



Regional
Development
Australia

FAR NORTH QUEENSLAND
AND TORRES STRAIT INC

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Friday 6th December 2013

Dear Ms Cvijanovic,

RE: Queensland – draft assessment bilateral agreement.

Regional Development Australia Far North Queensland & Torres Strait (RDA FNQ&TS) welcomes the opportunity to provide comment on the Draft Queensland assessment bilateral agreement. RDA FNQ&TS provides a significant role in strategically facilitating, supporting and promoting regional development to deliver cultural, social, economic and environmental benefits across the region. We work in collaboration with key stakeholders, industry, local government, State and Federal Government and communities to deliver on our broad agenda to secure a prosperous future for the region and its communities. Our work is directed by the Regional Road Map, underpinned by six pillars and delivered through twelve Strategic Priority Packages (please refer to <http://www.rdafnqts.org.au/index.php/rda-initiatives/regional-road-map> for further information). Please find attached for your information our prior submission to the Productivity Commission *Review of Major Project Development Assessment Processes* outlining key concerns with development assessment processes.

It is worth noting here that reform of the impact assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) has been one of our highest profile issues of concern for regional development. Consequently we are very supportive of the Commonwealth Government taking the initiative to review the system and to seek feedback from all stakeholders.

One of the roles of the RDA FNQ&TS is to provide support to projects that will deliver key outcomes for the region. Our focus has been on helping to improve the assessment and approval systems and processes that facilitate and enable economic development, while at the same time meeting high environmental standards to protect Matters of National Environmental Significance (MNES). It is within this context that our comments are made.



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Key points are provided covering specific content of the draft agreement, followed by general comment on gaps and outstanding questions regarding operational arrangements. We appreciate that issues raised may be more appropriately addressed under the yet to be released Administrative Arrangements, the non-legally binding Memorandum of Understanding¹, relevant Queensland legislation² and/or any future reform of the EPBC Act.

Specific clauses of the draft agreement

1. Approvals bilateral agreement – clause 4

Comment on any approvals bilateral will be held over until that draft agreement is available for consideration.

2. Nature of the agreement – clause 11

We note and welcome the subclauses setting out the specific approaches to improve efficiency and effectiveness of the administrative procedures to implement the agreement,³ and believe these will significantly progress an integrated, streamlined process. However some key gaps remain which are addressed in the 'Other matters' section below.

In regard to subclause (d) providing for placement of Commonwealth officers to Queensland (and vice versa) to assist with improved communication, information sharing and assessment capability regarding MNES, RDA FNQ&TS requests consideration of placing sufficiently senior assessment capacity in the regions. There is a particular need to build regional assessment capacity (with effective negotiation skills) in our region as we are a location where two World Heritage Areas converge, consequently there are several coinciding MNES issues likely to trigger the EPBC Act. This means that there is a high likelihood for projects both large and small to trigger the assessment requirements. In addition, consideration may be given to the potential assessment capacity of the Wet Tropics Management Authority to contribute to this process. Please note that feedback from some proponents and consultants has indicated that Canberra based Departmental staff have not necessarily displayed the level of knowledge and expertise required to effectively undertake assessments of projects, a situation exacerbated by high staff turnover. We further note the effective implementation of the Single Assessment Referral Agency (SARA) in the Department of State Development, Infrastructure and Planning (DSDIP) Far Northern Regional Office based in Cairns. The Commonwealth needs to consider measures to integrate its efforts more effectively with the SARA arrangements, and this is best done within the region.

In regard to subclause (f) RDA FNQ&TS would like to see a comprehensive monitoring and evaluation framework covering the implementation of the Agreement to measure operational success. We seek a broader regular review than that provided for in clause 24 (regular oversight by

¹ Non-binding agreement between the Commonwealth of Australia and the State of Queensland, 18/10/13 -

² For example, the *State Development and Public Works Organisation Act 1979* (Qld), *Environmental Protection Act 1994* (Qld), and *Sustainable Planning Act 2009* (Qld).

³ as per clause 6.1.2 of the Memorandum of Understanding 18/10/13.



senior officials), which we also recognise as important. An annual review is recommended with targeted input from proponents, industry more broadly, community and Departmental staff. Improvements could then be made to operational matters via the Administrative Arrangements and the Agreement itself, if required. This comprehensive monitoring and evaluation framework would incorporate assessment of compliance efforts related to clause 22 monitoring compliance with conditions and 23 enforcing conditions on approvals.

3. Procedures – clause 16

It is unclear whether a time limit is required for the Commonwealth Environment Minister to decide whether an action is a controlled action, and upon receipt of what information. Notwithstanding clause 16.2 requiring the Commonwealth Environment Minister to inform the Queensland Environment Minister within 10 day of making the decision. There is no detail around what information the Commonwealth Environment Minister will receive to inform their decision as to whether the action is a controlled action and the timeframes he will have to make this decision. RDA FNQ&TS would appreciate clarity on this initial step in the process.

Further, given the role of the Minister for State Development, Infrastructure and Planning in relation to the accredited assessment processes under the *State Development and Public Works Organisation Act 1971* (Qld) (SDPWO Act) and the *Sustainable Planning Act 2009* (Qld) (SP Act), shouldn't this Minister be notified of relevant actions that are declared controlled actions by the Commonwealth Environment Minister? Or is the Queensland Environment Minister responsible for informing the Minister for State Development, Infrastructure and Planning? Clarification of the notification approach would be also be appreciated.

4. Other information – clause 20.

The reference to "relevant Queensland Minister" is presumed to refer to the Minister administering the relevant Queensland legislation i.e. the accredited assessment process – whether the Minister for Environment and Heritage Protection (assessment under the *Environmental Protection Act 1994* (Qld) (EP Act) or the Minister for State Development, Infrastructure and Planning (assessment under the SDPWO Act or the SP Act). We seek clarification on this matter.

5. Groups with particular communication needs – Clause 36 & 37.

RDA FNQ&TS welcomes the additional recognition and importance attributed to Indigenous peoples interests and roles regarding conservation and ecologically sustainable use of natural resources in clause 37 and the need for specific engagement strategies. It may be relevant to further note, that in our experience and those of our stakeholders, Indigenous peoples are interested in economic and other opportunities associated with potential projects, proponents should seek to engage Aboriginal and Torres Strait Islander people in relation to these aspirations as well.



Other matters

6. Timing of decisions.

Feedback to RDA FNO&TS from proponents proceeding through the EPBC Act assessment process has identified issues with decision timeframes, for example regarding comments from Departmental officers on the draft approach and methodology. The entire assessment process needs to be critically examined to ensure all stages, including departmental feedback, are appropriately timed, with necessary flexibility (see point 6 below). The Queensland Government has tightened up its development assessment processes through SARA and consequential amendments to the SP Act. A similar approach could be considered. This may be a matter for amendment of the EPBC Act or explicit inclusion in the Administrative Arrangements to this bilateral agreement, if binding.

More explicit, agreed and common timeframes for decision making by the Department of Environment (formerly SEWPAC), the relevant Queensland Department, and the relevant State/Commonwealth Minister are critical. More clear timeframes for departmental and Ministerial decision making can increase transparency and security of the process.

7. Binding nature of departmental advice.

Some proponents experiences with SEWPAC including providing advice specifically on methodologies to inform the EIS, that was held not to be binding, with multiple staff changes resulting in changing advice from the Department. This approach does not provide for clarity, certainty and consistency. Departmental advice must be binding and only subject to change when significant new information becomes available. RDA FNO&TS believes that the provision of up-front guidance to industry, as per clause 11 (a) will go some way to addressing this issue, but making Departmental decisions and advice binding would be preferable.

8. Separation of project facilitation and project assessment capabilities.

The integrity and robustness of the assessment process will be facilitated by clarification of the roles between the Coordinator General and DSDIPs project facilitation processes and the DSDIP SARA assessment capacity. Consideration should be given to how best to establish assessment capacity within a one-stop-shop that establishes this clear separation of functionality to avoid any conflict of interest.

9. Managing change and flexibility

Whilst a clear process with articulate timeframes, expectations and requirements is paramount for clarity and consistency for government, proponents and community alike, elements of flexibility must remain in the system to deal with project changes, whether driven by the proponent or as a result of approaches required to mitigate impacts on MNES. For example, "stop the clock" options need to be allowed under certain circumstances and significant new information from EIS or other project documentation may necessarily result in required amendments to the project. The



assessment bilateral needs to support a strategic, iterative assessment process meeting Government, proponent and stakeholder needs.

10. Strategic Assessment of the Great Barrier Reef Coastal Zone.

The Memorandum of Understanding (MoU) refers to agreement around finalising the strategic assessment of the GBR Coastal Zone however neither the MoU nor the draft assessment bilateral refer to any outcomes from the strategic assessment, implications for the assessment process etc.

It would be useful for the relationship between the anticipated outcomes from the strategic assessment, the MoU and draft assessment bilateral agreement to be mapped out, including the relevance of the proposed direct benefits offsets approach and guidelines for dealing with cumulative impacts. In the development towards a Great Barrier Reef Long-Term Sustainability Plan, RDA FNQ&TS would want to see this evolve as a highly collaborative venture that compliments and strengthens existing planning frameworks rather than duplicates and conflicts with them.

11. Clarity on coordination of triggers, timing and public consultation.

To ensure efficiency gains in the process, from a timing perspective, there needs to be a common 'triggering' so proponents can obtain the one set of Terms of Reference (ToR) addressing State matters and Federal MNES within the same timeframe, regardless of which Qld legislation they will be assessed under. We note that clause 18.5 appears to address this issue to ensure earliest inclusion of MNES in draft Terms of Reference and other project assessment documentation, with detail to be determined in the Administrative Arrangements. This is the second step that must be successfully 'integrated' to deliver a streamlined process after the Commonwealth Environment Minister deems the action a 'controlled action' (refer to comments under point 3 above).

It is acknowledged that more significant projects will be 'called in' by the Coordinator General under the SDPWO Act and therefore there should be a public consultation period on the draft ToR for the EIS. However it is unclear whether draft ToR should be subjected to public consultation for the other accredited assessment processes under the EP Act and SP Act. Schedule One does not refer to any public consultation period in relation to the draft EIS for projects assessed under Chapter 9, Part 2 of the SP Act.

Disparity in the assessment process must be made explicit to the proponent and broader community, including differences in timeframes for decision-making and public consultation requirements and justification for different assessment approaches.

In order to streamline the assessment process, ensure consistency and provide clarity RDA FNQ&TS makes the following recommendations for consideration by the Commonwealth and Queensland Governments' in relation to the draft assessment bilateral:

- 1) **Clarifying timeframes for decisions** - need to firm up explicit, common timeframes for decision making across the entire assessment process including the relevant timeframe for the



Commonwealth Environment Minister's decision as to whether an action is a 'controlled action' and specifying what information informs this decision;

- 2) **Binding Departmental advice** – ensuring that Departmental advice (whether State or Federal) is binding to avoid changing advice due to any staff changes;
- 3) **Boosting regionally based assessment capacity** – exploring options for regionally based assessment staff including considerations of the role of the Wet Tropics Management Authority as well as regionally basing assessment capacity within the SARA system of DSDIP;
- 4) **Strengthening monitoring and evaluation mechanisms** – a comprehensive annual review assessing operational success to improve the Agreement itself and/or Administrative Arrangements;
- 5) **Ensuring separate functionality within the Queensland Government's project assessment and project facilitation roles** – relevant for projects assessed under DSDIP (SP Act) and the Coordinator General (SDPWO Act);
- 6) **Clarity on coordination of triggers, timing and public consultation** – across the three accredited Queensland legislative processes (Schedule One);
- 7) **Mapping out implications of the Strategic Assessment of the Great Barrier Reef** – particularly relevant offsets policies and arrangements, and approaches for improved assessment of cumulative impacts of projects.

In essence we would particularly stress that while getting right the rules for effective bilateralism is important in these reforms, it is the culture of EPBC project assessment and approval systems that we would most like to see changed. Our view is that there needs to be a cultural presumption within the DoE that the EPBC is there to serve both the interests of facilitating economic development while at the same time protecting and indeed enhancing MNES and their values. This would mean those involved in the assessment process would treat proponents with the respect that they deserve, work proactively with them to ensure they are clear about the environmental standards being sought, and that there is a more facilitated approach to supporting projects through towards a decision (approval or otherwise). The purely regulatory culture of assessment processes does, in our view, diminish interest in investment in FNQ&TS, even for environmentally advantageous projects. As such, there may be some scope to see greater use of independent third party brokerage in supporting proponents to negotiate their pathways through major projects of regional significance.

RDA FNQ&TS is interested in further engagement with the Department of Environment and relevant Queensland Government counterparts to progress the bilateral agreement, including Administrative Arrangements, to deliver a truly stream-lined and effective development assessment process.

Please do not hesitate to contact me with any queries regarding our submission or to discuss related matters. Thank you.

Yours sincerely





Sonja Johnson
CHIEF EXECUTIVE OFFICER
RDA FNQ&TS Inc.

Cc:

The Hon Greg Hunt, Commonwealth Minister for the Environment - Greg.Hunt.MP@environment.gov.au

The Hon Jeff Seeney, Queensland Deputy Premier and Minister for State Development, Infrastructure and Planning,- deputypremier@ministerial.qld.gov.au

The Hon Andrew Powell, Queensland Minister for Environment and Heritage Protection,-
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Mr David Edwards, Director General, Department of State Development, Infrastructure and Planning -
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Mr Jon Black, Director General, Department of Environment and Heritage Protection -
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Attached:

26/3/2013 Submission to the Productivity Commission Review of Major Projects Assessment Processes.



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