



Briefing Note: Exposure Draft of the Territory Coordinator Bill 2024

4 December 2024

On 31 October 2024, EDO published its [Briefing note: role of the Territory Coordinator](#) which analysed the Territory Coordinator Consultation Paper (**Consultation Paper**), included our key concerns and provided a comparison with current/proposed coordinator roles in Queensland and South Australia.

This briefing note supplements our previous note. Together, both briefing notes can assist stakeholders and interested parties to understand key issues relating to the legal framework proposed for the Office of the Territory Coordinator.

Have your say

The NT Government recently released an Exposure Draft of the *Territory Coordinator Bill 2024* (**the Bill**) and Explanatory Guide. It is [seeking feedback](#) before the Bill is introduced in the Legislative Assembly, likely in the **11-13 February 2025** sittings.¹ That feedback could result in changes to the Bill.

You can give your feedback until **17 January 2025** by emailing OTC.Consultation@nt.gov.au.

Summary of Key Concerns

We summarise our **key concerns** with the Territory Coordinator Bill on the following **3 pages**. Our [detailed analysis](#) commences on **page 5**.

The key concerns and issues we have identified with the proposal are summarised as follows:

Concern	Explanation
The proposal concentrates too much power in the hands of the Territory Coordinator (TC) and with the Chief Minister.	The Bill would give the TC powers to take over existing operations of government and decisions made across 32 Acts and the Regulations made under them (Scheduled laws). The TC would be able to make these decisions without the usual controls that apply to government decisions. Unlike a Minister making a decision under an Act or Regulations, the TC would not be accountable to the NT Parliament.

¹ [Meeting Days – Northern Territory Government – Legislative Assembly](#)

	<p>The Chief Minister has even greater powers to interfere with existing decision-making, including decisions that are intended to be made by independent parts of government.</p> <p>The Scheduled laws cover a vast array of topics including planning law, building regulation, environmental protection, water extraction, mining and petroleum, the handling and storage of nuclear waste, water and sewerage services and land acquisition. Further laws can also be added through the Regulations.</p>
<p>The Bill lacks appropriate checks and balances for the exercise of powers.</p>	<p>The Chief Minister is the only person with oversight of the TC. The TC can exercise all their powers under the Bill without facing genuine scrutiny. The TC only needs to consult with public bodies or public entities when the TC intends to interfere with their statutory processes or statutory decision-making. Once the TC exercises their powers they only have to report on the use of the powers to the Chief Minister. The Chief Minister is the only person publicly held to account for these decisions, through reporting on the TC’s use of powers to the NT Parliament.</p> <p>The criteria for the TC and the Chief Minister to exercise their powers under the Bill are vague and lack rigor. There is no clear public interest test ensuring the powers are used in a clear and controlled way, for stated public benefit outcomes.</p>
<p>The Bill could conceivably allow vast parts of the Territory to be subject to its extensive powers.</p>	<p>The criteria for (1) prescribing projects as “significant projects”, for (2) setting up programs of works and for (3) declaring areas as “Territory Development Areas” (TDA) in the Bill are extremely broad and subjective, and once in place, provide the basis for the exercise of powers in relation to decision making under the Scheduled laws.</p> <p>There is no public consultation in relation to setting up these three kinds of ‘workstreams’, only for the development of a TDA plan once a TDA is already in place. There are also no public review or appeal rights included in relation to those decisions in the legislation.</p>

<p>The Bill allows broadly defined economic considerations to override environmental, social and other decision-making considerations in legislation through application of the “primary principle”.</p>	<p>The Bill requires the TC and Chief Minister to exercise key powers by reference to the primary objective of driving economic prosperity for the Territory or a region of the Territory, with potential social and environmental outcomes expressly being a secondary consideration.</p> <p>When step-in powers are used to make a decision under another Act, the primary principle overrides any inconsistent objects, principles and other considerations in that Act. This undermines consistency in statutory decision-making and means that important non-economic considerations which serve to protect people and communities and uphold the public interest can easily be sidelined. It is also unclear <i>whose</i> economic interests are to be prioritised and whether benefits are to be retained locally or for the community.</p>
<p>The Bill changes how important decisions are made in ways that cannot be predicted.</p>	<p>When the TC or the Chief Minister uses any of their powers, they change the usual operation of processes the public expect. The direction powers mean public bodies or entities change their already set priorities to comply with the TC and the “primary principle”. When the step-in power is used, the TC or the Chief Minister can run a statutory process or make a statutory decision with different criteria in mind than would usually apply. This extends to attaching conditions to a decision that would not be available under the usual Act or Regulations for the decision. The exemption power can completely remove a requirement that the community would expect to apply to a statutory process or decision.</p>
<p>The use of step-in powers under the Bill removes third party review rights that would otherwise be available, including in relation to water, fracking and planning decisions.</p>	<p>If the TC or Chief Minister steps in to make a decision in place of an original decision maker, then the Bill cancels any appeal or review rights that would usually be available. If the decision would usually be reviewable at the Northern Territory Civil and Administrative Tribunal, this is no longer the case. The only review available would be judicial review in the Northern Territory Supreme Court.</p> <p>Examples of community review rights that could be affected include challenges to water extraction licence decisions under the <i>Water Act 1992</i> (NT), challenges to the approval of Environment Management Plans under the <i>Petroleum (Environment) Regulations 2016</i> (NT) and review rights under the <i>Planning Act 1999</i> (NT).</p>

<p>The Bill allows the TC to vary conditions on existing statutory approvals in a wide range of circumstances, even where this would not be permitted under the law, giving effect to the approval and where proponents have previously breached approvals.</p>	<p>The TC can step in and vary the conditions imposed on statutory approvals after a decision has been made to grant the approval, having regard to the primary principle. This would also appear to apply to approvals granted before the Bill is made into law. The TC can impose conditions even if those conditions would not have been allowed by the law under which the statutory approval was made, again sidestepping limitations imposed on other decision-makers and introducing regulatory uncertainty.</p> <p>The circumstances in which conditions can be varied are also very broad. For example, the TC can vary a condition if the person or company holding the approval consents to the variation, can impose conditions which come into effect as soon as an existing approval is renewed or extended, or even if the TC is satisfied on reasonable grounds that the variation is connected with the approval holder's failure to comply with a law of the Territory or a condition of the approval. Conditions can be modified in a manner which is convenient to an approval holder, absent the usual statutory constraints, and even in a manner which effectively excuses prior breaches of conditions or other Territory laws. This has the potential to result in adverse environmental and social outcomes under the guise of economic progress.</p>
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See further for our [detailed analysis of the Bill](#).

Analysis of the Bill

Overview of Briefing Note

This Briefing Note answers the following questions, based on our analysis of the Bill:

- [Who could exercise powers under the Bill?](#)
- [What kinds of projects, programs and areas could powers apply to?](#)
- [What are the proposed powers of the Territory Coordinator and the relevant Minister?](#)
- [What has changed since the October Consultation Paper?](#)
- [What regulatory frameworks does the Bill currently apply to?](#)
- [What public comment, review and appeal rights are available?](#)
- [What are some limitations on the exercise of the Territory Coordinator’s powers?](#)

The Briefing Note outlines [our key concerns](#) in greater detail on **pages 15-18**.

Finally, we include several [case studies](#) on **pages 19-21** to illustrate how the powers could be used.

Who could exercise powers under the Bill?

There are two key decision-makers in the Bill:

- **Territory Coordinator:** The Northern Territory Government recently appointed Stuart Knowles, a previous General Manager of INPEX in the Northern Territory, as the interim Territory Coordinator.² Although the Bill hasn’t yet been introduced to Parliament, the Chief Minister has explained that Mr Knowles will establish the office of the Territory Coordinator so it is ready to “*hit the ground running*” in the second quarter of 2025.³
- **Minister for Territory Coordinator:** The Chief Minister is presently the Minister with responsibility for the Territory Coordinator,⁴ and will presumably be the Minister with responsibility under the *Territory Coordinator Act 2024* once it is passed.

What kinds of projects, programs and areas could powers apply to?

The Bill provides for the creation of programs of works, significant projects and Territory Development Areas (**TDAs**). This enables the TC, and in some cases, the Chief Minister, to exercise certain powers in relation to works projects, significant projects and TDA activities.

The below table outlines these key enabling concepts. A more detailed summary of the powers which can be utilised by the TC and/or Chief Minister follows on **pages 8-11**.

² Chief Minister and Deputy Chief Minister, [Territory Coordinator legislation out for public consultation until 17 January 2025, Joint Media Release](#) (14 November 2024).

³ Ibid.

⁴ [Administrative Arrangements Order \(No. 4\) 2024](#) (28 November 2024), Schedule 2 (p 8).

(1) Programs of works	
<p>Program of works (Part 3, Div 2)</p>	<p>A program of works is “the coordination of an aggregation of any work, project, service, utility, undertaking or function to be undertaken by a public entity or a proponent of a project, over a set period of time.”⁵</p> <p>The Territory Coordinator is to create a program of works if directed by the Minister to do so, in relation to a particular period.⁶ The program must be approved by the Minister and is then carried out by the TC.⁷</p> <p>Example: <i>The roll out of significant infrastructure in one or more locations to set up a chemical or industrial processing precinct.</i></p>
<p>Works project (Part 5)</p>	<p>A works project is defined as “a project undertaken as part of the implementation of an approved program of works.”⁸</p> <p>Example: <i>A consultation project included in an approved program of works for infrastructure in a region of the Territory.</i></p> <p>In Part 5 of the Bill, a number of powers can be used for facilitating works projects.</p>
(2) Significant projects	
<p>Significant project (Part 3, Div 1)</p>	<p>Designated by the Minister.⁹</p> <p>Criteria: Minister believes on reasonable grounds that the project is one (or more) of the following:</p> <ul style="list-style-type: none"> (a) Of economic significance to the Territory or a region of the Territory (b) Is of major importance when considered in conjunction with one or more other projects being undertaken or proposed to be undertaken in the Territory or a region of the Territory (c) Is complex in nature and is of regional significance in terms of scale and impact. (d) Meets criteria prescribed in regulation. <p>Example: <i>A large residential housing project.</i></p> <p>In Part 5 of the Bill, a number of powers can be used for facilitating significant projects.</p>

⁵ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 23.

⁶ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 24.

⁷ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 26.

⁸ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 50.

⁹ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 17.

(3) Territory development area	
<p>Territory development area</p> <p>(Part 4, Div 1)</p>	<p>Designated by the Minister.¹⁰</p> <p>Criteria: Minister considers that:</p> <ul style="list-style-type: none"> (a) The area has potential for a development of economic significance to the Territory, or a region of the Territory; or (b) The area has potential for infrastructure that would enable, or be enabled by, develop of economic significance to the Territory; or (c) The area meets other criteria prescribed by regulation. <p>Example: <i>The Beetaloo Sub-basin geological zone and surrounding land and communities, identified for its potential for onshore gas exploration.</i></p> <p>The TC must prepare a “TDA plan” for each TDA which sets out the requirements for activities, land uses or development undertaken in the place area, which is subject to public consultation before a decision is made by the Minister about the approval of the plan.¹¹</p> <p>The TC may direct a public entity to undertake or coordinate investigations or studies, or prepare reports required for the development of a TDA plan. They can also issue prioritisation requests requiring such an entity to prioritise this work over other responsibilities.</p>
<p>TDA activity</p>	<p>A TDA activity is defined as:¹²</p> <ul style="list-style-type: none"> (a) any activity undertaken by the Territory Coordinator to facilitate the implementation of a TDA plan; or (b) a project that is permitted under a TDA plan. <p>Example: <i>Roads construction by the Territory to support a TDA plan (for paragraph (a) above or an agricultural development identified in a TDA plan (for paragraph (b))).</i></p> <p>The TC can exercise a range of powers to facilitate TDA activities.</p>

¹⁰ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 28.

¹¹ Territory Coordinator Bill 2024 (Exposure Draft) (NT), Part 4, Division 2.

¹² Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 3, definition **TDA activity**.

[Economic significance](#)

The definition of **economic significance** in the Bill is extremely broad. Clause 4 of the Bill says a project of development is of economic significance to the Territory or a region of the Territory if the project or development facilitates **any of the following** in the Territory or region:

- private sector investment;
- job creation;
- population growth; or
- development or advancement of an industry.

This broad and subjective definition means a potentially wide range of projects across different sectors could be declared significant projects, and large parts of the Territory could fall within the definition of a “Territory Development Area”. This in turn would enable the exercise of a range of powers in relation to those projects and areas, as discussed **below**.

[What are the proposed powers of the Territory Coordinator and Chief Minister?](#)

[General powers of the Territory Coordinator](#)

The Bill gives the TC powers to:

- request information, documents and assistance from public entities if that request relates to a significant project, program of works, a TDA or TDA activity;¹³
- direct public entities to coordinate their activities or share information with other public entities if those activities or that information relates to a significant project, program of works, a TDA or TDA activity;¹⁴
- undertake public consultation on a significant project, program of works, a TDA or TDA activity;¹⁵
- prepare for the Minister’s approval, an infrastructure coordination plan that is binding on public bodies and public entities.¹⁶

[Powers of the Territory Coordinator and Chief Minister in relation to significant projects, works projects or TDA activities](#)

The TC, and in some cases, the Chief Minister, also have the following **key powers**. These may be used where a **responsible entity**¹⁷ is undertaking a **statutory process** or making a **statutory decision** in relation to a works project, significant project or TDA activity, under other specified pieces of legislation known as **Scheduled laws** (see below at **page 13** and **Appendices 1 and 2**).

¹³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(a).

¹⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(b).

¹⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(c).

¹⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 20(1), 22.

¹⁷ See the definition of **responsible entity** in *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 3.

- **Statutory process:** Defined as a “*process required to be undertaken*” under a Scheduled law.¹⁸ For example, this may be the Controller of Water Resources’ (**Water Controller’s**) consideration of applications for water extraction licences, including mandatory public notification and submission processes.
- **Statutory decision:** Defined as a “*decision to be made*” under a Scheduled law.¹⁹ For example, the Water Controller’s decision to grant (or refuse) a water extraction licence decision.

Power	Who can exercise
<p>Prioritisation request to the public body running a statutory process for the project, activity or area.²⁰ This requires the public body to prioritise this process over statutory processes for all other projects, activities and areas not covered by a prioritisation notice.</p> <p>Note: This power can also be exercised in relation to a TDA where a TDA plan is not yet in effect.</p>	<p>Territory Coordinator.</p> <p>Chief Minister, if:</p> <ul style="list-style-type: none"> • another Minister is the responsible entity for a statutory decision or statutory process in relation to a significant project, works project or TDA activity.²¹ • the TC is the applicant for a statutory decision or statutory process in relation to a works project or TDA activity.²²
<p>Progression request to a public body undertaking a statutory process for the project, works or activity (this includes to start, complete or pause the statutory process).²³</p>	<p>Territory Coordinator.</p> <p>Chief Minister, if:</p> <ul style="list-style-type: none"> • another Minister is the responsible entity for a statutory decision or statutory process in relation to a significant project, works project or TDA activity.²⁴ • the TC is the applicant for a statutory decision or statutory process in relation to a works project or TDA activity.²⁵
<p>Decision request to the decision-maker,²⁶ requiring a statutory decision to be made within the period specified in the notice.</p>	<p>Territory Coordinator.</p> <p>Chief Minister, if:</p> <ul style="list-style-type: none"> • another Minister is the responsible entity for a statutory decision or statutory process in

¹⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 3, definition of **statutory process**.

¹⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 7.

²⁰ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 52(1).

²¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 55(2).

²² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 55(1).

²³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 53.

²⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 55(2).

²⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 55(1).

²⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 54.

<p>This <i>appears to be</i> limited to making the decision within a time specified by the TC,²⁷ rather than making a decision in a particular way as directed by the TC.</p>	<p>relation to a significant project, works project or TDA activity.²⁸</p> <ul style="list-style-type: none"> the TC is the applicant for a statutory decision or statutory process in relation to a works project or TDA activity.²⁹
<p>Issue a step-in notice and take over decision-making or managing a statutory process for the project, works or activity³⁰</p>	<p>Territory Coordinator.</p> <p>Chief Minister, if:</p> <ul style="list-style-type: none"> another Minister is the responsible entity for a statutory decision or statutory process in relation to a significant project, works project or TDA activity.³¹ the TC is the applicant for a statutory decision or statutory process in relation to a works project or TDA activity.³²
<p>Exempt a particular significant project, works project or TDA activity from any statutory decision or statutory process under any part of an Act or Regulations specified as a relevant law in the Schedule to the Bill (or later prescribed by Regulations).³³</p> <p>The grounds for the TC to recommend an exemption are that:</p> <ol style="list-style-type: none"> (1) there is substantial duplication of a part of a statutory process being undertaken for the particular significant project, works project or TDA activity,³⁴ or (2) the TC considers it necessary to exempt the particular significant project, works project or TDA activity from a statutory decision or statutory process because of the overarching primary principle of driving economic prosperity in the NT.³⁵ 	<p>Chief Minister (on recommendation from the TC).</p> <p>Note: An exemption notice cannot be given unless a step-in notice has been given for the statutory process or statutory decision to which the exemption notice relates.</p>

²⁷ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 54(2) and (4)(a).
²⁸ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 55(2).
²⁹ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 55(1).
³⁰ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 56.
³¹ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 57(2).
³² Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 57(1).
³³ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 64 and 66.
³⁴ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 65(a).
³⁵ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 8 and 65(b).

The TC also has the power to **vary the conditions applying to a statutory decision that has already been made** for a particular significant project, works project or TDA activity.³⁶ The TC must consult with the responsible entity who made the original decision. If the responsible entity is a Minister, the TC must obtain their consent.³⁷

Importantly, this appears to apply to various types of approvals given **before** the commencement of the Territory Coordinator Act 2024 (if passed). It also allows conditions to be imposed even if they could **not** have been validly made under the law which was used to make the statutory decision.

Condition variation notices may be issued in any of the following circumstances:³⁸

- in accordance with the provisions of the law under which the original decision was made; or
- where the applicant has consented to the variation; or
- where the variation is to take effect once a time-limited approval is renewed or extended for a further period of time; or
- where the TC is satisfied, on reasonable grounds, that the variation provides consistency between the conditions and any conditions applying under a law of the Commonwealth; or
- where the TC is satisfied, on reasonable grounds, that the variation is likely to prevent harm to a person or prevent material environmental harm; or
- where the TC is satisfied, on responsible grounds, that the variation is in connection with a failure by the applicant for the decision to comply with a requirement under a law of the Territory, or a condition of an approval under a law of the Territory.

Further circumstances can also be prescribed in the regulations.

[Further powers of the Territory Coordinator in relation to TDAs](#)

In addition, once an area is designated a Territory development area (**TDA**), the TC has specific and potentially far reaching powers to:

- direct public entities to carry out investigations or studies and prepare reports for the TDA with the purpose of developing a TDA plan;³⁹
- authorise a person go onto land to make inspections and install machinery for the purpose of developing a TDA plan;⁴⁰ and
- propose a TDA plan for a TDA that the Minister then can approve.⁴¹

³⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clauses 70-71. The Chief Minister must utilise that power where the TC was the applicant for a statutory decision in relation to a works project or TDA activity: cl 73(1).

³⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 70(3).

³⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71.

³⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 29(a).

⁴⁰ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 30 and 31.

⁴¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 34, 35 and 38.

What is the “primary principle”?

The “primary principle” sets out the overarching considerations the TC must have regard to when exercising its key powers under the Act (and including powers of another authority under a different Act if the TC has exercised its step-in power).

The primary principle is:⁴²

“when exercising a key power under this Act, or when exercising a power or performing a function under any other Act in connection with the exercise of a key power, the Minister or the Territory Coordinator must have regard to following considerations:

- (a) the primary objective of driving economic prosperity for the Territory or a region of the Territory;*
- (b) the potential social and environmental outcomes for the Territory or a region of the Territory.”*

The primary principle **overrides** any other objective, principles or considerations under other legislation of the Territory, if the TC is exercising powers under other legislation, following use of the step-in power under clause 56 of the Bill.⁴³

The primary principle is also the overarching consideration the Minister will apply when exercising their powers.⁴⁴

What has changed since the October Consultation Paper?

The NT Government made one major change to the TC model since they consulted in October 2024 on the proposal. The Bill now includes a list of the **Scheduled laws** that the TC will have the power to step-in for decisions, exempt projects from and generally exercise powers for.⁴⁵

Minor changes to the TC model made since the NT Government consulted on the proposal include:

- Removal of the criteria for approval of TDA plans.⁴⁶ It is no longer part of the TC model to require the Minister to be satisfied that:
 - The plan identifies public interest economic benefit where there are competing interests for land;
 - The plan considers the balance of potential economic, environmental and social impacts under the plan;

⁴² Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 8(1).

⁴³ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 8(2).

⁴⁴ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 8(1).

⁴⁵ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 3, definition **Scheduled law**.

⁴⁶ Territory Coordinator Bill 2024 (Exposure Draft) (NT), clause 37 and 38.

- The plan includes activities and programs of works that are feasible and will facilitate significant economic development;
- Implementing the plan is in the public interest.⁴⁷
- Removal of the option to approve a TDA plan with conditions.⁴⁸ Now the Exposure Draft proposes that TDA plans be approved without a conditioning power.⁴⁹
- Removal of the option for infrastructure coordination plans to identify cost recovery or cost contribution agreements to be established between proponents and relevant authorities.⁵⁰ Now it appears proposed only for infrastructure coordination plans to set out the requirements of proponents, without cost recovery by public authorities.⁵¹
- The Consultation Paper did not make it clear whether the TC or Minister could use their step-in powers *after* a decision has already been made and make a different decision. The Exposure Draft makes clear that condition variation notices can be used to change conditions of existing decisions that may have been made long before the TC model comes into effect.⁵²

What regulatory frameworks does the Bill currently apply to?

The Bill includes a list (or Schedule) of legislation (**Scheduled laws**) it proposes to apply to. However, it is noted that the definition of Scheduled law in clause 3 of the Bill also includes “an Act prescribed by regulation.”

The NT Government proposes to give itself the power to add additional Acts and Regulations to the list by prescribing those by Regulation.⁵³ Regulations are made by the Administrator acting on the advice of the Executive Council.⁵⁴ In practice this means the NT Government can, in a short period of time by regulation, add additional Acts and Regulations to the list of relevant laws. It also means the changes are not debated in the NT Parliament, like the *Territory Coordinator Bill 2024* would be before it is made into law.

That means the list of legislation included in the Schedule to the Bill is not exhaustive and the Territory Coordinator could utilise their powers in relation to decisions contained in other Acts (not currently listed) if prescribed by Regulation (which is a much easier and faster process).

See **Appendix 1** for an analysis of the Scheduled laws and particular decisions the Bill would apply to.

⁴⁷ Consultation Paper 7.2.2 (p 14).

⁴⁸ Consultation Paper 7.2.2 (p 14).

⁴⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 38.

⁵⁰ Consultation Paper 7.1 (p 13).

⁵¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 19.

⁵² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), Part 5, Division 3, Subdivision 3.

⁵³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 3, definition **Scheduled law**, paragraph (b).

⁵⁴ *Interpretation Act 1978* (NT), section 34; *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 96.

What public consultation, review and appeal rights are available?

Under the Bill, the public must be consulted in the following circumstances:

- In relation to a **proposed TDA plan**. The TC must publish the proposed plan online and undertake public consultation in accordance with the regulations (we do not have a copy of any draft regulations). The Chief Minister must consider the submissions received when making a decision.⁵⁵
- In relation to a **proposed variation of the TDA plan**, unless the TC considers that the variation will not affect a material change to the TDA plan, the variation will not result in any new impacts to the plan area, or public consultation has already occurred.⁵⁶

As noted above, the TC also has a discretionary power to undertake public consultation regarding a significant project, approved program of works, TDA area or TDA activity.⁵⁷

If the TC or Minister steps in to make a decision in place of an original decision maker, then **no appeal or review rights** are available, other than judicial review in the NT Supreme Court.⁵⁸ Bringing Court proceedings is costly and time-consuming. Judicial review also requires there to be an arguable legal error with the decision which is difficult to establish when a law gives decision-makers significant discretion about how and when their powers can be exercised.

Examples of merits review and appeal rights that would not be available if the TC or Chief Minister used the step-in power to make a statutory decision include:

- **Water extraction:** The right to seek merits review in NTCAT of decisions to grant surface and groundwater extraction licences under the *Water Act 1992* (NT). Ordinarily, directly affected persons and those who put in submissions about licence applications have a right to seek review.
- **Fracking approvals:** The right to seek merits review in NTCAT of the Minister for Environment's decision to approve an Environmental Management Plan (**EMP**) for a fracking project under the *Petroleum (Environment) Regulations 2016* (NT). Ordinarily, directly affected persons, relevant Land Councils, Registered Native Title Body Corporates and claimants, and those who put in submissions about the EMP have a right to seek review.
- **Planning approvals:** The right to seek review in NTCAT of certain determinations by the consent authority to grant development permits and approval of concurrent amendments⁵⁹ where

⁵⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clauses 36-38.

⁵⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clauses 43-45.

⁵⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(c).

⁵⁸ For more information, see EDO's [factsheet on judicial review and merits review in the NT](#).

⁵⁹ Being applications to amend the planning scheme and obtain a development permit in relation to the amendment.

review rights would otherwise be available under the *Planning Act 1999* (NT). Ordinarily, local Councils and objectors would be able to seek review where permitted under legislation.⁶⁰

Note: The exercise of the step-in power does not just prevent third party review and appeal rights. It also **prevents project proponents from seeking review or appeal of decisions** where it would otherwise be available to them – such as decisions not to grant permits or approvals or to grant permits or approvals subject to certain conditions.

What are some limitations on the exercise of the TC’s powers?

The Northern Territory government does **not** have the power to modify, exclude or override Commonwealth laws which may apply to projects, such as the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) or the *Aboriginal Land Rights (Northern Territory) Act 1975* (Cth) (**ALRA**).

The Bill also states that the Territory Coordinator may not exercise a power in a manner that would interfere with an agreement between the Territory and the Commonwealth; or interfere or modify:⁶¹

- the protection of sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- the protection of heritage places or objects under the *Heritage Act 2011* (NT);
- the operation of the *Aboriginal Land Act 1978* (NT), which regulates entry onto Aboriginal Land as defined under ALRA including the issuance of permits;
- the full and free exercise by Aboriginal Persons of rights reserved in favour of Aboriginal persons under a pastoral lease, as provided for in s 38(1)(n) of the *Pastoral Land Act 1992* (NT); or
- the recognition and protection of native title rights and interests under a law of the Territory.

This means, for example, that the TC could not modify or exclude requirements under 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.⁶²

Our key concerns

Significant concentration of power in the hands of the TC and Chief Minister to supplant existing regulatory processes and considerations

The TC model concentrates a significant amount of power in the hands of the TC and the Chief Minister to exercise extraordinary powers over existing regulatory processes and supplant the considerations usually applying to those processes.

⁶⁰ See *Planning Act 1999* (NT), section 117 for third party review rights and *Planning Regulations 2000* (NT), regulation 14, which specifies circumstances where third party review is not available. Review is also not available when the Minister is the consent authority: section 117A, or for decisions to grant exceptional development permits.

⁶¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 14.

⁶² This is also made clear in clause 64(3)(a) of the Bill.

- The powers included in the proposed model are not subject to appropriate checks and balances. There are only limited processes giving some alternative perspective to the use of the TC’s powers, such as requirements to consult with a responsible entity before its statutory decision or statutory process is subject to a prioritisation request, progression request or decision request,⁶³ or consult publicly on a proposed TDA plan.⁶⁴ Power to conduct a review into the TC is given to the TC itself, to investigate concerns about its own operations.⁶⁵
- The powers of the TC to direct public entities and public bodies to act in particular ways overrides the existing arrangements for statutory decisions and statutory processes. It is not clear under the TC model how public entities and public bodies will account for their activities under the *Financial Management Act 1995* (NT) if they are carrying out their activities differently to how their governing Acts and annual plans require them to be carried out.
- Existing protections for how information is handled when it is collected by public entities and public bodies in the course of making statutory decisions and carrying out statutory processes are not preserved. It is not clear how the TC model will affect the protections under the *Information Act 2002* (NT). The TC model explicitly allows the TC to request information and documents in relation to a significant project, program of works TDA and TDA activity.⁶⁶

There are a wide range of responsible entities who could potentially be impacted by the exercise of powers under the Bill – see **Appendix 2** to this Briefing Note.

Elevation of economic considerations over other concerns

The scheme elevates economic considerations over environmental, cultural, social, health 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*”.⁶⁷ This risks undermining the purposes promoted by other laws in the Territory. Other regulatory schemes set up statutory decisions to be made with a variety of objectives that would be immediately overridden once a TC power is exercised for that scheme.

With that in mind, the TC model is very unclear about what or *whose* economic interests are to be prioritised. The Bill does not require a project to demonstrate its economic worth to all members of the community, or that benefits from a project will be retained locally. To designate a project as a significant project and then allow the TC powers to be used to promote the project, the Chief Minister only needs to believe on reasonable grounds that one of a loose set of criteria are present.⁶⁸ One of the criteria is the **economic significance** of the project to the Territory or a region of the Territory. This definition is so broad that any economic activity could be captured,⁶⁹ irrespective of whether economic benefit remains in an area.

⁶³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 52(2), 53(2)(a) and 54(2)(a).

⁶⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 36.

⁶⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 91.

⁶⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 13(2)(a).

⁶⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8(1)(a).

⁶⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 17(1).

⁶⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 4.

Extraordinary scope and application of step-in and condition variation powers

We are especially concerned by the proposed **step-in, condition variation** and **exemption** powers. The **step-in power** would allow the TC or Minister to carry out a statutory process and make a statutory decision under an NT law *as though* they are the original decision-maker.⁷⁰ 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**.

The TC model will also extend the **step-in power** to decisions that have already been made, where the TC wants to **vary the conditions of that decision**.⁷¹ A decision needs to only meet one of a loose list of criteria for such an extraordinary intervention; including criteria such as the consent of the project's proponent,⁷² or the TC being satisfied on reasonable grounds the variation to conditions is connected to a previous failure to comply with an NT law.⁷³ It does not even appear to be a requirement that the condition could have been made as part of the original statutory decision,⁷⁴ so that the TC could add or remove conditions the community might not have expected could be included in the original statutory decision at the time it was made. Concerningly the inclusion of a criteria to do with failure to comply with an existing NT law appears to almost reward law-breaking behaviour for proponents, allowing the TC to remedy their regulatory failure after the fact. For example, a proponent might have cleared vegetation in breach of a condition of an authority (such as a non-pastoral use permit under the *Pastoral Land Act 1992* (NT) or consent to development in a conservation zone granted under the *Planning Act 1999* (NT)), leading to their meeting the criteria for a step-in power used by the TC to vary the conditions of the authority and resolve the unlawfulness.

Unprecedented exemption powers without appropriate checks and balances

The Bill gives the Chief Minister an **exemption power** to use for any statutory process or statutory decision under a **relevant law** (at present the list of laws and their regulations in the Schedule), provided that a step-in notice has already been given.⁷⁵ This power would allow the Chief Minister to **modify the application of a Territory law in relation to a significant project, works project or TDA activity**.⁷⁶ For example, the Chief Minister could exempt a project from a certain approval, such as a water licence, or determine that certain factors were no longer required to be considered for a particular decision. The basis for exempting a significant project, works project or TDA activity can be to avoid duplication of statutory processes or parts of statutory processes,⁷⁷ or that the exemption is necessary because of economic considerations as expressed in the **Primary Principle**.⁷⁸ The Chief Minister only needs to satisfy themselves that one of these bases exists and consult with the responsible

⁷⁰ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 56 and 57.

⁷¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 70 and 71.

⁷² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(b).

⁷³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(d)(iii).

⁷⁴ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 71(1)(a). Each of the criteria in subclause (1) are alternatives, and the TC needs to only show one or any other is present to vary the conditions of a notice.

⁷⁵ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 64 and 67.

⁷⁶ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 64(1).

⁷⁷ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 65(a).

⁷⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 8 and 65(b).

entity that would be making the statutory decision or running the statutory process the project will be exempt from, as well as the project proponent, to then exempt the project.⁷⁹

The checks and balances proposed for the **exemption power** are far from sufficient. The Consultation Paper states an exemption notice may only be used in “certain circumstances”.⁸⁰ But as shown above these criteria are very broad and available in the alternative. Because the TC or Chief Minister only need to satisfy themselves one of the criteria is present as they see the circumstances, there is very little rigor to the process. The NT Legislative Assembly has the power to disallow an exemption notice,⁸¹ however the Legislative Assembly is majority-controlled by the NT Government. In one sense this is only a form of self-scrutiny.

Extensive powers to enter and conduct intensive activities on private land to develop TDA plans

The TC has powers to authorise entry onto land and intensive activities, such as installing machinery and taking samples from land, for the purpose of developing a TDA plan.⁸² These are powers usually given to authorised officers for the purpose of investigating and enforcing compliance under a regulatory scheme. However, this could be done for any land in a TDA. Entry would require notice of the planned entry on land. Consent of an owner or occupier would be required to enter premises on that land, but not the land itself.⁸³ The kind of activity permitted once a notice has been given is not proportionate to the objective of developing an economic plan and appears to lack protections against overreach.

⁷⁹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 67.

⁸⁰ Consultation Paper 6.3.1 (p 12).

⁸¹ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 69.

⁸² *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 31.

⁸³ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 30(1), (3) and (4).

Case studies

Case study – Project of Territory Significance: Middle Arm Project

What is the Project?

The Middle Arm Industrial Precinct is proposed by the NT Government's Department of Logistics and Infrastructure (**the proponent**) to be a development precinct and series of common-user infrastructure projects. It is anticipated to host industries such as Liquefied Natural Gas (**LNG**) processing and export), petrochemical processing, mineral processing, hydrogen development and carbon-capture and storage.⁸⁴ The works will involve clearing terrestrial ecosystems (including mangroves), marine dredging and channel construction works and construction of roads, construction of jetties and offloading facilities, as well as the construction works expected when industry projects are proposed.⁸⁵

The proponent referred the Middle Arm project to the NT EPA in 2022. Environmental impact assessment and approval is required for projects with a potential to have a significant impact on the environment.⁸⁶ The NT EPA invited comment on the referral and draft program for the proposal and recommended to the NT Environment Minister to assess the proposal as a strategic proposal under the *Environment Protection Act 2019* (NT), by preparation of an Environmental Impact Statement (**EIS**).⁸⁷

When the draft EIS is released, the NT EPA will consult on the draft, with the option to require a Supplement to the EIS from the proponent and undertake further consultation.⁸⁸ After the NT EPA finalises their assessment report,⁸⁹ the Environment Minister then decides whether to grant the environmental approval for the strategic proposal.⁹⁰ If the Minister approves the strategic proposal, proponents for industry projects can apply for approval notices under Part 5, Division 8 of the *Environment Protection Act 2019* (NT) which takes into account the assessment of the strategic proposal. The subsequent approval notices can be granted without public consultation.

The Australian Government and the Northern Territory Government entered an agreement in March 2022 to conduct a strategic assessment of Middle Arm (**Bilateral Agreement**). The Bilateral Agreement requires the NT EPA's assessment to include assessment of Middle Arm's impact on Matters of National Environmental Significance (**MNES**) protected under the EPBC Act.

⁸⁴ Minister for Environment, Climate Change and Water Security, *Notice of Decision and Statement of Reasons*, p. 2 (19 September 2022). [NT EPA Notice of decision on terms of reference - 19 September 2022](#).

⁸⁵ NT EPA, [Notice Of Recommendation And Statement Of Reasons – DIPL – Middle Arm Sustainable Development Precinct](#), (17 Aug. 2022).

⁸⁶ *Environment Protection Act 2019* (NT), Part 4 and 5.

⁸⁷ NT EPA, [Notice Of Recommendation And Statement Of Reasons – DIPL – Middle Arm Sustainable Development Precinct](#), p. 4 (17 Aug. 2022); Minister for Environment, Climate Change and Water Security, *Notice of Decision and Statement of Reasons*, p. 2 (19 September 2022). [NT EPA Notice of decision on terms of reference - 19 September 2022](#).

⁸⁸ *Environment Protection Regulations 2020* (NT), Part 5, Division 6, Subdivision 2 and 3.

⁸⁹ See *Environment Protection Act 2019* (NT) Part 5, Division 2.

⁹⁰ *Environment Protection Act 2019* (NT), s 69.

In addition to environmental impact assessment under the *Environment Protection Act 2019* (NT) and *Environment Protection Regulations 2020* (NT) there are a range of other statutory decisions and processes applicable to the Middle Arm project like planning controls and waste management licences.

What changes could the *Territory Coordinator Bill 2024* make to approvals for the Project?

The Chief Minister could designate the Middle Arm project a significant project under clause 21 of the *Territory Coordinator Bill 2024*. This would allow the TC to issue a step-in notice under clause 56 of the Bill for the statutory process of the EPA releasing, conducting consultation on and preparing a recommendation to the Environment Minister on the draft EIS. The TC would exercise the powers of the EPA until the end of the process.

The Chief Minister could also issue a step-in notice under clause 57 of the Bill for the statutory decision of the Environment Minister granting environmental approval of the strategic proposal. Under the TC model the Chief Minister could decide the environmental approval and attach any conditions that would not be available under the *Environment Protection Act 2019* (NT), but that the Chief Minister considers promote the “primary principle”.⁹¹

The TC model cannot change requirements under Federal law, so the requirements of assessment under the EPBC Act and Bilateral Agreement would remain unaffected.

The Chief Minister could give an exemption notice for the Middle Arm project if satisfied of the grounds under clause 65 of the Bill. The Chief Minister could decide to exempt the project from parts of the statutory process of environmental impact assessment, such as the requirement for public consultation of a minimum 30 business days and up to 60 business days on the draft EIS before the EPA makes a recommendation to the Minister. Either ground will be sufficient for an exemption. If this requirement is exempt, the only requirement for public consultation on the draft EIS would be the 28 days (not business days) of consultation the Bilateral Agreement requires.

Clause 65(a) says there are grounds to exempt a statutory process if “it is necessary to modify or exclude the relevant law specified in the notice because the statutory process, or part of the process...substantially duplicates another statutory process”. Any duplication of part of the EIS statutory process could be used to justify exempting the consultation requirements for the draft EIS.

Clause 65(b) requires the Chief Minister to only be satisfied that “it is necessary for the purposes of making the statutory decision or undertaking the statutory process to which the notice relates, having regard to the considerations mentioned in section 8(1)” – meaning if the Chief Minister considers the “primary principle” of economic development and decides it is necessary to expedite the EIS for the purpose of economic development by omitting full consultation, this could be sufficient.

The only check on the exemption power would be the Chief Minister having to consult with the EPA on its intended exemption.

⁹¹ *Territory Coordinator Bill 2024 (Exposure Draft)*, clause 61.

Case study – Territory Development Area – Critical minerals mining

What is the issue?

The Territory has been identified as a key region for current and future critical minerals mining such as lithium, cobalt and copper, with government and private investment being increasingly directed towards this sector. For example, the Territory is Australia’s only lithium producer apart from Western Australia, and there are many lithium exploration licences held over areas immediately adjacent to Litchfield National Park.⁹² Whilst critical minerals are an important component of the global energy transition, significant concerns have been raised in the Territory and elsewhere about the environmental impacts of critical minerals mining and the need for robust regulation. Landholder rights in relation to mining activities are already very limited,⁹³ whilst the Territory’s new environmental (mining) licence scheme has significant shortcomings.⁹⁴

What changes could the *Territory Coordinator Bill 2024* make in relation to critical minerals mining?

The Chief Minister could designate a region of the Territory identified as having critical mineral mining potential as a Territory Development Area. This would mean, for example, that:

- The TC could direct a public entity to undertake investigations or studies about the mineral potential within the relevant area;
- The TC could authorise people to enter onto pastoral land in the TDA to install and maintain equipment, take measurements and take samples of soil, water or minerals on the land, as part of the development of a TDA plan;
- The Chief Minister could approve a TDA plan which identifies particular mining projects or types of minerals to be explored under the plan;
- The Chief Minister could require the TC to prioritise the making of water extraction licence decisions under the *Water Act 1992* (NT) in respect of relevant mining activities, or require that such decisions be made within a certain specified timeframe;
- The Chief Minister could step in and make a decision to grant an environmental (mining) licence under the *Environment Protection Act 2019* (NT) to a particular operator. This could include determination of what tier of licence is appropriate, which conditions should apply and how the security bond should be calculated for the operation;
- The Chief Minister could step in and modify conditions on an existing environmental (mining) licence for activities within the TDA area even if that licence was granted before the *Territory*

⁹² See [Resourcing the Territory](#).

⁹³ For example, there is no requirement to negotiate land access agreements with owners and occupiers of pastoral and freehold land; and compensation rights are limited for exploration on pastoral leases. (Different rights and obligations apply under ALRA and the *Native Title Act 1993* (Cth) which cannot be overruled by the TC).

⁹⁴ See, for example, EDO’s [Submission on the Exposure Draft for the Environment Protection Legislation Amendment \(Mining\) Bill](#) (18 September 2023) and EDO’s [Briefing Note: Mining regulation proposed for complete overhaul in the Territory](#) (24 November 2023).

Coordinator Bill was enacted into law, including, for example, to reduce the security bond required from a mining operator or to impact mine closure and rehabilitation requirements;

- The Chief Minister could step in and assume responsibility for managing the application process for exploration licences in the TDA area under the *Mineral Titles Act 2010* (NT), for water licences, environmental (mining) licences or other necessary statutory approvals;
- In turn, where the step-in power has been exercised, the Minister could then use the exemption power – for example, to modify or exclude public consultation processes for statutory approvals on the basis that fast-tracking those processes is in the interests of economic development.

Case study – Territory Development Area – Intensive agricultural precinct

What is the issue?

Several parts of the Territory have previously been identified by governments as being prospective for large scale agricultural land developments including irrigated agriculture. Areas include the land releases forming the basis of the proposed Larrimah, Wildman and Keep Plains Agricultural Precincts, as well as parts of the Roper River catchment.⁹⁵ The previous Consultation Paper also specifically referred to the Ti Tree horticultural zone.⁹⁶

What changes could the *Territory Coordinator Bill 2024* make in relation to intensive agricultural precincts?

The Chief Minister could designate a particular area of the Territory, seen as having agricultural potential, as a Territory Development Area. Potential agricultural projects and types of agricultural activities could then be set out in a TDA plan. This would mean, for example, that:

- The TC could require the Pastoral Land Board to prioritise the consideration of land clearing and non-pastoral use permits under the *Pastoral Land Act 1992* (NT), to enable agricultural projects, or require that decisions be made on those permit applications within a set period of time.
- The TC could exercise the step-in power after a particular development was referred to the NT EPA and determine that environmental impact assessment was not required under the *Environment Protection Act 2019* (NT).
- The TC could step in and exercise the powers of the Pastoral Land Board in relation to the application process for non-pastoral use permits, the approval of which would enable pastoral lease holders to use their lands for the purposes of irrigated agriculture.
- Alternatively, the TC could step in and exercise the powers of the Water Controller to grant water extraction licences under the *Water Act 1992* (NT) for the project. If the TC made the licence decision, then it could not be subject to the usual merits review process for water licences in the NT Civil and Administrative Tribunal, only judicial review.

⁹⁵ See NT Government, [Northern Territory Land Corporation – Agricultural Precincts](#); CSIRO, [Roper River Water Resource Assessment](#) (2024).

⁹⁶ Consultation Paper 10.2 (p 18).

- The Chief Minister in turn, on recommendation from the TC, could exempt those applications from any required public consultation processes under the *Water Act*, arguing, for example, that such consultation “substantially duplicates” consultation being carried out under the *Pastoral Land Act*. This is notwithstanding that there are different processes, factors and review rights in each piece of legislation – the statutory language is somewhat ambiguous for the use of the exemption power.

See also: Case study in our [previous Briefing Note](#) concerning the Singleton Station Project (p 5-6).

Case study – Hazardous waste storage facilities

What is the issue?

A new hazardous waste storage facility would engage a variety of laws and approvals, including requirements and approvals under the *Waste Management and Pollution Control Act 1998* (NT) to collect, transport, store and dispose of listed wastes, as well as approvals under the *Environment Protection Act*, possible land clearing approvals and permits under the *Pastoral Land Act*, and dependent on the type of waste approvals, the storage and transport of radioactive material may be required.

By way of example, the Chandler Facility Project is a proposed underground salt mine and waste storage facility located on two pastoral leases 120 km south of Alice Springs and 15 km from the community of Titjikala. The project will involve storage of hazardous waste in the mine pit for permanent isolation. The proponent plans to accept domestic and international waste from industries including power, electronics, mining, oil and gas, and agricultural that contain naturally occurring radioactive materials.

The Chandler Project has not commenced and does not currently have all of its approvals. It was assessed by the NTEPA under the previous *Environmental Assessment Act 1982* (NT) and approved with conditions by the Commonwealth Minister for Environment under the EPBC Act due to the potential to impact listed threatened species.⁹⁷

What changes could the *Territory Coordinator Bill 2024* make in relation to hazardous waste storage facilities?

The Chief Minister could designate a hazardous waste facility a significant project by reference to its ‘economic significance to the Territory’ under clause 17(1)(a) of the Bill.⁹⁸

Once a project is designated as a ‘significant project’ the TC can make any of the prioritisation, progression or decision requests. This could mean, for example, that the TC could utilize its powers to expedite or determine the following approvals that would normally be required:

- environmental assessment under the *Environment Protection Act 2019* (NT) – determined by the NT EPA;

⁹⁷ See NTEPA, [Chandler Facility](#).

⁹⁸ *Territory Coordinator Bill 2024* (Exposure Draft) (NT), clause 17.

- environmental protection approval or licence under s 31 of the *Waste Management and Pollution Control Act 1998* (NT) – determined by the NT EPA;
- a licence under s 13 of the *Radioactive Ores and Concentrates (Packaging and Transport) Act 1980* (NT) to transport and store radioactive material (dependent on the concentration) – determined by the Chief Inspector; and/or
- a permit to clear native vegetation on pastoral land under s 91H of the *Pastoral Land Act 1992* (NT) – determined by the Pastoral Land Board.

Case study – New housing developments

What is the issue?

New housing developments in the Territory could engage a variety of laws and approvals, including requirements for building permits under the *Building Act 1993* (NT), possible land clearing approvals, water supply and sewerage services licences, grants of Crown land or even compulsory land acquisition. Importantly, such developments would need to comply with applicable requirements under the *Planning Act 1999* (NT) and the NT Planning Scheme, including zoning rules, and proponents would need to obtain development consents. A developer who cannot comply with the NT Planning Scheme must obtain an exceptional development permit (or would otherwise require changes to the Planning Scheme itself to be made).

By way of example, dwellings in Alice Springs on land zoned as “low density residential” or “low-medium density residential” must not exceed 2 stories in height, whilst dwellings on land zoned “medium density residential” or “tourist commercial” cannot exceed 3 stories.⁹⁹ There are also specific building design requirements applicable to developments in the Alice Springs Town Centre, including that developments maintain or create visual connections to key landmarks (such as the Todd River) and that development is sympathetic to the historic context provided by adjoining declared heritage places and registered and recorded sacred sites.¹⁰⁰

Melanka Pty Ltd recently applied for an exceptional development permit to construct several six story apartment blocks on vacant land in the Alice Springs Town Centre.¹⁰¹ Melanka’s proposal exceeds the approved height limitations for the land, which is currently zoned as “tourist commercial”.

Melanka is one of three companies which have been awarded agreements through the Northern Territory’s Regional Accommodation Project.¹⁰² The project earmarks half the apartments for NT Government accommodation, with the rest to be offered for sale or rent on the local market. This is the third time a housing application has been put forward for this particular site, with previous applications approved in 2010 and 2015 without proceeding to construction. As at the time of writing, the submission

⁹⁹ [NT Planning Scheme 2020](#), Part 5, Section 5.2.1 (5).

¹⁰⁰ [NT Planning Scheme 2020](#), Part 5, Section 5.9.1.

¹⁰¹ Gera Kazakov, “[Developer downsizes in revised proposal for empty Melanka site in Alice Springs as opposition grows](#)”, *NT News* (28 November 2024).

¹⁰² Invest NT, [Regional Accommodation Project](#) (2024).

and hearing process for Melanka's permit had concluded and the matter now rests with the Minister for Lands, Planning and the Environment for decision.

What changes could the *Territory Coordinator Bill 2024* make in relation to new urban housing developments?

The TC (or Chief Minister) could potentially exercise several powers under the Bill in relation to a housing development project. The TC could declare a housing development similar to the Melanka project as a "significant project". Alternatively, the Chief Minister could declare an area earmarked for urban development as a TDA, so that powers could be exercised in relation to a range of different proponents and infrastructure (e.g., housing, commercial developments, utilities, roads).

This could mean, for example:

- The TC could require decision makers to prioritise considering particular permit applications relevant to works being proposed, such as under the *Building Act 1993*.
- The TC could require building permit applications to be determined within a set period of time.
- The Chief Minister could issue a step-in notice to the Minister for Lands, Planning and Environment and determine a Planning Scheme amendment themselves. The application of the Primary Principle means that economic considerations will override other factors the Minister for Lands, Planning and the Environment must consider under the Planning Act.
- The Chief Minister, or TC, as applicable, could request the relevant consent authority make a decision on the granting of applicable development permits within a set period of time, using the "decision request" power.
- The Chief Minister or TC, as applicable, could step in and exercise the consent authority's powers in relation to a development consent or the Minister's powers in relation to an exceptional development consent application. This would mean any available third-party merits review rights associated with a decision to grant a development consent could not be exercised (there are no third-party merits review rights for exceptional development consent decisions).
- If the step-in power were exercised, the Chief Minister could also choose to exempt or limit public consultation processes in relation to development applications and amendments to the Planning Scheme which would otherwise be available.

For more information on planning processes, see: <https://www.edo.org.au/publication/planning-and-development-laws/>.

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