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Department of the Chief Minister and Cabinet
22 Mitchell Street
Darwin NT 0800

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RE: Territory Coordinator Act - Consultation | INPEX Submission

We welcome the leadership of Northern Territory Chief Minister Lia Finocchiaro in establishing the Office of the Territory Coordinator.

INPEX is a leading energy company with a global presence. As operator of Ichthys LNG, we represent the largest investment made by a Japanese company in the history of the Northern Territory—and in Australia. INPEX makes a significant contribution to the local economy through job creation, local contracts and community investments.

INPEX supports the introduction of a Territory Coordinator and sees much to be gained by the Coordinator's focus on investment certainty and policy stability for major projects, which can bring significant social and economic benefits to the Northern Territory.

INPEX also values the Territory Coordinator's ability to recommend legislative amendments and provide certainty of approvals supporting the establishment of a carbon capture and storage industry and other major projects in the Northern Territory.

Thank you for the opportunity to participate in the Northern Territory Government's consultation process and we are pleased to append our submission. If we can assist further, please contact John Williams Government Affairs and Regulatory Approvals Manager on 0412 422 636 or via email john.w@inpe.com.au.

Yours sincerely,

Tetsu Murayama
President Director
INPEX Australia

Territory Coordinator Act 2024 – Consultation

INPEX Submission

Establishment of the role of Territory Coordinator

INPEX supports the introduction of the role of Territory Coordinator (hereafter the Coordinator) through the *Territory Coordinator Act 2024*. We view this role as a key enabler for companies to effectively navigate complex legislative and regulatory frameworks and approval timeframes for major projects. More broadly, the new Coordinator has the potential to encourage significant sustainable economic development in the Northern Territory.

It will be necessary for the Coordinator function to uphold the highest levels of transparency and accountability with the following considerations being at the forefront of decision-making:

- positive and long-lasting social and economic benefits
- impact on the environment
- wellbeing of communities
- the rights of First Nations people

Specifically, we value the ability for the Coordinator to make recommendations on legislative amendments. For example, prioritising legislation regarding the transportation of CO₂ via pipeline under the *Energy Pipelines Act and the NT Petroleum (Submerged Lands) Act* would provide much needed support for a new carbon capture and storage (CCS) industry.

INPEX notes the proposed powers of the Coordinator in accordance with the proposed legislation could assist to streamline approvals for major projects in the Middle Arm Sustainable Development Precinct (MADSP), which would provide greater investment certainty for proponents. INPEX remains highly supportive of the MASDP.

Finally, we encourage the Territory Government to pursue a bilateral agreement with the Commonwealth to streamline processes further—where possible and appropriate—to avoid duplication and maximise efficiency.

Recommendations

Part 2

Section 14 - Limitation on exercise powers

The current framework prohibits the Coordinator from exercising power under the Act in a manner that would interfere with an agreement between the Territory and the Commonwealth. By expressly referencing such agreements it, by inference, does not prohibit the Coordinator from interfering with existing agreements between the Territory and private entities, between two private entities, or between private entities and the Commonwealth.

It is recommended this section be expanded or generalised to prohibit the Coordinator's interference of such agreements.

Additionally, INPEX recommends Part 2 Section 14 be amended to insert an overarching provision prohibiting the Territory Coordinator from acting in contravention of any Act, except to the extent the Coordinator is entitled to do so in accordance with an Exemption notice.

Further, the explanatory guide provided states that a Territory Development Area (TDA) can include Aboriginal land and waters (Section. 29) and therefore, it is envisaged the Coordinator will have rights, to an extent, to interfere with such lands and waters.

It is recommended the limitation on the Coordinator's powers in Section 14 only apply to the exercising of its powers to Step-in and issue Exemption and Condition Variation notices.

Section 16 – Cooperation with Territory Coordinator

Under Section 16, the Coordinator can request public entities to provide information, documents and take specific actions, such as public consultations.

However, Section 16 only protects entities when providing information. It is recommended this protection be extended to cover all actions requested by the Territory Coordinator.

Part 3

Section 25 – Selection of works for program and performance of works

Section 25 allows the Coordinator to require works be performed by those obligated or permitted under the Act. This includes compelling private entities to perform works even without their agreement. It is suggested Section 25(3) be revised to:

- Differentiate between compelling public entities and requesting private entities to perform works.
- Ensure private entities only perform works by agreement.

Part 4

Section 28 – Designation of a Territory development area (TDA)

Section 28 provides multiple options for the Minister to designate an area as a TDA, including option (c) wherein the area meets any other criteria prescribed by regulation. Although the proposed criteria have not yet been reviewed, it is anticipated these criteria would establish specific parameters necessary for an area to be designated as a TDA.

To ensure a consistent approach in making such designations, it is recommended compliance with the criteria be mandated as a prerequisite, rather than being presented as an optional consideration.

Section 30 – Power to enter land

Although Section 30(4) prohibits individuals from entering without consent, it does not address compliance with the owner's or occupier's conditions of entry. For instance, the land might be an operational site with stringent safety requirements. It is recommended Section 30(4) be expanded to require individuals to adhere to any entry conditions specified by the owner or occupier.

Section 31 – Powers on entry

Section 31 allows authorised persons to carry out activities on land according to the proposed TDA plan. While notice must be given and entry consent obtained from the owner or occupier, activity consent is not required. It is recommended Section 31(2) be amended to require consent from the property owner or occupier before any activities are conducted.

Although Section 32 provides for compensation to be paid for damage caused, it is recommended Section 31(2) be expanded to ensure, prior to any activities being performed, the relevant public entity, Territory Coordinator's office, or person performing the activities provides:

- all insurances necessary to cover the activities performed (if any); and
- forms of indemnities from claims, releases, and waivers of recourse to the owner or occupier of the land.

Section 32 – Compensation for damage

Section 31 compels the Northern Territory Government to compensate the owner or occupier damages for damage caused by the activities set out in S. 32(2). Therefore, items for which the landowner or occupier is entitled to compensation for should reflect the activities that may be undertaken.

It is recommended Section 32(2) be amended to include compensation for:

- the value of the sample taken if it is taken from an item / thing which the owner / occupier owns – samples may be taken of anything on the land, which may include objects; and
- damage to the owner or occupier's property – subsection 32(2)(b) covers "improvements to the land", being permanent additions or enhancements to land that increase its value and utility, however, this does not extend to all property.

Section 34 – Territory Development Area (TDA) plans

This section indicates that a TDA plan may identify land eligible for acquisition. However, it is not mandatory for a TDA plan to specify (1) the interest holders in that land; or (2) the method of acquisition, whether through compulsory measures or negotiation with owners and interest holders.

It is recommended that a TDA plan be required to detail not only the land subject to potential acquisition, but also the interested holders of such land and the proposed method of acquisition.

Section 40 – Variation of boundaries of Territory development area

This subsection allows the Minister to vary TDA boundaries if one of several options is met, including (c) meeting criteria prescribed by regulation. Assuming these criteria set necessary parameters for TDA designation, consistency is crucial. Therefore, INPEX recommend adhering to the criteria should be a mandatory condition, not optional.

Part 5

Section 58 – When step-in notice may be given

There are two conditions precedent to issuing a Step-in notice, as outlined in Section 57 and Section 58. The authority of the Territory Coordinator to decide unilaterally to take over decision-making from a responsible entity should be limited.

It is suggested Section 58 be revised to ensure this power is only activated if the responsible entity has not complied with a Request issued under Part 5 Division 2. Since issuing a Step-in notice is a prerequisite for an Exemption notice (Part 5, Division 3, Subdivision. 2), adding this additional condition precedent must be evaluated in relation to its impact on the Exemption notice power.

Section 62 – Effect of statutory decision made under step-in notice

This section specifies the decision of the Territory Coordinator is regarded as a decision of the original entity and is not subject to appeal or review, except through judicial review. Considering the importance of this authority and its discretionary nature under Section 58, it is advisable to implement a system of checks and balances on such decisions. One potential measure could be requiring the Territory Coordinator to consult with, and obtain approval from, the Minister or the original entity before issuing a decision.

Section 64 – Exemption notice

According to Section 64, the Minister cannot issue an Exemption notice to the Territory Coordinator unless a Step-in notice has been given for the statutory process or decision related to the exemption notice. The recommendation proposed in Section 58 suggests the Step-in right should only be activated if the responsible entity fails to comply with a request issued under Part 5 Div 2.

If this recommendation is adopted, an Exemption notice could only be issued if two conditions are met: (1) the responsible entity did not comply with a request, and (2) a Step-in notice was issued.

In this context, the legislature might consider separating the Minister's authority to issue an Exemption notice from the first condition by amending Section 64(2) to state the Minister:

- can issue an Exemption notice to the responsible entity (not the Territory Coordinator) if the entity is subject to a Request (Prioritisation request, Progression request, or Decision request) for the decision from the Territory Coordinator; or
- can issue an Exemption notice to the Territory Coordinator if the Coordinator has issued a Step-in notice for the decision; and
- the Territory Coordinator determines that a ground mentioned in Section 65 exists.

Section 69 – Tabling and disallowance

Section 69 states the Legislative Assembly's disallowance of an Exemption notice does not affect prior actions. However, it is unclear if the Minister's or Territory Coordinator's statutory decisions require Legislative Assembly approval.

It is recommended to either (1) prohibit the Minister and Territory Coordinator from making statutory decisions until the Legislative Assembly approves the Exemption notice; or (2) deem any decision made by them as revoked or void if the Exemption notice is later disallowed.

Section 70 – Territory Coordinator may give condition variation notice

Section 70(2) incorrectly references subsection (4), which does not exist. It is recommended to amend this reference to Section 73, as the Territory Coordinator cannot issue a condition variation notice when they are the applicant for a statutory decision.

Section 71 – Permitted variations

Section 71(1) outlines conditions under which the Territory Coordinator may issue a Condition Variation notice. One option is Section 71(1)(a), but other conditions in Section 71(1) can also apply, such as the applicant's consent to the variation, even if it does not align with the relevant law.

Only the Minister can exempt entities from compliance through an Exemption Notice. Therefore, it is recommended all Condition Variation notices must comply with relevant laws unless an Exemption Notice is issued.

Part 6

Section 80 – Term of appointment

As outlined in Section 80, the Territory Coordinator will hold office for a maximum period not exceeding five years. However, the section does not specify the number of reappointments that may be granted. It is recommended to limit the number of

appointments to three terms of five years each, in order to introduce new methods and approaches into the role of the Territory Coordinator.

Part 7

Section 89 – Recovery of costs

The rights of the Coordinator in this section are confined to the recovery of costs from proponents of a "significant project." However, in accordance with Section 34(2), the Territory Coordinator also possesses the right to recover costs from proponents of projects related to the preparation and approval process of a TDA plan. It may be necessary to amend Section 89 to include a cross-reference to the Territory Coordinator's rights as outlined in Section 34(2).

Other comments for consideration

Adequate resourcing

We note the Territory Coordinator will assume extensive responsibilities in relation to major projects and cross-collaboration with government and industry. To carry out this function effectively, adequate resourcing will be needed for the Coordinator and the associated Office.

Broader Northern Territory Regulatory Reform

We encourage the Government to consider a comprehensive plan of regulatory reform across a range of functions alongside the work of the Office of the Territory Coordinator to stimulate sustainable economic development for the Northern Territory in the long-term. One approach could be to set up a regulatory reform taskforce to ensure Government agencies across the board have fit for purpose regulatory and policy frameworks and ultimately integrate the efficiency mandate of the Territory Coordinator into the ongoing business of the Territory Government.

Public reporting of agencies and departments

In our experience, the length of time taken to make decisions within the machinery of government results in lengthy delays. While we appreciate the need for delegates to carefully consider the decisions before them in the interests of the public, building anticipated statutory approval timelines and reporting against these as a key performance indicator is best practice for timely and effective decision making. We acknowledge those Northern Territory Government agencies who have adopted this approach and would encourage all agencies to consider following this way of working.

Strengthening coordination with the Commonwealth

As noted above, we encourage the Territory Government to pursue intergovernmental agreements with the Commonwealth to streamline processes further—where possible and appropriate. Such coordination and cooperation between Territory and Commonwealth Governments is key to avoiding duplication and maximising efficiency.