure funding during the initial stages is to ensure that a change of government would not impede implementation. The initial funding guarantee would also place the developing EPA beyond the party political system for the term of an electoral cycle, in addition to being permitted to complete the project implementation program without external interference.

It must be remembered that the initial investment in developing a consistent and streamlined approach to development assessment will assist proponents to achieve approvals.

Resourcing of an EPA

The functioning of Government is an important component in promoting economic activity in the Northern Territory. Completion of the approval process is seen as a milestone to be achieved in all project management for legal reasons. The professionalism of staff and adherence to timeliness impacts project timing and can be a major cost imposition in commercial ventures, eg delays to finalisation of contracts and obtaining funding of activities with financial institutions.

The following quote is taken from the review of the Western Australian Approvals process regarding resourcing of agencies.

AMEC commented; "...governments generally have failed to comprehend that they have core businesses in an economy which produce growth and revenues vital to budget outcomes... by ensuring departments administering an industry, such as the mining industry, are adequately funded, growth and development is enhanced and revenue flows to government increase." (pp 86 GWA 2002)

Use of inadequately trained or inexperienced staff to undertake complex assessments though costing the government less to employ increases environmental and overall risk associated with the project. It is suggested that if an EPA is to be set up that appropriately trained and competent staff are selected to fill these positions.

Due to the Northern Territory's geographical isolation it may be difficult to get appropriately trained staff to fill team leading positions. It must be identified that if the EPA is to obtain the stakeholder confidence resourcing and appointment of suitably qualified staff are important considerations.

A SUITABLE EPA MODEL AND OPTIONS FOR ITS STAGED INTRODUCTION

Western Australia up until the 1960s had gone through a boom-bust cycle of resource development mainly associated with gold in Kalgoorlie and agricultural development in what became known as the wheat belt. There are similarities between where Western Australia was in the in 1986 (the year of the commencement of the *Environmental Protection Act*) and where the NT is positioned now. Both

economy's have had made considerable investment to resource development projects. The similarities between the Northern Territory today and where Western Australia was placed and has since progressed can be seen as a measure of the environmental protection issues, which may face the Northern Territory in the future.

The Western Australian Environmental Protection Authority has been in existence since the commencement of the *Environmental Protection Act 1986* (EPA Act). In September 2001 the Western Australian State Development Minister established a committee to review major projects approvals processes. One of the conclusions of the committee outlined in 'The Review of the Development Approvals System Final Report' (GWA 2002) identified "... *that there is no significant regulatory requirement that was unnecessary. Each area of approvals has been found to serve a proper purpose and this has not been contested by the submissions received*" (pp 1, GWA 2002)

The main finding of the review was "...*the complexity in the system that has grown in response to demands of the day, rather than to a plan.*" (pp 1, GWA 2002) The Review of the Development Approvals System Final Report outline fifty five (55) recommendations. Issues discussed in the recommendations include:

- "Ensuring timeliness of approvals and accountability;
- Removal of overlap and duplication;
- Native title and Aboriginal heritage;
- Approvals information;
- Resourcing of agencies;
- Integration of State and Commonwealth approvals;
- Approvals and outcome based conditions;
- Approvals for Minerals Exploration and Mining;
- Approvals for Petroleum Exploration and Development Approvals for Gas pipelines;
- Approvals and State Agreements;
- Sustainability- regional forward planing;
- Sustainability – Publication of environmental and other data."

(GWA, 2002)

As evidenced from the issues identified there is some need for revision of the administrative process. Nonetheless, the Western Australian approvals regulatory system is effective as evidenced by those who responded to the request for submissions. Groups that responded in this instance were Federal and State Government agencies and private industry, including national and state based resource development companies. A list of submissions is provided in Appendix 3 of the report.

However, since enacting in 1986 there have been a number of amendments to the *EPA Act*. Discussions have identified that it is time for the *EPA Act* to be rewritten to streamline the regulatory process. In consideration of the synergies between resource development in the Western Australia and the Northern Territory it is suggested that the Western Australian EPA be used as a model to base a future Environmental Protection Agency for the Northern Territory.

The EAA needs to be reviewed to establish if the same administrative problems, which hamper proposals in Western Australia, are experienced within the Northern Territory development approvals system.

One problem with the EAA, which does need resolution, is the ability to place conditions on approvals for activities. This would bring the EAA in line with the Commonwealths *Environmental Protection and Biodiversity and Conservation Act 1999*. At present the recommendations of an Environmental Assessment Report (EAR) prepared under the EAA are not enforceable directly under the EAA. The Office of Environment and Heritage relies on the recommendations of an EAR to be incorporated within approvals given by custodians of other Northern Territory legislation applicable to the activity.

CONCLUSION

I support the formation on an EPA in the Northern Territory for the following reasons.

As a central tenet of Northern Territory Governments strategy for developing the economy, the streamlining of the current development approval process should be reviewed to incorporate stakeholder expectations.

These expectations include transparency of process and sustainability. Transparency by involving and informing stakeholders of the decision making processes. Sustainability by ensuring that resources and the environment are not impacted for short-term gain, which in the longer term may be an impost on the taxpayer.

The dual objectives of a resource based economy and stakeholder acceptance is difficult to attain if agencies with responsibilities for 'sustainability' have inconsistent policies in relation to management of the activities, especially in relation to environmental protection and management objectives.

Currently Northern Territory government agencies with statutory requirements for environmental management develop environmental management policy independent of each other. This permits an inconsistent approach to environmental management across inter-agency jurisdictions.

Policy direction provided by an Environmental Protection Agency (EPA) would assist decision makers in the Northern Territory Public Service to take a consistent approach to matters relating to established environmental protection objectives. Policy direction would also permit a consistent approach to strategic environmental assessment.

Prior to commencing strategic environmental assessment environmental protection objectives should be developed to provide the basis for a consistent policy in relation to development areas. A centralised agency (such as an EPA) dedicated to this task would be able to formulate environmental protection objectives and develop a consistent set to environmental protection policies and procedures.

With the exception of large development proposals determined to warrant assessment under the Northern Territory *Environmental Assessment Act (EAA)*, most activities are assessed by agencies with jurisdiction for the activity. Environmental impacts from smaller activities can have cumulative environmental impacts. 'Self assessment' and approval of smaller activities by agencies may also be a potential problem from a stakeholder perspective.

There are two problems associated with agencies having responsibilities for environmental protection both linked to perceptions by stakeholders. The first is

corporate objectives. The second is the already pessimistic view that stakeholders have of environmental management by NT government agencies.

If stakeholders are to be confident in the assessment process and concur with the process outcomes, the issues of sustainability and social impact will need to be addressed in greater detail. The issues of social impact of proposals and sustainability will be elements of the environmental assessment process, which the community will expect to be incorporated into the approval process. It is unrealistic to expect independent government agencies to maintain staff with skills to assess social impacts or sustainability elements of project approvals

In relation to the development of an EPA in the Northern Territory, as the overall population ages, there will a growing percentage of the demographic that will expect an EPA to be an element of the government infrastructure.

The functioning of Government is an important component in promoting economic activity in the Northern Territory. Completion of the approval process is seen as a milestone to be achieved in all project management for legal reasons. The professionalism of staff and adherence to timeliness impacts project timing and can be a major cost imposition in commercial ventures, eg delays to finalisation of contracts and obtaining funding of activities with financial institutions.

Use of inadequately trained or inexperienced staff to undertake complex assessments though costing the government less to employ increases environmental and overall risk associated with the project. It is suggested that if an EPA is to be set up that appropriately trained and competent staff are selected to fill these positions.

It must be remembered that the initial investment in developing a consistent and streamlined approach to development assessment will assist proponents to achieve approvals.

In consideration of the synergies between resource development in the Western Australia and the Northern Territory it is suggested that the Western Australian EPA be used as a model to base a future Environmental Protection Agency for the Northern Territory.

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