



Minister for Resources and Northern Australia

Min ID: MB19-000583

For Action

Subject: ACTION - SITE SPECIFIC LEGISLATION RELATING TO THE NATIONAL RADIOACTIVE WASTE MANAGEMENT FACILITY

Timing: URGENT – to allow the development of legislative amendments for introduction in the Autumn 2020 sittings

Recommendations: That you

- | | |
|---|----------------------------------|
| 1. Agree to not pursue introduction of the National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill in Spring 2019. | Agreed/Not agreed/Please discuss |
| 2. Agree to progress site specific legislative amendments to the <i>National Radioactive Waste Management Act 2012</i> to be introduced in the Autumn 2020 parliamentary sittings. | Agreed/Not agreed/Please discuss |
| 3. Note the Australian Government Solicitor's advice on 42 [REDACTED] | Noted/Please discuss |
| 4. Sign the letter to the Prime Minister seeking policy authority to pursue site specific legislation. | Signed/Not signed/Please discuss |
| 5. Agree you will refer the Bill to the Senate Economics Legislation Committee once it is introduced. | Agreed/Not agreed/Please discuss |

Matthew Canavan 

Date: 8 / 11 / 2019

Comments:

Key Points:

1. The Barngarla Determination Aboriginal Corporation (BDAC) appeal to the Federal Court is expected to be heard in the week of 17 February 2020, however it may take some time for the appeal to be decided, and there remains an opportunity to BDAC to appeal further to the High Court. 42 [REDACTED]
2. To address these risks, and provide Parliament with a say in this important national decision, the department recommends pursuing site specific legislative amendments, which will name the site you select following your assessment of the Site Assessment Report (MS19-001277 refers) and the Community Sentiment Report. The site specific legislative amendments will include the current amendments relating to the Community Fund as well as all other amendments required to prescribe the site that you select.
3. To do this, your agreement is required to:

- a) not pursue introduction in the Spring 2019 parliamentary sittings of the National Radioactive Waste Management Amendment (Community Fund and Other Measures) Bill, which includes validating the nomination and site selection process in the *National Radioactive Waste Management Act 2012* (NRWM Act) (MS19-000642 and MS19-001248 refer), and
 - b) seek policy authority from the Prime Minister to amend the NRWM Act to remove the current voluntary nomination site selection process and allow for a specific site to be identified as the site for the National Radioactive Waste Management Facility (the facility).
4. We have consulted with the Department of the Prime Minister and Cabinet on the revised approach. While they agree that a new policy authority is required, they have noted that it may be necessary to take the matter to Cabinet.
5. In the first instance, a letter seeking the Prime Minister's authority has been prepared for your signature (see Attachment A).

Implementation considerations

6. 42 [REDACTED]
7. 42 [REDACTED]

The department will advise in due course.

9. 42 [REDACTED]
10. 42 [REDACTED]

Timing considerations

11. A category-T (critical) legislation bid is being pursued as a contingency in the event the currently proposed NRW Act legislative amendment package is not introduced in the current sittings. If status is granted, this could be used to introduce and pass the proposed site specific legislative amendments in the Autumn 2020 parliamentary sittings. Your decision on a site for inclusion in the legislative amendments will be required by mid-January 2020 to enable introduction of the Bill before 13 February, or it will automatically revert to a category-A Bill, which would not pass until the Winter 2020 sitting period.
12. Once the Bill is introduced, the department could publish the site assessment and community sentiment reports to ensure that there is public information available to support the introduction of the Bill. We will work with your office to prepare a detailed communication plan to support the change of approach and help mitigate any legal risks.
13. The Standing Committee for the Scrutiny of Bills will review the Bill as a matter of course. We recommend that you refer the Bill to the Senate Economics Legislation Committee for inquiry and report. Your referral means that you can request that the Committee consider the Bill and provide its report within a certain timeframe. Further details on these Committees are at Attachment C.
14. Subject to passage through the Parliament, it could be possible to acquire a site via site specific legislative amendments by July 2020.

Next Steps

15. If the Prime Minister grants policy approval and the Bill is granted status for Autumn 2020, the Office of Parliamentary Counsel in consultation with AGS (on instruction from the department) will determine the precise wording of the amendments. You will be provided with regular updates on progress of the site specific legislative amendment package or an alternative approach if policy authority is not granted.
16. The amendments to implement the Australian Government's commitment to establish a \$20 million Community Fund to support the host community's long-term social and economic sustainability are well progressed and would be included in the site specific legislative amendment package.

Sensitivities

17. 42 [REDACTED]
18. Announcement of the amendments is likely to encourage interested parties to seek access to documents through the Freedom of Information process, 42 [REDACTED]
[REDACTED]
[REDACTED]
20. There is a community expectation that legislative amendments to the NRW Act, including the establishment of the \$20 million Community Fund, will be progressed as soon as possible, and potentially in November this year. However, the department has been clear in its engagements that legislative amendments are subject to legislative timeframes outside of its control, and the amendments may not progressed until early 2020.

Consultation: Legal Audit and Assurance Branch, Department of the Prime Minister and Cabinet, and AGS.

Clearance Officer:

Sam Chard
General Manager
National Radioactive Waste Management Taskforce
Northern Australia and Major Projects Division

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Contact Officer:

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Strategic Policy

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MLO Version: 4/11/2019

ATTACHMENTS

- A: Letter to the Prime Minister seeking policy authority
- B: AGS advice on pursuing site specific legislative amendments
- C: Background information on Committees



Senator the Hon Matthew Canavan

Minister for Resources and Northern Australia

MB19-000583

08 NOV 2019

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister *Scott,*

I am writing to seek policy approval pursue a new policy outcome for the *National Radioactive Waste Management Act 2012* (the Act). These amendments seek to provide the greatest clarity and certainty for all stakeholders (including relevant communities) about the selection of a site for the National Radioactive Waste Management Facility (the facility).

42 [REDACTED]

To address these risks, and provide Parliament with a say in this important national decision, I seek your agreement to an alternate legislative amendment approach which would involve the removal of processes currently in the Act relating to the voluntary nomination of potential sites and site selection activities under Part 2 and 4 of the Act. I propose to replace these by introducing amendments to enable a specific site to be identified as the facility. 42 [REDACTED]

I also propose that amendments currently being progressed to implement community funding commitments (MT18/0409/CAB/2 refers), expected by the host community and other stakeholders to support the host community's long-term social and economic sustainability, would be included in this legislative package of amendments.

I seek your immediate consideration to enable the development of legislative amendments for introduction in the Autumn 2020 sittings.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'mcb'.

Matthew Canavan

Parliament House, Canberra ACT 2600

Telephone (02) 6277 7180