



## Briefing Note: The role of Territory Coordinator

31 October 2024

### Have your say

The NT Government recently released the Territory Coordinator Consultation Paper (**Consultation Paper**) to select stakeholders for feedback. The Consultation Paper was made public when it was tabled in Parliament on 24 October 2024 by the leader of the opposition, Selena Uibo.

Feedback can be provided by 1 November 2024 by emailing [OTC.Consultation@nt.gov.au](mailto:OTC.Consultation@nt.gov.au).

**Note:** *We have not seen a copy of any draft Bill, so this Briefing Note is based on the Consultation Paper. We have also considered a previous 2020 Bill for the Territory Coordinator, which was never passed.*

*The earliest a Bill could be introduced to Parliament is in the next sittings (26-28 November).<sup>1</sup>*

### What is the Territory Coordinator?

- The **Territory Coordinator (TC)** would be a non-elected official who works with the NT Minister for the Territory Coordinator (currently the **Chief Minister**), government agencies and companies to ‘coordinate and consolidate’ project approval processes. For more significant decisions, the Chief Minister would act on the advice of the Territory Coordinator.
- Under the proposed model, the Chief Minister could declare:
  - **Projects of Territory significance:** complex projects with a single proponent which are seen to be of significance to the Territory.
  - **Territory Development Areas (TDAs)**, on advice from the TC: geographic areas seen as “well suited to supporting economic development outcomes”, and where multiple companies may be operating.

---

<sup>1</sup> Usually Bills are debated and voted on in the subsequent session of Parliamentary sittings to when the Bill is first introduced. However, it may be open to the government to suspend standing orders and have a Bill debated and passed in the same session as its introduction.

- The TC would have several overarching powers, including to request information from government agencies or proponents, direct entities to coordinate action or share information or undertake public consultation. The TC would also have specific and significant powers in relation to **projects of significance** and **TDA**s, including to expedite or take over decision-making for relevant approvals under NT law or to modify the application of NT laws.

## What are our key concerns?

- The TC model concentrates a significant amount of power in the hands of a non-elected government official. The powers included in the proposed model are not subject to appropriate checks and balances.
- The scheme also problematically seeks to elevate economic considerations over environmental, cultural, social and other considerations contained in existing regulatory schemes. The TC and the Chief Minister must exercise key powers in accordance with the **Primary Principle** – described as the “*primary objective of driving economic prosperity in the Territory*”.
- We are especially concerned by the proposed **step in** and **exemption** powers. The **step in power** would allow the TC or Minister to undertake an assessment and decision-making process under an NT law *as though* they are the original decision-maker. For example, the TC or Minister could act in the place of the NT Environment Minister and determine whether to grant environmental approval for a project, and under what conditions. This would also require application of the **Primary Principle**. It is not clear from the Consultation Paper whether the government also intends to allow the TC or Minister to step in *after* a decision has already been made and make a different decision. This was a feature of the previous 2020 Territory Coordinator Bill.<sup>2</sup>
- Whilst the step in power was included in the 2020 Bill,<sup>3</sup> the **exemption power** is new. This power would allow the Chief Minister to issue ‘Exemption notices’ which **modify the application of a Territory law in relation to a specific project of significance or a TDA**. For example, the Chief Minister could exempt a project from the requirement to have an environmental impact assessment, determine that a certain approval such as a water license was not required or that certain factors were no longer required to be considered for a particular decision.
- The checks and balances proposed for the **exemption power** are far from sufficient. The Consultation Paper notes that an exemption notice may only be used in “certain circumstances”.<sup>4</sup> This would apply not just where statutory processes are duplicative, but where strict compliance with the statutory process is “**unnecessary or problematic taking into account the Primary**

---

<sup>2</sup> [Territory Coordinator Bill 2020](#) (NT) cl 25(3). The Bill did not pass the legislative assembly.

<sup>3</sup> [Territory Coordinator Bill 2020](#) (NT) Pt 5, Div 3, Sub-div 2.

<sup>4</sup> Consultation Paper 6.3.1 (p 12).

**Principle** (or other relevant matters that may be considered on a case-by-case basis)”.<sup>5</sup> This introduces an enormous amount of discretion to the exercise of those powers.

- The Minister must table an exemption notice in the Legislative Assembly, giving Parliament the opportunity to ‘disallow’ the exemption,<sup>6</sup> and enabling the public to see the notice. However, this is unlikely to lead to any problematic notices being disallowed. Because the Northern Territory does not have a second house of Parliament (a Senate), disallowance is done by majority vote of Legislative Assembly members. It is highly unlikely that members of the government of the day, which hold the majority, will vote down a notice put forward by their own Chief Minister.<sup>7</sup>
- The proposed model also excludes any review of decisions made by the TC or Chief Minister, except through judicial review in the Northern Territory Supreme Court.<sup>8</sup> Bringing Court proceedings is a costly, time-consuming and risky process. It also requires there to be an arguable legal error with the decision, which is difficult to establish when a law gives decision-makers huge discretion about how and when their powers can be exercised.

### Was the public on notice that this kind of model would be introduced?

- **Only for some elements of the model.** The TC proposal is not a new one. In the Territory Economic Reconstruction Commission Final Report (**TERC Final Report**), the authors recommended the introduction of an “Investment and Major Projects Commissioner” to streamline and coordinate decision making processes for major projects.<sup>9</sup> The *Territory Coordinator Bill 2020*, introduced by the Chief Minister when she was in opposition, purportedly drew on the TERC Report but went further than its recommendations, including the introduction of step in powers. The Bill was never passed, and the introduction of a TC was included as part of the Country Liberal Party’s election platform for the 2024 Territory election.
- The Consultation Paper introduces new elements which were not referenced in the 2020 Bill, including the Exemption Notice power and the concept of “Territory Development Areas”. It is also unclear how much the new model changes elements of the 2020 Bill in circumstances where we do not have a draft Bill to review.
- There is a marked difference in the consultation process for the TC and that in South Australia, where the government is contemplating a similar Coordinator-General model. In South Australia,

---

<sup>5</sup> Ibid.

<sup>6</sup> The exemption notice would need to be tabled within 3 Parliamentary sitting days and disallowed within 3 further sitting days: Consultation Paper 6.3.1 (p 12).

<sup>7</sup> At present, the Country Liberal Party holds 17 out of 25 seats in the NT Legislative Assembly.

<sup>8</sup> For more information, see EDO’s [factsheet on judicial review and merits review in the NT](#).

<sup>9</sup> [Territory Economic Reconstruction Commission](#), Final Report (November 2020) p 34.

there has been a lengthy public consultation process with an Issues Paper, Draft Bill and Explainer published for consultation.<sup>10</sup>

## Is the Territory Coordinator role similar to models in other jurisdictions?

- **No**, this model goes beyond what is in place elsewhere. The Consultation Paper suggests that this model is based on existing powers in Queensland (as well as models being developed in SA and WA). However, the TC would have greater powers than in these jurisdictions. For example, the Queensland Coordinator General does not have exemption powers. The South Australian model being proposed incorporates “no go zones” – areas where these powers *cannot* be exercised. No such safeguards appear in the Territory model.
- The proposed exemption powers are also relatively unprecedented. Although the South Australian model also includes an exemption power, it is more constrained and only permits the CG to modify or exclude a specific provision of an Act rather than excluding the application of an entire Act which the Territory model proposes.
- For further analysis, see our comparison table at **Appendix A** to this Briefing Note.

## Is the Territory Coordinator model limited to projects with environmental concerns?

- **No**, the TC and Chief Minister could potentially exercise powers in relation to a wide range of projects, not just those with environmental implications. Whilst the Consultation Paper uses examples such as onshore gas development in the Beetaloo and the Ti Tree Horticultural Precinct, the powers could be exercised in relation to a vast array of projects perceived as having some economic benefit in the Territory. For example, the model could be used to expedite planning decisions for major infrastructure projects, or side-step other kinds of approvals for projects.
- The Consultation Paper notes that the TC’s powers will not apply to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT), which deals with Aboriginal sacred sites protection, or with the *Heritage Act 2011* (NT), which protects both Aboriginal and non-Aboriginal heritage places.<sup>11</sup>

## How does the Territory Coordinator model work with Federal Laws?

- The Northern Territory government does **not** have the power to modify, exclude or override Commonwealth laws which apply to projects.<sup>12</sup> These include approvals under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**), the *Native Title Act 1993 (Cth)* and

---

<sup>10</sup> See <https://yoursay.sa.gov.au/public-consultation-state-development-coordination-and-facilitation-bill>

<sup>11</sup> Aboriginal and Macassan archaeological places and objects receive automatic protection under the *Heritage Act 2011* (NT) without requirements to register the sites or objects first: see ss 17-18.

<sup>12</sup> See Consultation Paper 9 (p 16).

the [Aboriginal Land Rights \(Northern Territory\) Act 1976 \(ALRA\)](#). For example, the TC could not modify the strategic assessment process being undertaken by the Commonwealth and Northern Territory for the Middle Arm Development Precinct, which is subject to a bilateral agreement between the governments under the EPBC Act.<sup>13</sup>

- The Chief Minister recently indicated that the government was looking into duplication between Territory and Commonwealth laws and suggested these issues could be addressed by the Territory Coordinator model.<sup>14</sup> Whilst there is some overlap between Territory and Commonwealth law, Federal laws may cover a narrower sphere of operation. A key example of this is the EPBC Act, which can only regulate projects with the potential for significant impact on Matters of National Environmental Significance.

## Case studies

### Case study – Project of Territory Significance: Singleton Station Horticulture Project

#### What is the Project?

The Singleton Station Horticultural Project (**Project**) is a proposal to develop approximately 3,300 ha of intensive irrigated agriculture at Singleton Station, approximately 35km south east of Ali Curung. The proponent, Fortune Agribusiness Funds Management Pty Ltd (**Fortune**) proposes to grow perennial and annual groups, including for export to international markets.

Fortune has been granted a 30-year, staged, water licence under the *Water Act 1992 (NT)* (**Water Act**) for the Project. By year 8 of the Project, the licence allows for 40,000 ML/year (40GL/year) of groundwater to be extracted. Fortune has also applied for permits to clear land and for non-pastoral uses under the *Pastoral Land Act 1992 (NT)*, which have not yet been decided. Fortune referred the Project for Environmental Impact Assessment under the *Environment Protection Act 2019 (NT)* (**EP Act**), but its draft Environmental Impact Statement has not yet been finalised and released for public consultation. In sum, the Project has not yet completed all assessments and received all the approvals it needs to commence.

The Project has been the subject of significant controversy and concern over the potentially unacceptable environmental impacts associated with 40GL/year of water drawdown on groundwater dependent sacred sites and groundwater dependent ecosystems.

---

<sup>13</sup> This would not necessarily prevent the TC or Chief Minister being able to exercise powers in relation to other approval processes for Middle Arm or for individual projects within the Precinct which are solely governed by Northern Territory law. It is difficult to comment further without seeing the draft legislation.

<sup>14</sup> Fia Walsh, "[Details remain murky about proposed Territory Coordinator Powers](#)", *NT News* (30 October 2024).

### How could the Territory Coordinator proposal impact the Project?

Under the new model, the Chief Minister could declare the Singleton Project as a ‘Project of Territory significance’, based on, for example, its complex nature, significant regional impact or potential to advance or catalyse industry development.<sup>15</sup> This would then enable the TC to exercise powers to expedite the Project.

Whilst this will ultimately depend on what is in the legislation, the Consultation Paper suggests the TC or Chief Minister would be able to do such things as:

- Require the Pastoral Lands Board to determine Fortune’s land clearing permit and non-pastoral use permit applications within a set time.
- Step into the shoes of the NT EPA at some stage in the Environmental Impact Assessment process, or step into the shoes of the NT Minister for the Environment at the environmental approval stage.
- Exempt Fortune from certain statutory approval processes if considered unnecessary (for example, no longer requiring Fortune to obtain a non-pastoral use permit).

### Case study – Territory Development Area: Onshore gas development in the Beetaloo Basin

#### What is the Development?

The Beetaloo sub-Basin is a 28,000 km<sup>2</sup> area 500 km southeast of Darwin. It is estimated to hold significant gas reserves and is currently the subject of hydraulic fracturing (‘fracking’) exploration and appraisal activities by several companies, including Tamboran and Imperial Oil & Gas. A moratorium was lifted on fracking in the Territory following the completion of a public inquiry (the **Pepper Inquiry**). The Inquiry relevantly found that fracking could proceed in the Territory if all 135 recommendations of the Final Report were implemented. The NT Government committed to implementing the recommendations and passed significant amendments to the *Petroleum Act 1984* (MNT) and the *Petroleum (Environment) Regulations 2016* (NT) (**Petroleum Environment Regulations**).

Fracking projects in the Territory require several approvals to proceed. Proponents must submit an Environmental Management Plan (EMP) under the *Petroleum Environment Regulations* and have the EMP approved by the Environment Minister before proceeding. Proponents must obtain licences under *Water Act 1992* (NT) for groundwater extraction and may be required to refer their projects for environmental impact assessment under the EP Act.

Whilst the previous Territory government indicated that all recommendations had been implemented, questions have been raised about whether this is the case. There continues to be community opposition to fracking in the Territory and several legal challenges have been brought, including most recently a merits review proceeding initiated in the Northern Territory Civil and Administrative Tribunal

---

<sup>15</sup> See Consultation Paper 7.1 (p 13) for possible criteria where projects may be designated as projects of significance.

challenging the decision to grant an EMP for the Shenandoah South project.<sup>16</sup> Merits review for EMPs was introduced as part of the reforms responding to the Pepper Inquiry.

### **How could the Territory Coordinator proposal impact the Development?**

Onshore gas development in the Beetaloo is expressly identified in the Consultation Paper as an area where the model could be beneficial.<sup>17</sup> Under the new model, the Chief Minister could declare the Beetaloo sub-Basin area as a TDA. This would then enable the TC and the Minister to exercise powers in relation to a range of companies and projects operating or proposing to operate in the region.

The Consultation Paper suggests the TC or Chief Minister would be able to do such things as:

- Use consolidated assessment approaches to assess several projects within the TDA at once and coordinate streamlined public consultation processes.
- Require the Environment Minister to determine an application to approve an EMP or grant a groundwater extraction licence for a fracking project (or several) within the TDA within a specified timeframe.
- Step into the shoes of the original decision maker to determine approvals or steps in an approval process – for example, step into the shoes of the NT EPA and decide whether and what tier of environmental impact assessment should be required for a fracking project within the TDA.
- Exempt fracking proponents operating within the TDA from certain regulatory requirements, such as the requirement to apply for a water licence.
- Step into the shoes of the Environment Minister and approve an EMP – if this takes place, the EMP could not be challenged through the merits review process that would otherwise be available under the Environment Protection Regulations.<sup>18</sup> Instead, only judicial review would be available.

If you have any questions about the material in this Briefing Note or the **attached** Appendix, please contact our office at darwin@edo.org.au.

---

<sup>16</sup><https://www.ntnews.com.au/news/ntcat-to-decide-on-application-filed-against-tamborans-beetaloo-basin-project-in-alice-springs/news-story/bf6bbb12d1267d030f239aeea2d6f110>

<sup>17</sup> Consultation Paper 10.2 (p 18).

<sup>18</sup> Consultation Paper 8.1 (p 15). See also [Territory Coordinator Bill 2020](#) (NT) cl 29(1)(a).

## APPENDIX A

	<b>Queensland (Coordinator General)</b>	<b>South Australia (Coordinator General)</b>	<b>Northern Territory (Territory Coordinator)</b>
<b>Legislation</b>	<a href="#"><i>State Development and Public Works Organisation Act 1971</i></a>	<a href="#"><i>State Development Coordination and Facilitation Bill 2024</i></a> - Note: public consultation on the Bill ended in August 2024	<a href="#"><i>Consultation Paper</i></a>
<b>Primary Principle</b>	<b>X</b>	Decisions to be made in consideration of the primary principle: <sup>19</sup> - Economic, social and environmental outcomes of a project; and - The implications of these outcomes on both a state and local level.	Decisions to be made in consideration of the primary principle: <sup>20</sup> - Economic, social and environmental outcomes of the project for the Territory; and - Implications of any outcomes at a Territory level as well as in the locality of the project.
<b>POWERS</b>			
<b>Direct / coordinate</b>	✓ <sup>21</sup>	✓ <sup>22</sup>	✓ <sup>23</sup>

<sup>19</sup> State Development Coordination and Facilitation Bill 2024 (SA) cl 4.

<sup>20</sup> Consultation Paper 5.2 (p 9).

<sup>21</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 10.

<sup>22</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 10.

<sup>23</sup> Consultation Paper 6 (p 10-11).



<b>Impose / amend conditions</b>	✓ <sup>24</sup>	✓ <sup>25</sup>	✓(?) <sup>26</sup>
<b>Expedite</b>	✓ <sup>27</sup>	✓ <sup>28</sup>	✓ <sup>29</sup>
<b>Declaration of project types</b>	Coordinated Project ✓ <sup>30</sup>	Tier 1 - Coordinated Project ✓ <sup>31</sup>	Program of works ✓ <sup>32</sup>
	Prescribed Project X <sup>33</sup> - Only the Minister has the power to declare a prescribed project	Tier 2 - Designated Projects X <sup>34</sup> - Only the Minister has the power to declare Designated Projects	Project of significance X <sup>35</sup> - Only the Minister may declare a project to be a project of significance
	State Development Areas X <sup>36</sup>	Tier 3 - State Development Areas X <sup>37</sup>	Territory Development Areas X <sup>38</sup>

<sup>24</sup> *State Development and Public Works Organisation Act 1971* (Qld) ss 35I, 54U.

<sup>25</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 26.

<sup>26</sup> Whilst this isn't clear from the Consultation Paper, the *Territory Coordinator Bill 2020* (NT) envisioned that the TC could step in and send a decision or process back to the original decision maker with conditions, or decide aspects of the decision and send back undecided aspects of the decision to the original decision maker.

<sup>27</sup> *State Development and Public Works Organisation Act 1971* (Qld) ss 76I, 76J.

<sup>28</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 24, 36.

<sup>29</sup> Consultation Paper 6.3 (p 11).

<sup>30</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 26.

<sup>31</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 21.

<sup>32</sup> Consultation Paper 5 (p 8). It is unclear whether a similar model would be imposed to the 2020 Bill, where the TC was to plan a program of works and submit it to the Minister for approval.

<sup>33</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 76E.

<sup>34</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 22.

<sup>35</sup> Consultation Paper 5 (p 8), 7.1 (p 13).

<sup>36</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 77.

<sup>37</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 23.

<sup>38</sup> Consultation Paper 5 (p 8), 7.2 (p 13-14).

	<ul style="list-style-type: none"> <li>- A regulation may declare SDAs (if the Governor in Council is satisfied the public interest requires it).</li> <li>- CG can make a recommendation.</li> </ul>	<ul style="list-style-type: none"> <li>- Only the Governor can declare SDAs (on the recommendation of the Minister)</li> </ul>	<ul style="list-style-type: none"> <li>- Only the Minister can declare a TDA after considering the recommendations from the TC.</li> </ul>
<b>Step-in or Call-in</b>	<p>Yes<sup>39</sup></p> <ul style="list-style-type: none"> <li>- With the approval of the Minister, the CG can step-in and make an assessment and decision</li> <li>- To ensure timely decision-making</li> <li>- Can step-in and act as the original decision maker</li> </ul>	<p>Yes<sup>40</sup></p> <ul style="list-style-type: none"> <li>- Power to call-in (take over statutory processes and decisions) for tier 2 and 3 projects.</li> <li>- CGO can call-in a project and act as the original decision maker.</li> <li>- CGO is not able to call-in the decision of a Minister or Governor.</li> </ul>	<p>Yes<sup>41</sup></p> <ul style="list-style-type: none"> <li>- Power to step-in and act as the original decision maker</li> <li>- To ensure timely decision-making</li> <li>- Consider the same factors as the original decision maker as well as the primary principle</li> </ul>
<b>Exempt / exclude</b>	<b>X</b>	<p>✓<sup>42</sup></p> <ul style="list-style-type: none"> <li>- Power to modify or exclude a specific provision in a designated Act if the CGO considers it necessary.</li> </ul>	<p>✓<sup>43</sup></p> <ul style="list-style-type: none"> <li>- Power to issue exemption notices and modify the application of an Act in relation to a specific project of significance or TDA.</li> <li>- Minister must table an exemption notice in Parliament within 3 days.</li> </ul>
<b>Hold an inquiry</b>	✓ <sup>44</sup>	<b>X</b>	<b>X</b>

<sup>39</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 76K.

<sup>40</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 25.

<sup>41</sup> Consultation Paper 6.3 (p 11).

<sup>42</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 25(8).

<sup>43</sup> Consultation Paper 6.3 (p 11-12).

<sup>44</sup> *State Development and Public Works Organisation Act 1971* (Qld) s 12.

<b>PROJECT TYPES</b>			
	<p>1. Coordinated projects</p> <ul style="list-style-type: none"> <li>- Declaration of a coordinated project for which an Environmental Impact Statement or Impact Assessment Report is required.</li> </ul> <p>2. Prescribed projects</p> <ul style="list-style-type: none"> <li>- Of significance economically and socially to Queensland or a region in Queensland.</li> </ul> <p>3. State Development Areas</p> <ul style="list-style-type: none"> <li>- Enlivens powers to coordinate land use, infrastructure, economic and environmental planning, and implement a development scheme for each SDA.</li> </ul>	<p>1. Coordinated Projects</p> <ul style="list-style-type: none"> <li>- Declaration of a Coordinated Project enlivens coordinating powers only (impose or vary timeframes for decisions).</li> </ul> <p>2. Designated Project</p> <ul style="list-style-type: none"> <li>- Declaration of a Designated Project enlivens powers to call-in, review, add/amend conditions, undertake infrastructure works, acquire land, and targeted statutory exemption.</li> </ul> <p>3. State Development Areas</p> <ul style="list-style-type: none"> <li>- Economic or industrial development; essential infrastructure; or protection, conservation or enhancement of the environment.</li> </ul>	<p>1. Programs of Work</p> <ul style="list-style-type: none"> <li>- Significant infrastructure by private proponents or government (ie water infrastructure).</li> <li>- TC can investigate, plan, coordinate and implement programs of work.</li> </ul> <p>2. Project of significance</p> <ul style="list-style-type: none"> <li>- Declaration of project of significance means TC can expedite through direction/coordination.</li> <li>- Project with potential for significant Territory benefit with complex regulatory process.</li> </ul> <p>3. Territory Development Areas</p> <ul style="list-style-type: none"> <li>- Economic, industrial or agricultural development of significance; or</li> <li>- Enabling establishment of essential infrastructure</li> </ul>
<b>PUBLIC REVIEW</b>			
<b>Review</b>	Limited judicial review of some decisions/sections of the Act only. <sup>45</sup>	Limited to judicial review of jurisdictional errors only. <sup>46</sup>	Limited to judicial review only. <sup>47</sup>

<sup>45</sup> *State Development and Public Works Organisation Act 1971* (Qld) ss 27AD, s76W.

<sup>46</sup> *State Development Coordination and Facilitation Bill 2024* (SA) cl 42.

<sup>47</sup> Consultation Paper 8.1 (p 15).