

NT Submission to the Productivity Commission Inquiry into Major Project Development Assessment Processes

April 2013

Introduction

The Northern Territory Government welcomes this opportunity to provide input to the Productivity Commission's Inquiry into Major Project Development Assessment Processes. This submission formalises comments by NT representatives during a teleconference on 13 March 2013. The NT has also provided a submission earlier this year to the Productivity Commission's Enquiry into Non-Financial Barriers to Mineral and Energy Exploration in Australia. That submission contains relevant information which the NT would ask the Productivity Commission to consider in the current inquiry.

Northern Territory Situation

The Northern Territory is of the view that it has a successful process for assessment of major projects as demonstrated by the Ichthys LNG Project. Despite this there is always opportunity for improvement, for all jurisdictions. Australian jurisdictions operate in a competitive global capital market. While Australia has a distinct advantage with its resource endowment, it also faces significant cost structure disadvantages for labour and construction costs. Competing investment locations are continually striving to improve their competitive position so Australian jurisdictions must not be complacent.

In the Northern Territory most of our facilitated major projects are resource development projects. While this might appear to narrow the scope for dealing with major projects relative to the other jurisdictions, experience shows that each resource project throws up new challenges for government to deal with in assessment.

The success of the Northern Territory in regard to major project assessment is, in part, a function of the size of our jurisdiction and the size of our bureaucracy. Relative to the larger jurisdictions the number of people involved in facilitating assessment of major projects is small and experienced. When combined with existing processes and the reduced role of local government, the Territory's existing approval processes have been proven successful.

Lead Agency Approach

The Northern Territory implements a lead agency approach to major project facilitation. Initially, the lead agency is involved in and oversees engagement between the proponent and line agencies but as a project progresses there may be direct engagement between the proponent, its consultants and line agencies with more limited oversight by the lead agency.

An important role for the lead agency is the early identification and resolution of issues that may lead to conflict. To the extent possible, these issues must not be allowed to remain unchecked until the later stages in the approval process. A lead agency approach can also be useful in managing proponent expectations. The challenge for governments is to provide reasonable certainty to proponents early in the process and manage expectations on a range of issues, ie what is or is not acceptable for a particular for a particular development. Strategic planning, clear policy, standards and guidance can all assist improvement of major projects development assessment.

A key element for success in the NT's assessment process is an imbedded structure to ensure accountability. With the change in Government in August 2012 the structure of this mechanism has been modified but the essence of CEO accountability for outstanding and unresolved issues remains and generally assures a timely and efficient engagement and assessment processes. Under both structures there is/has been a series of circuit breaker points for resolution of issues from the case officer through to Chief Executive Officers and the members of the Major Projects Cabinet Sub-Committee. Chief Executive Officers are responsible for timely delivery and response through the Standing Committee on Major Projects.

Consider Government Objective Framework

The Commission's issues paper refers to efficiency in meeting government objectives, without compromising those objectives. It should be noted that changes in objectives or regulatory requirements from one project to the next pose an imposition on major projects and their timelines. Each additional demand on major projects from raising the bar for government objectives reduces the competitive position of Australia to attract these investments. There is a strong case for better managing changes to government objectives, to get the balance right and to make sure that there is a net benefit from such changes.

Duplication

The main area of duplication for Territory major projects is in the sphere of environmental assessment. Most major projects are subject to the Commonwealth's EPBC Act as well as the Northern Territory's Environmental Assessment Act. There is an agreement for bilateral assessment of projects so that where appropriate, proponents can undertake a single environmental impact study. The assessment process is largely managed by the Northern Territory but the processes for project approvals from the Commonwealth and the Northern Territory are still separate and the approval timelines may not align.

Divergence in timelines may occur at the beginning between the Notice of Intent lodged with the Northern Territory Government and the EPBC Referral to the Commonwealth Government, although this may occur in part due to timing differences in when a proponent lodges the two documents. Toward the end of the environmental approvals processes, a structural divergence in timelines occurs where the NT Environmental Protection Authority recommendations are required and used by approving Minister in the Northern Territory and the Commonwealth Minister in the formulation of his approval under the EPBC Act.

The Northern Territory intends to review its environmental assessment legislation and may consider changes that better align timelines for project assessment. Alignment of Northern Territory and Commonwealth timelines for project approval would be difficult given the range of legislation in the Northern Territory that may apply to approval of major projects.

Wherever possible the Northern Territory aims to deliver project approvals that are aligned with Commonwealth approvals and provided in a similar timeframe.

In other approval/regulatory areas where there has been past duplication or inconsistency between jurisdictions there has generally been a harmonisation of legislation and regulations that has reduced duplication and efficiency. Some proponents may argue that such harmonisation has raised the bar and thus increased approvals workloads. However there is a risk to the Territory through harmonisation and common approaches, whereby net benefits may be demonstrated at the national and larger jurisdiction level (over long periods of time), whereas for the Territory, there may in fact be a net cost, or at best a marginal benefit realised some time in the future. The Territory should ensure that where current processes demonstrate a greater net benefit to any process ultimately recommended by the Productivity Commission, that the Territory is allowed to continue with the procedures already in place.

Some energy projects have been subject to State, Territory and Commonwealth petroleum and energy infrastructure legislation by virtue of having upstream, mid stream and downstream project elements in different jurisdictions or crossing

multiple jurisdictions. The Territory experience has been that this complication has been efficiently handled by the relevant authorities in a cooperative manner.

Statutory Timelines

The use of statutory timelines has been raised by the Commission as one answer to promoting efficient approvals assessment. Such timelines can focus the attention of government agencies on dealing with approvals issues in a timely fashion and they represent a benchmark for performance of agencies. However, they have implications for resourcing can force rushed decisions and often their effect is nullified by 'stop the clock' provisions for 'more information'.

Requests for further information during the assessment process may be viewed by proponents as a cause of unnecessary delay, yet to the authority assessing the project, and often the community, the information may be viewed as critical to ensuring an adequate assessment can be made. The Commission will need to give careful consideration to how 'unnecessary delays' in assessment and approvals processes can be avoided.

The Northern Territory environmental assessment process has statutory timelines for key steps in the assessment process. In reviewing the *Environmental Assessment Act* the Northern Territory will consider whether reasonable statutory timeframes should be imposed for other steps in the process where statutory timeframes do not currently exist.

Limited Role of Local Government

It should be noted that relative to the other Australian jurisdictions, that local government has a significantly lower input into major project approval processes. Powers that local government have in other jurisdictions in relation to planning approvals are held by the Northern Territory Government and independent development consent authorities, the latter in specific locations around major population centres. Even within the planning control centres where development consent authorities have jurisdiction, the Minister for Lands, Planning and the Environment has the power to assume the role of the consent authority.

On the other hand, there are new provisions regarding Significant Developments in the Planning Act which allow a Significant Development Report to be developed for a 'Significant Development' by the Planning Commission. Significant Developments include proposals that affect strategic plans, have major impacts upon adjacent land holders, etc. Such developments may be referred by a consent authority to the Minister for Lands Planning and the Environment.

Strategic Planning

The Northern Territory supports the role of strategic planning in lowering costs to proponents, increasing efficiency of approval processes and shortening project timelines. This is important for processing hubs and infrastructure corridors, particularly those associated with shipping export hubs. Strategic planning for industrial hub locations well ahead of their intended use significantly reduces the many negative impacts issues on the wider community from development.

In the case of mining projects, and to a lesser extent mineral processing projects the site of development is driven by the location of the resource to be developed, which cannot be predicted and planned for ahead of discovery and appraisal.

The Northern Territory Planning Commission was established under the Planning Act in 2013 to prepare integrated strategic plans for inclusion in the NT Planning Scheme

Sacred Sites

The Northern Territory has specific legislation and a dedicated authority (Aboriginal Areas Protection Authority) to manage and protect sacred sites. These provide greater protection for sacred sites than exist in some other jurisdictions but arguably reduce development and development approval timelines. This is achieved by making rights and responsibilities clear and transparent and having a dedicated authority to deal with sacred sites matters.

The impact of sacred sites legislation is reinforced by the fact that most resource developments are on land subject to either *Native Title Act* or the *Aboriginal Land Rights Act* and so access agreements must be negotiated with traditional owners through the Land Council at the early stages of engagement. The agreement will typically require a sacred sites survey to identify 'no go' areas to avoid impacting on sacred sites.

Typically a proponent will request the relevant authority (Aboriginal Areas Protection Authority) for a sacred sites certificate for specified activities. The certificate will specify areas where activities or development can proceed, areas that must be avoided and constraints on activities/development. Sacred sites are protected by legislation but their importance to traditional owners can vary significantly. Traditional owners may negotiate with proponents on the allowable impact to some identified sacred sites.

Land Access – *Aboriginal Land Rights Act 1976 (ALRA)* Land

ALRA imposes a significant additional burden on approvals and project development in the Northern Territory and this applied to approximately 50% of the land area. ALRA impacts on costs, timeliness, transparency, certainty and regulatory outcomes. ALRA impacts are comprehensively discussed in the attached NT submission to the earlier Productivity Commission inquiry on non-financial barriers to mineral and energy exploration in Australia.

International Benchmarking

The Northern Territory supports the analysis of and benchmarking with comparable international jurisdictions, where this is possible, to identify avenues for improvement. Such benchmarking, however, should not ignore differences in overall investment settings and government objective frameworks.