Northern Territory National Emergency Response (Land Use Approvals) Guidelines 2010

Northern Territory National Emergency Response Act 2007

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make these Guidelines under subsection 35A (2) of the Northern Territory National Emergency Response Act 2007.

Dated 17 December 2010

JENNY MACKLIN
Minister for Families, Housing, Community Services and Indigenous Affairs
1 Name of Guidelines

These Guidelines are the Northern Territory National Emergency Response (Land Use Approvals) Guidelines 2010.

2 Commencement

These Guidelines commence on the commencement of item 4 of Schedule 5 to the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010.

3 Definitions

In these Guidelines:

- **environment** has the meaning given by section 528 of the Environment Protection and Biodiversity Conservation Act 1999.
- **impact**, for the environment, has the meaning given by section 527E of the Environment Protection and Biodiversity Conservation Act 1999.
- **leased land** has the meaning given by subsection 4 (1).
- **proposed use**, for leased land, has the meaning given by subsection 4 (1).
- **proposer**, for a proposed use of leased land, has the meaning given by subsection 4 (1).
- **sacred site** has the meaning given by section 3 of the Aboriginal Land Rights (Northern Territory) Act 1976.
4 Guidelines specify matters

(1) These Guidelines apply if the Commonwealth is considering whether to exercise its power under subsection 35 (5) of the Act to enable a person (the proposer) to use land leased to the Commonwealth under section 31 of the Act, or a part of it, (the leased land) for a particular purpose (the proposed use).

Note Subsection 35 (5) of the Act enables the Commonwealth to sublease, license, part possession with, or otherwise deal with, land leased to the Commonwealth under section 31 of the Act.

(2) For subsection 35A (2) of the Act, the Commonwealth must consider the matters mentioned in sections 5 to 10 in exercising its power under subsection 35 (5) of the Act.

Note Subsection 35A (3) of the Act provides that the requirement for the Commonwealth to have regard to matters specified in these Guidelines does not prevent the Commonwealth from having regard to other matters.

(3) In this section:

person includes:

(a) any Commonwealth or Northern Territory public authority; and
(b) any other association, authority, body, institution or other organisation, whether incorporated or unincorporated.

5 General matters

(1) The Commonwealth must consider the following matters:

(a) the objectives of the proposed use;
(b) whether the leased land is vacant;
(c) any competing claims to the leased land;
(d) the views of persons consulted about the proposal in accordance with subsection (3);
(e) whether the proposed use will have, or is likely to have, a significant impact on the environment;

Note The Environment Protection and Biodiversity Conservation Act 1999 may also be relevant to assessing the impact on the environment of the proposed use.

(f) who will be responsible for carrying out works (if any) on the leased land;
(g) who will be responsible for maintaining the leased land and any buildings on the leased land;
(h) who will occupy the leased land and any buildings on the leased land;
(i) how long the leased land and any buildings on the leased land will be required for the proposed use.

Note See section 36A of the Act for obligations relating to the traditions, observances, customs and beliefs of Indigenous persons and administering a lease over leased land.
Section 6

(2) For paragraph (1) (d), the Commonwealth must conduct whatever consultations the Commonwealth thinks appropriate about the proposed use.

(3) For subsection (2), the Commonwealth may consult with:
   (a) people living on or near the leased land who may be directly affected by the proposed use; and
   (b) people known to the Commonwealth to be community leaders or community decision makers in relation to the leased land; and
   (c) the traditional Aboriginal owners of the leased land; and
   (d) the Land Council in whose area the leased land is located.

(4) For paragraph (3) (c), the **traditional Aboriginal owners** of the leased land are the persons determined, by the Land Council in whose area the leased land is located, to be the traditional Aboriginal owners of the leased land.

6 **Object of Part 4 of Act**

The Commonwealth must consider if the proposed use of the leased land:
   (a) will improve the delivery of services in Indigenous communities in the Northern Territory; and
   (b) is likely to promote economic and social development in those communities.

7 **Existing interests on land**

The Commonwealth must consider the effect of the proposed use on any existing right, title or other interest in the leased land.

*Note*  Section 34 of the Act provides for when existing rights, titles or interests over leased land are preserved.

8 **Relevant NT planning body**

(1) The Commonwealth must consider:
   (a) any information given to the Commonwealth by the relevant NT planning body about the leased land; and
   (b) the views (if any) of the planning body about the proposed use.

(2) Information given to the Commonwealth under paragraph (1) (a) may include a reference to an instrument issued under the *Planning Act* (NT), including a planning scheme, relevant to the leased land.

(3) In this section:

   **relevant NT planning body** means the Department of State of the Northern Territory that administers the *Planning Act* (NT).
9 Sacred sites

(1) The Commonwealth must consider:
   (a) whether the proposer is aware that there is, or there may be, a sacred site on the leased land; and
   (b) whether conditions in relation to sacred sites should be imposed on the proposer.

Note Sacred sites in the Northern Territory may be registered under section 29 of the Northern Territory Aboriginal Sacred Sites Act (NT).

(2) Without limiting paragraph (1) (b), the conditions may include the following:
   (a) that the proposer take steps to find out whether there is a sacred site on the leased land;
   (b) that the proposer apply for an Authority Certificate under section 19B of the Northern Territory Aboriginal Sacred Sites Act (NT) if it is required under that Act;
   (c) that the proposer use the leased land in accordance with:
      (i) an Authority Certificate issued for the land under the Northern Territory Aboriginal Sacred Sites Act (NT); or
      (ii) if a certificate under paragraph 32 (1) (b) of that Act is issued for the land — the certificate.

Note Authority Certificates are issued by the Aboriginal Areas Protection Authority established by subsection 5 (1) of the Northern Territory Aboriginal Sacred Sites Act (NT).

10 Conditions

(1) The Commonwealth must consider whether to impose conditions on the proposer about the proposed use.

(2) Without limiting subsection (1), the conditions may include the following:
   (a) that the proposer maintain the leased land and any buildings on the leased land;
   (b) that the proposer arrange and maintain insurance for any buildings on the land;
   (c) that the proposer pay rates or any other charges that are payable for the land, including rates or other charges for local government services and utilities;
   (d) that the proposer enters good faith negotiations with the owner of the leased land to obtain a lease that exceeds the term of the Commonwealth’s lease under section 31 of the Act;
   (e) a condition mentioned in paragraph 9 (1) (b).
Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the Legislative Instruments Act 2003. See http://www.frl.gov.au.