



# CENTRAL LAND COUNCIL

**Submission to the Northern Territory Environment Protection Authority on the guidance notes for the implementation of the *Environment Protection Act* on:**

***Stakeholder engagement and consultation: Environmental impact assessment guidance for proponents***

**June 2020**

## **1. Introduction and context**

The Central Land Council (CLC) welcomes this opportunity to provide a submission to the Northern Territory Environment Protection Authority (NTEPA) on the guidance documents for the implementation of the *Environment Protection Act* and *Environment Protection Regulations*.

The CLC is a Commonwealth corporate entity established under the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRA'). Amongst other functions, it has statutory responsibilities for Aboriginal land acquisition and land management in the southern half of the Northern Territory. The CLC is also a Native Title Representative Body established under the *Native Title Act 1993* ('NTA'). Pursuant to the ALRA more than 50% of the NT and more than 85% of the NT coastline is now held by Aboriginal Land Trusts on behalf of traditional owners. A further 253,886 square kilometres of land and water is also held under native title. The CLC region covers approximately 780,000 km<sup>2</sup> of land, and 417,318 km<sup>2</sup> is Aboriginal land under the ALRA. Given existing pastoral land was not able to be claimed this Aboriginal land tends to be very arid and remote. In addition, rights have been asserted and won under the *Native Title Act 1993*, and traditional owners unable to claim land under the ALRA have succeeded in obtaining rights to small areas known as Community Living Areas, under NT legislation.

Through its elected representative Council of 90 community delegates the CLC continues to represent the aspirations and interests of approximately 17,500 traditional landowners and other Aboriginal people resident in its region, on a wide range of land-based and socio-political issues.

The CLC aims to improve the lives and futures of its Aboriginal constituents through sustainable development and change. The CLC's development approach is based on an integrated and strengths-based strategy of building economic, social and cultural capital. Significant work is being done under the various functions of the CLC in each of these related areas through initiatives in: natural and cultural resource management; the development of remote enterprise and employment pathways; innovative community development work, ensuring land owners use income generated from land

use agreements for broad community benefit; and land administration and land use agreements for third parties and traditional owners.

The CLC has been actively engaged in the environmental regulatory reform agenda and has contributed comprehensive submissions throughout, including the Draft Environment Protection Bill in collaboration with the Northern Land Council. The key priorities throughout the reform remain the same for these guidance notes: ensuring that the EIA process is consistent with the requirements of free prior and informed consent, that community engagement is culturally appropriate and that the rights and interests of Aboriginal people and landholders are properly acknowledged and protected throughout EIA.

## **2. General comment on the guidance document**

The CLC welcomes the release of an improved and updated guidance document for stakeholder engagement that addresses the additional responsibilities proponents have under the *Environment Protection Act* (EP Act). CLC strongly supports the inclusion of Table 1 in section 4.2 as it provides useful detail on how a proponent can practically address the requirements to consult and engage with Aboriginal stakeholders in a comprehensive and culturally appropriate manner. The guidance note could be strengthened by outlining in the body of the document how a proponent could address Object 3(e) in the EP Act in recognising the role that Aboriginal people have as stewards of their country. Table 1 should be used as a guide to interpreting this object and should provide a framework to assess compliance against it. This table, in addition to the ICMM guidelines, should be considered best practice principles when engaging with Aboriginal stakeholders.

CLC supports the identified importance of participation by Aboriginal people and communities in environmental decision making. Upfront and proactive engagement with affected Aboriginal communities is critical to best practice effective engagement. Such feedback should be determinative of the EIA process so that it actively informs the design and content of assessment documents. This should include a responsibility on the proponent to indicate how feedback is actively incorporated into the process and influences the design and content of the project and its assessment documents. We commend the EPA for incorporating feedback from the NLC/CLC joint submission to the 2019 version of this guidance document.

CLC reiterates the key concerns and recommendations outlined in the joint CLC/NLC submission on the Draft Guidance for Proponents – Stakeholder Engagement released in March 2019. They include:

A checklist of the key components of effective engagement with Aboriginal stakeholders that addresses free, prior and informed consent.

- Careful planning: cultural and anthropological matters, complexity of changes, meeting structure and size, local factors (language, culturally significant events)
- Early engagement: critical during the planning and research phase to ensure local values and places are acknowledged from the beginning.
- Effective engagement: information must be communicated in an accessible, linguistically appropriate manner including appropriate opportunities to process the information and

identify any likely impacts and mitigation measures according to the perspective of local Aboriginal landowners and community members.

- Ongoing process of reporting: ensure that communities remain informed about the progression of the project and how their concerns, values and feedback are informing the EIA process. Aboriginal people should have a foundational role in determining the relevant indicators of the social, environmental, economic and cultural impacts of the proposal.

### **Role of the Land Councils**

This section should be expanded to acknowledge that a key function of the CLC is to assist Aboriginal people to protect sacred sites. The CLC performs this function pursuant to section 23(1)(ba) of the *Aboriginal Land Rights (Northern Territory) Act (ALRA)*. The CLC has been conducting consultations, issuing CLC Sacred Site Clearance Certificates and thereby successfully protecting sites on Aboriginal land for over 40 years; proponents should be aware of this core responsibility and function. The guidance note should be amended accordingly.

AAPA and the CLC perform complementary roles, and in this regard the guidance document should note that the CLC has a role to protect sacred sites, has extensive accumulated information about the locations of sacred sites, and as a result of its functions under the ALRA and the *Native Title Act 1993 (Cth)* is in most cases, the representative of custodians of sacred sites protected by the *Northern Territory Aboriginal Sacred Sites Act 1984*. Sacred sites are protected in the Northern Territory whether or not they have been registered by AAPA, and CLC has been an integral contributor to the identification and protection of sacred sites since its inception. The CLC therefore recommends the following be added to the list of Land Council functions in the guidance note:

- Research and consultation on sacred sites in the CLC region for the purposes of issuing Sacred Site Clearance Certificates (SSCC).
- Preparing SSCCs which provide detailed guidance as to how to conduct works in order to avoid impacts on any sacred sites (including those registered with AAPA).

### **3. Enforcement and compliance**

While the CLC supports the inclusion of more detailed information on how to deliver on the principles of appropriate engagement, the guidance document does not provide enough direction as to how the document will inform decision making. There is no clear sense of how the EPA will address monitoring, compliance and enforcement of the strategy. So while the content is supported, there are concerns it may not necessarily promote best practice if there is no effective way to ensure compliance.

The EPA should perform a compliance and monitoring role to ensure that the guidance document is actively considered and applied by proponents when designing their stakeholder engagement plans. The Land Councils are ideally placed to advise a proponent on the right communities to consult with. Stakeholder engagement plans should ideally be developed in collaboration with the Land Councils.

Further, the EPA should outline how compliance with the guidance will be monitored and how such compliance will be considered during assessment decisions. For example, the guidance document should provide direction on the effect of non-compliance with the stakeholder engagement plan. The following questions therefore need to be addressed before the CLC can have confidence that the guidance document will ensure appropriate and effective consultation and engagement.

- How will compliance against the guidance document be monitored?
- What will be the effect of non-compliance with the guidance document, and how will non-compliance be evaluated?
- Will non-compliance be considered by the EPA during the various assessment stages, for example, if a proponent has not undertaken appropriate proactive engagement would a referral be refused for insufficient information?

Without a clear position on monitoring, compliance and enforcement within the guidelines, there is a real risk that the guidance document will be ineffective at promoting appropriate stakeholder engagement and consultation.

#### 4. Recommendations

1. Include more detailed guidance on how Object 3(e) of the Act will inform consultation and engagement processes so that proponents understand how to undertake appropriate engagement planning.
2. Provide clear direction on how the EPA will undertake monitoring, compliance and enforcement of the guidance document and how that will be considering during the various decision making stages of the EPA.
3. Include the following as functions of the Land Councils:
  - a. Research and consultation on sacred sites in the CLC region for the purposes of issuing Sacred Site Clearance Certificates (SSCC).
  - b. Preparing SSCCs which provide detailed guidance as to how to conduct works in order to avoid impacts on any sacred sites (including those registered with AAPA).
4. Define best practice consultation and engagement with Aboriginal people and communities to be based on table 1 in the guidance document and the principles of the *ICMM Good Practice Guide Indigenous Peoples and Mining*.
5. Proponents should be encouraged to develop their stakeholder engagement plans in consultation with the CLC if the project is on Native Title land or land held under the *ALRA*.
6. Acknowledge in section 4.3 of the guidance document that a key function of the Land Councils is supporting Aboriginal people to protect sacred sites in the Land Council area, according to section 23(1)(ba) of the *ALRA*.