



31 May 2020

NT EPA
PO Box 3675
DARWIN NT 0801
Mode of delivery
Email to: nTEPA.consult@nt.gov.au

Dear Environmental Assessment Team

Submission in relation to the Draft Guidance Note entitled “Making a public submission during the impact assessment process”

Thank you for the opportunity to provide a submission in relation to the Draft Guidance Note entitled “Making a public submission during the impact assessment process”.

The Environment Centre NT (ECNT) is the peak community sector environment organisation in the Northern Territory of Australia, raising awareness amongst community, government, business and industry about environmental issues and assisting people to reduce their environmental impact and supporting community members to participate in decision-making processes and action.

As a general comment, ECNT is uncertain about the purpose of the Draft Guidance. It is somewhat useful for the list of the timeframes for public submissions at various points of the environment assessment process, the methods for submitting comments, and some of the information required to make an effective submission, but it does little to address the core concerns ECNT (and the public) has in relation to public participation in environmental decision-making in the Northern Territory. These concerns include that public participation in environmental decision-making in the Northern Territory is not robust, and that both proponents and the NTEPA pay scant attention to the public’s views in relation to environmentally harmful projects.

Specifically, ECNT believes this Guidance Note should provide far more guidance for proponents and the NTEPA about how public submissions/concerns will be taken into account and incorporated into environmental decision-making. If there is more prescription about these matters, then public confidence in environmental decision-making by the NTEPA will be enhanced.

ECNT notes, in this regard, that section 42 of the *Environment Protection Act* lists one of the purposes of environmental impact assessment to ensure that “the community is provided with an opportunity to participate, and have its views considered, in decisions on proposed actions”. Section 43 imposes specific duties on proponents to ensure public participation, including via consultation with affected communities. Both these provisions should form the starting point for the Draft Guidance.

Yet very little is said about the obligations on either the NTEPA or proponents to ensure public participation in environmental impact assessment in the Draft Guidance. All that is said (on page 4) is that “proponents are required to consider submissions received on their environmental impact assessment documentation and respond to the issues raised when preparing an SER or Supplement. The NT EPA will consider all submissions made within the submission period, and how a proponent has responded to them,

when preparing an assessment report.” This is an understatement of best practice, and what is required by ss 42 and 43 of the legislation and as a matter of administrative law.

ECNT suggests that this Draft Guidance be reworked to incorporate:

- Comprehensive guidelines for how proponents should ensure their obligations to ensure public participation/consultation under the legislation and regulations are complied with;
- Comprehensive guidelines for how the NTEPA will facilitate public participation in, and take into account public submissions, in environmental decision-making.

ECNT suggests that the NTEPA consider and incorporate other best practice models for public participation in environmental decision-making into the Guidance Note, such as:

- The NSW Government’s document “Responding to Submissions: Draft Environmental Impact Assessment Guidance Series June 2017” (<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/guideline-5-draft-responding-to-submissions-2017-06.pdf>);
- The Stockholm Environment Institute’s document “Making space: how public participation shapes environmental decision-making” (<https://www.sei.org/wp-content/uploads/2019/01/making-space-how-public-participation-shapes-environmental-decision-making.pdf>).

Finally, large scale projects with the potential for significant environmental impacts disproportionately impact Indigenous people and lands in the NT. Many Indigenous residents are located remotely, speak English as a second or third language, with poor access to IT by which they could make a submission. Proponents have a special duty to provide communities that may be affected by a proposed action with information about that action, to consult with affected Aboriginal communities in a culturally appropriate manner, and to address Aboriginal values and the rights and interests of Aboriginal communities (s43). Yet, apart from replicating the text of this provision, this Guidance Note makes no reference to Indigenous people, how these obligations should be fulfilled or the higher standards that proponents and the NTEPA should be held to ensure that Indigenous people are given an opportunity to participate meaningfully in environmental assessment processes. A template for meaningful public engagement exists, developed during the Scientific Inquiry into Hydraulic Fracturing. The Draft Guidance should be redrafted to incorporate culturally appropriate participation by Indigenous communities. This work should be undertaken collaboratively with NT land councils.

If you have any questions in relation to ECNT’s submission, please contact Shar Molloy on shar.molloy@ecnt.org.

Yours faithfully,



Shar Molloy

Director