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INQUIRY INTO THE EFFECT OF RED TAPE ON THE ECONOMY AND THE COMMUNITY:

ENVIRONMENTAL ASSESSMENT AND APPROVALS

SUBMISSION FROM THE EAST KIMBERLEY CHAMBER OF COMMERCE AND INDUSTRY

KUNUNURRA, WESTERN AUSTRALIA

1.0 Overview

The East Kimberley Chamber of Commerce and Industry (EKCCI) represents 132 businesses and community members who actively seek to develop the economy of Kununurra, Wyndham, Halls Creek and surrounding communities in north-eastern Western Australia. This submission has been prepared by EKCCI members in order to illustrate the direct and indirect impacts of environmental assessment and approvals processes upon economic development (particularly in relation to agriculture) in the East Kimberley. The agricultural focus of this submission is based directly upon current development trajectories and experiences of our members.

This submission addresses the terms of reference of the Red Tape Committee inquiry, namely -

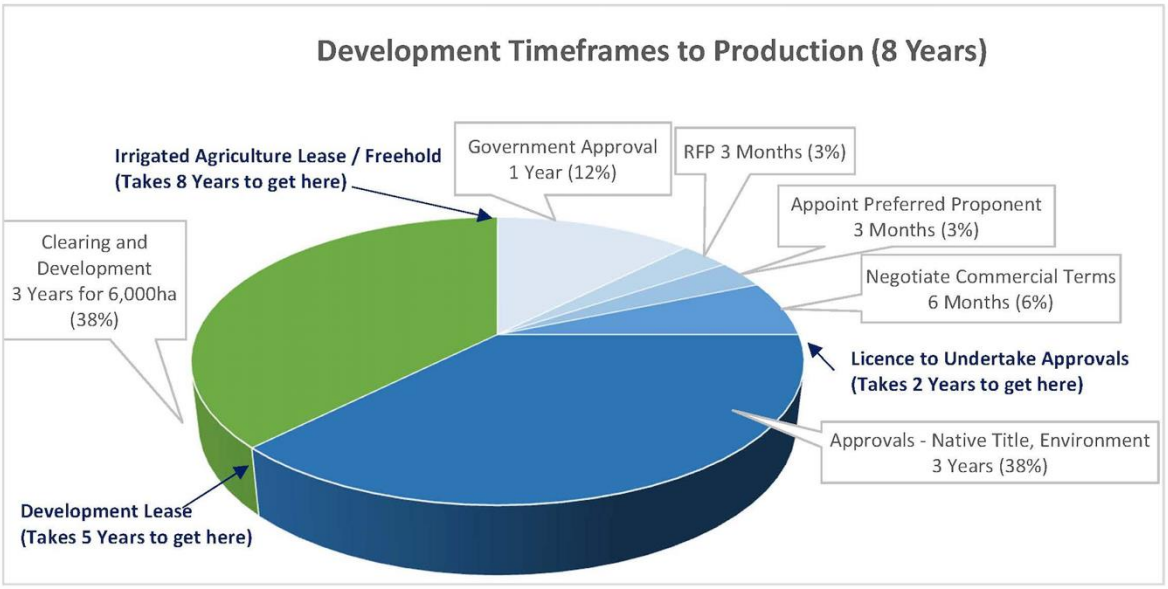
a. *the effects on compliance costs (in hours and money), economic output, employment and government revenue;*
b. *any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;*
c. *the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;*
d. *the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;*
e. *alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;*
f. *how different jurisdictions in Australia and internationally have attempted to reduce red tape; and*
g. *any related matters.*

This submission addresses the terms of reference in relation to four stages in the processes experienced by our members in relation to the development of new lands for agricultural production:

1) Land release (by government);
2) Securing of tenure (by proponents, relying on statutory and policy-driven government processes and timeframes)
3) Securing of approvals, including specific environmental licences; and
4) Physical development of land.

These processes currently take in excess of eight years, as depicted in Figure 1:

Figure 1 - Current land development timeframes



Source: Department of Regional Development, 2016

Specific examples, direct economic impacts and regional implications of these processes are provided in this submission.

2.0 Regional Context

The East Kimberley context is one of ample opportunity, including abundant land and water resources. The remote location imposes substantial additional logistical issues and costs, which our members seek to manage on a daily basis as they operate their businesses. However, the proximity of the East Kimberley to South-East Asia, and a national focus on developing the north (including infrastructure), as articulated in *Our North, Our Future: White Paper on Developing Northern Australia* (Australian Government, 2015), enables food and fibre market access opportunities which our members seek to exploit as they endeavor to expand regional agricultural production.

Private industry has the intent, the willingness, and the passion to develop Northern Australia. The East Kimberley region alone is seeking to expand tropical grains (including quinoa, chia, sorghum), cotton, horticultural crops (melons, cucurbits, mangoes, bananas), and animal-based protein sources such as prawns (with the proposed Project Sea Dragon development 100km east of Kununurra), and expanded beef production and processing through the existing pastoral industry. Multiple proposals to re-establish a cotton industry in the region, based on recently-released cotton varieties bred for resistance to risks, underpin current clearing permit applications in excess of 25,000ha in the East Kimberley alone. This represents less than 0.3% of the land area of the region. The EKCCI is aware of an additional 10,000ha of clearing permit applications, whether submitted through Western Australian or Commonwealth statutory processes, which are currently undergoing assessment in the Kimberley.

This scale of agricultural development will underpin downstream processing opportunities, enabling employment across the north. This is particularly pertinent to Indigenous land managers, many of whom are actively involved in and/or beneficiaries of proposed land developments, either as proponents or through Indigenous Land Use Agreements (ILUAs) through which are dependent on development approvals being granted. While this scale of development is important to commercial success and competitiveness in global markets *it represents an insignificant area in terms of total land mass,* as a mosaic across the northern landscape, consistent with what is understood to be the desire of many people, and in line with some of the more practical limitations such as land suitability, access and water.

The EKCCI represents members who have committed financially, socially and often emotionally in the East Kimberley, and who do not seek to damage the environmental values in which residents and tourists alike find so much intrinsic appreciation and enjoyment. However, being so remote from centralised decision-making (3,000km + from Perth and 4,000km + from Canberra), our Chamber has at times sensed a southern policy-maker pre-disposition to treat the Kimberley as a national park, and prevent development at all costs.

This pre-disposition, our members feel, may be based in a lack of understanding of the scale and context of operating in this region. Incongruency between statutory processes managed by the public service, and the sentiment of politicians, adds time and cost particularly where political will is undermined by process delays. Politicians often see the balance between good and poor development. The same cannot be said for the public sector where the tendency for pre–disposed bias against development remains at its strongest.

Delays in decision-making have direct economic impacts. The remainder of this submission addresses the specific impacts of environmental assessment and approvals processes at each stage of the development timeframes illustrated in Figure 1. The four stages of the land release and development process need to be considered together, in order to adequately demonstrate the impact of environmental approval requirements on the full development cycle, and where efficiencies and streamlining can occur. Time is money, and delays in approvals equate to direct and indirect costs (eg opportunity cost).

3.0 Land development experiences in the East Kimberley

3.1 Land release

The initial processes for releasing crown land for development in Western Australia account for an estimated one quarter of the time cost of agricultural land expansion, as depicted in Figure 1. This stage of the

development cycle provides little opportunity for reducing land release times, given the necessary incorporation of procurement and probity regimes, identification of proponents, and commercial contracting. This is particularly relevant to the north of Western Australia where crown land is by far the dominant land tenure. In Western Australia 92% of the land mass is crown land, with just 8% in freehold tenure. In the Kimberley region the largest parcels of freehold tenure are held by the Department of Defence, Yampi Sound and Curtin Air base. In the case of Curtin Air base, the 30,000ha of freehold land around the air base itself contributes nothing to the economy. It should be released for agricultural development.

3.2 Securing of tenure

Securing tenure is a fundamental component of commercial land development. Willingness and ability to invest is inherently tied to the length and terms of tenure (i.e value). Banks and investors are reluctant to provide finance where tenure is not secure.

Problems arise where conditions which must be met by developers in order to achieve tenure are dependent on statutory licences and approvals which require tenure, or where delays in meeting unrelated government conditions limit the ability to secure environmental licences. Cross-dependency of approvals (between unrelated agencies or regulators) becomes a frustrating and time-consuming web which must be negotiated by businesses seeking to expand their activity.

Land tenure factors are entwined with environmental approvals and licensing to the extent that one may be dependent on the other, and hence become cyclical. This is compounded by conflicting or at best non-complementary legislation and statutory requirements.

Where pastoral diversification permits are required, the WA Department of Lands requires clearing permits to be obtained first. Clearing permits generally necessitate expensive vegetation and fauna surveys, and require tenure. Why would a developer spend, for example, in the case of a diversification permit application submitted to the Department of Lands in early 2017, approximately half a million dollars ($500k) undertaking vegetation and fauna surveys, if there is no guarantee of a diversification permit at the end? Tenure is thus vitally important in relation to investment decisions.

Other examples are presented below:

3.2.1 Ceres Farms

Our member Ceres Farms is a family-owned and operated horticultural producer in Kununurra. Ceres' recent experience with land tenure and environmental approvals is summarised as follows:

In November 2014 Ceres Farm was named by the WA Government as the preferred developer for a 360ha agricultural land parcel on the Packsaddle Plain, near Kununurra. The land was unallocated crown land, and adjacent to Ceres' current farm. There was no further correspondence until March 2015 when Ceres wrote to the Department of Lands to ask how their company should proceed with the tenure, approvals and development.

It took the Department of Lands all of 2015 to gain approvals from relevant departments with some putting up unjustified delays. In May 2016, Ceres Farms received a 'Section 91' licence under the WA Lands Administration Act 1987 (LAA 1987), which allowed the company to undertake soil sampling on the site.

In July 2016, Ceres received a first draft copy of the lease under the LAA 1987. Tenure was required in order that a clearing permit could be applied for under the WA Environmental Protection Act 1986 (EP Act 1986). In

August 2016, Ceres Farms was able to apply for a clearing permit, given the draft lease had been received. A second draft of the lease was received from the Department of Lands in December 2016. Preliminary clearing permit advice was received from the Department of Environmental Protection in February 2017, following which flora surveys were undertaken.

As of June 2017, Ceres Farms is still waiting on a finalised lease and clearing permit. This process has taken nearly three years. Time is money, and a three-year time lag between being granted preferred developer status and being able to commence development is not commercially acceptable.

3.2.2 Ord Stage 2

No example illustrates land tenure issues better than the 7,400ha Ord Stage 2 development. In 2012 the Western Australia Government appointed Kimberley Agricultural Investment (KAI) as the preferred developer for Ord Stage 2, following an extensive and open competitive Request for Proposal process. After four years of clearing land, building new irrigated farms and growing crops, in line with comprehensive (at times unwieldy) and expensive environmental approval requirements agreed to by the WA Government, KAI still does have any tenure, ***not even a lease***. KAI employs 70 local staff directly and invested $200 million in this region since 2013, yet the WA Government retains tenure while KAI must meet all of the WA Government's environmental obligations. In any other situation nationally, this would be entirely untenable. No financial institutions would provide finance to underwrite a development any where, if tenure was not secured. Yet the WA Government continues to without tenure. Under no circumstances except for a totally self-funded investment would this arrangement be viable elsewhere.

KAI has operated to date on successive Licences issued under the LAA 1987. A Licence is not tenure. It simply authorises the use of crown land. Since December 2016 KAI has continued to farm, and build farms without a Licence because it declined the sign the most recent Licence issues by Western Australia as a form of protest that it still had no tenure despite the work it has done and the substantial investment it has made over four years. KAI is now effectively squatting on crown land, and doing so with the full support of community in the East Kimberley.

This situation has made operating in a difficult area even more difficult for KAI. Access to funds and justification of future development plans beyond that of the current Goomig land development are viewed by financiers or potential offtake partner agreements with suspicion regarding what is the underlying Government motive for not providing tenure.

While land tenure is a State issue, what is stake here is the reputation of Australia as a place to invest and in which to do business.

3.2.3 Skuthorpe

Skuthorpe land is located 40km east of Broome, borders the national highway, and has received appropriate Native Title clearances. Horticulture is grown nearby (including melons, pumpkins asparagus and other crops). The WA Government took this land to market by Request for Proposal and a preferred developer was appointed. That developer was quoted in the West Australian newspaper 27 May 2017 concerned that after 8 months no clearing permit or water licence had been issued and as a result development was being stifled.

This situation mirrors, albeit to a different scale, the experience of the East Kimberley, and indicates that progress is not being made when it comes to the impact of approvals processes on development in Northern Australia. *Refer to Attachment A for further information.*

3.3 Securing of approvals

It has become common practice for one regulatory agency to take the view that it will not issue approval for what it controls until another agency approves its own matters. This approach leads to a circular process where decisions are delayed and red tape thrives.

Many of the approvals required in WA are dependent upon tenure – for example, the issuing of a water licence under the Rights in Water and Irrigation Act 1914 (RiWI Act 1914). In the case of Ord Stage 2, KAI has met all of the requirements to obtain a water licence (an annual water entitlement), except for tenure. This includes the required monitoring and reporting to the Department of Water, which has been occurring over past years. It is fortunate that the local Department of Water office works closely with KAI to ensure that the intent of water licensing processes and associated environmental compliance is met, as the tenure issue falls under the LAA 1987, managed by the Department of Lands.

Tenure transfer is dependent on other agencies' processes, statutory timeframe and public servant attitudes not being in line with Ministerial commitments.

The new WA Government is amalgamating the environmental regulatory functions under the new 'Department of Water and Environmental Regulation', from 1 July 2017. Given the tenure responsibilities under the LAA 1987 will reside with a different agency (the Department of Planning, Lands and Heritage), it remains to be seen whether any tangible improvements can be made to the tenure-related issues associated with obtaining environmental approvals in WA.

The inability or unwillingness of officers in regulatory departments to become familiar with proposals prior to assessment, due to internal budgets and probity concerns if proponents pay for pre-approval site inspections. This occurs for both State and Commonwealth approvals. There are many examples where regulatory staff either refuse or are not allowed to undertake site visits and because either they do not have budget for it, or it is considered to potentially corrupt their independence. Whatever the reason, this attitude results in staff being asked to assess things they have little or no idea about, and they are often dealing with proponents with decades of on ground experience. Bizarrely, quite often various Ministers have visited such sites many times and know more personally than the staff involved in assessments and preparing Government advice of positions.

3.3.1 Mowanjum

A case in point is the Mowanjum Aboriginal Community, located 20km south of Derby in the West Kimberley. This community seeks to clear modest areas of vegetation to grow irrigated fodder for beef production. It has one centre pivot (40ha) established under a $3.6million WA State Government trial investment. For over a year, Mowanjum has not been able to gain approvals to clear 100ha for another two centre pivots, and at the time of this submission still has not received that approval. Clearing would amount to 120ha in total out of 55,000ha grazing lease (0.27% of the grazing Lease area). The reason that clearing has been refused, despite

the WA Government investment of $3.6million raising the expectation of the Aboriginal people there, is because regulators take the view that the habitat might be suitable for bilbies. The Aboriginal people who live on the land and whose ancestors have survived off it for 50,000 years state that there are no bilbies at Mowanjum. Nonetheless, it appears that regulators located 3,000km away know better, based on their desk top analysis.

No bilbies have ever been recorded within a 100km of this site. Aboriginal people are therefore impeded in their efforts to be more self-reliant, and welfare dependency is perpetuated.

3.3.2 Ord Stage 2

The Ord Stage 2 EPBC approval process (undertaken throughout 2010-2012) included discussions, based on (uninformed) interstate regulator perspectives, on issues such as the following:

- A reduced road speed so as to lower the risk of EPBC-listed northern quolls becoming road kill, despite the fact no northern quolls were found in site surveys or have ever been found within 100km of the site.
- A cane toad eradication program was proposed as a condition, despite the fact Australia has been unsuccessful in preventing the spread of cane toads across north of the continent. Why was it expected that the developed would be able to better than the rest of Australia?

This is only a snapshot of the suggested actions for managing the Ord Stage 2 environment which were raised during the approvals process. Despite multiple counter-arguments, the development retains substantially higher environmental management requirements imposed on an 11,000ha buffer area than Australian National Parks. This buffer area is to be owned in freehold by Traditional Owners (once tenure is sorted!) in line with the requirements of the associated Indigenous Land Use Agreement. The TOs are restricted in their ability to actively utilise this land in freehold, because of the environmental conditions imposed on and accepted by a third party (the WA Government) during the EPBC approval process.

However, State-based (EP Act 1986) approvals were not exempt from ill-advised conditions and management requirements on Ord Stage 2. The WA State approval process resulted in an original Environmental Management Plan (EMP) which included -

- 'Bat deflectors' required on a 28km fence which separated a pastoral grazing lease land from the new Ord Stage 2 farm land – the only Kimberley fence which required such devices. When enquiries were made to determine the specific scientific requirements and benefit of the bat deflectors, the relevant agencies were not able to provide the advice, as they admitted they did not know (even though the inclusion of this management action was at the request of the (then) Department of Environment and Conservation). The proponent was advised that the bat species which were to be 'deflected' by the

  proposed devices (a) were blind (so couldn't see the devices any way); (b) flew higher than the fences; and (c) flew at night time – when reflective activity was minimal! Yet the action remained in the EMP. In order to meet compliance for the purpose of audit, compact discs (CDs) were hung randomly on fences, as there was seemingly no science behind the device or the required action. Compliance was cheaper than variation. Fortunately, a subsequent review of the EMP resulted in this action being removed. Nonetheless, the initial inclusion in the EMP showed a lack of knowledge and a naivety

about the species to be protected and the geographic conditions in which the bat deflectors were required.

- A flock of 'sentinel chickens' was required under the original EMP in order to monitor the prevalence of mosquito-borne diseases on Ord Stage 2, on the stated grounds that farm workers might bring diseases into the town of Kununurra 50km away (note: there is a much greater risk of mosquito-borne diseases affecting people camping and fishing along Kimberley waterways – where sentinel chickens aren't in place!). This was a health-related action rather than environment-focused, yet was still included in the EMP at the request of the Department of Health (and subsequently removed during the EMP review). Its inclusion indicated that non-environmental requirements of government can find their way into environmental conditions placed on proponents, to supposedly meet non-environmental purposes, but in reality are pandering to particular vested interests – including research interests.

3.3.3 Knox Creek Plain

An EPBC approval process (2014-15) the adjacent (to Ord Stage 2) Knox Creek Plain included survey and management conditions for the (formerly) critically endangered Bare-rumped Sheathtail Bat (BRSB), for which potential habitat occurred in the development areas. The conditions include an offset requirement of $100,000 per BRSB habitat tree, if the developer is to clear such trees, and habitat as well as bat surveys. Draft conditions had an open-end to this requirement. This amounted to no less than Federal Government-sanctioned environmental extortion. Following concerns raised by the proponent, the final EPBC conditions capped the charge at five trees ($500,000).

Subsequently, the EPBC listing status of the BRSB has been down-graded to near-threatened, yet the advice from regulators is that removal of the BRSB condition will be unlikely to be approved, as surveys are still required, for the good of science/knowledge of the species. If this is the case, then should it not be up to governments rather than developers to fund the research, which is beginning to look like a science project?

3.3.4 Ord- Carlton Plain

In 2016, Kimberley Agricultural Investment (KAI) purchased Carlton Hill and Ivanhoe Stations, and the associated freehold land known as 'Carlton Plain'. A year earlier, KAI was granted preferred developer status for the Mantinea parcel of unallocated crown land, which was formerly part of the Ivanhoe pastoral lease. Applications to develop freehold and leasehold areas of Carlton Plain and Mantinea were submitted to the WA Department of Environmental Regulation (DER) in December 2016. As of early June 2017, KAI has not received any formal correspondence on the progress of these clearing permits or conditions relating to either area.

It has come to EKCCI's awareness that the DER does not provide other agencies with full information supplied with application documentation when seeking Decision-Making Authority (DMA) input into clearing permit applications. This leads to lack of knowledge of proposals on which DMAs are required to comment. This occurred in relation to Carlton Plain, whereby the proponent (KAI) was asked by a local DMA why it had proposed to clear to the banks of the Ord River. This was not the case! Unless the DMA seeks further input from the proponent (which is not a common occurrence), queries and/or recommended conditions arise due to poor information being received, even though it has been supplied to the regulator. The DMA's are then inclined to think that proposals are environmentally concerning when in fact they may not be.

Southern perceptions and a lack of understanding of northern scale and context may be affecting decision-making in relation to the clearing applications for Carlton Plain and Mantinea. Both locations exhibit very degraded landscapes, and have been grazed heavily by cattle and (plague proportion) wallabies for 100 years. Both are heavily weed-infested. Yet the decision on approving clearing permit applications has exceeded 6 months and the developer is still waiting. In the meantime, KAI has lost the ability to do any follow-up post-wet season surveys, which adds another year of delay and cost if further surveys are required by DER prior to the commencement of development.

3.3.5 Local government environmental approvals

Local government-related environmental approvals also affect the ability to build business in northern Australia.

A case example is an application by a small business to install a domestic-scale septic tank leach drain 46m from end of man-made inlet on the Ord River, and over 90m from Ord River itself. The associated residence was to be occupied by caretakers for six months of each year. Guidelines provided by the WA Department of Water (DoW) require a 50m setback from a waterway. As the DoW is not a Decision-Making Authority, guidelines only can be provided to local governments. In this case, the relevant guidelines area based on a Phosphorus Retention Index (PRI) established on Swan Coastal Plain deep leaching sandy soils adjacent to minimum flow or stagnant waterways, such as the Swan River or the Peel-Harvey estuary system. Adjacent to the proposed septic tank site, the Ord River has a daily minimum environmental flow of 3,000 megalitres. Should any leachate enter the river system, dilution factors would be ample.

Despite qualified soils testing indicating substantially higher PRI (18-20) than the PRI 5 on which the guidelines were based, the local government was unable or unwilling to step away from the guidelines without a full environmental engineering report which could not be obtained without the expense of flying in an engineer. The outcome was that the affected small business opted for an expensive alternative system rather than time delays, which would have limited their ability to manage their commercial activities (tourism). A three-monthly septic system pump-out at a cost of $800 per pumping is now required. This example illustrates the lack of ability of local government to practically apply guidelines as guidelines. In this case, the guidelines were taken to be absolute rather than indicative, and the local circumstances (eg 3,000 megalitre per day dilution in the unlikely event that leachate reached the river) were not taken into account.

Local government does not have the expertise or resources to step outside guidelines established for southern conditions. Small businesses cannot wear the cost of delays, particularly where income is seasonal, hence they have no choice but to comply.

3.3.6 Other examples and issues

Local and regional context versus State and National policy and decision-making

There is often good local staff in agencies in regional areas like Kununurra, but they are located 3,000km from their head office where regulatory decision-making in Perth (or Canberra) occurs. This can result in the

imposition of 'southern,' small scale environmental management requirements which are not always relevant. For example, the Ord Stage 2 EMP requires detailed three-monthly monitoring of rehabilitation sites. In the Kimberley, rainfall results in substantial natural revegetation. Access issues such as rough terrain, and the scale of development (and rehabilitation) are impediments to meeting the prescribed requirements. Regular,

informed observation by air and at ground level indicates very successful natural rehabilitation, usually within one wet season, when topsoil is re-spread. This outcomes-based approach is more relevant at the scale of operations in this region, yet the detailed, prescriptive requirements cannot efficiently and effectively (or spatially) be adhered to, thus resulting in non-compliance with conditions.

Remoteness also affects the ability of northern Australia to meet, for example, water quality monitoring and analysis time requirements – that is, the turnaround time on obtaining water quality sample results. Accidental flow of farm water to a river system requires immediate action based on water quality, which can only be estimated based on previous results for a similar time of the year/cropping cycle. Compliance with prescriptive monitoring conditions is not possible, given that the time taken from sampling to results is, at best, one week when air freight is utilised. By the time water quality results are known, the water has gone. Remoteness must be considered when developing practical and achievable monitoring conditions and action responses, and these must be based on outcomes rather than prescribed process if compliance is to be achieved. The lesson – keep it real; keep it simple; make sure it meets the purpose.

Prescriptive versus outcomes-based conditions

Prescriptive process-based conditions and requirements, built into EMPs or conditions, add cost and frustration for proponents. How the environmental condition is maintained is not relevant. The fact that it is maintained to XYZ standard should be the sole focus and the object of compliance auditing and/or reporting. There has been movement towards outcomes-based conditioning in recent years, which is promising.

Environmental consulting industry

EKCCI's members also believe the environmental consulting industry has created its own monster. This industry appears to have substantially more capacity than the regulators involved in decision-making, and there is an inherent conflict of interest in consultants writing themselves jobs, crafting decades of forward work by the conditions or commitments they generate which have questionable public/environmental benefit. Regulators need to be on the front foot instead of following the lead of consultants. Best practice needs to be about best outcome. Unnecessarily detailed, prescriptive EMPs result, causing issues with implementation and compliance. Developers feel cornered due to regulator expectation of this level of detail.

Use of academia and institutions with vested interests

Outsourcing environmental modelling advice to academia (by regulators) has similar implications, if not worse because academia does not rely on developers for their next job. This can result in academic rivalry between institutions, with little recognition of the impact on the practical application of resultant condition and models upon the developer on the ground who seeks an approval. The use of academic expertise can also result in personal research interests gaining priority for conditions and actions, which may be based on personal goals rather than environmental outcome.

The recent decision by the Australian Government to provide $5million through its White Paper on Northern Australia for soil and salinity work on Ord Stage 3 (Northern Territory) - 14,000ha is an example of wasted and misplaced effort. This is work that any preferred developer would have to do in order to gain the required environmental approvals (under a proponent-led approach to development) - why does the taxpayer need to fund it? The Australian Government has pandered to the academic interests in Canberra on this matter, whose

agenda is not to develop northern Australia but to impede that development and the Australian Government is funding that by $2.5 million (i.e. creating more red tape). There are no jobs or progress in Northern Australia resulting from that spend, but it does indulge the agenda of some people in the Eastern States. Soil characteristics and salinity risk in this area are quite obvious and can be simply assessed in more practical and cost efficient ways. Any preferred developer willing to invest in this land will be facing a $400million + investment. If a developer is capable and willing to do that then it is capable of doing its own work on soils and salinity analysis. As such, the work commissioned by the Australian Government buys time. it will be several years before the academic research institutions collect that data and publish it. In the meantime, developers walk away from the north, despite the available and accessible land and water resources.

Reporting and compliance – administrative load

Reporting and compliance conditions often include prescriptive administrative requirements – for example uploading monitoring reports by a certain date. Technical non-compliance occurs (reportable by auditors) if upload dates are not met. Again, this focus is on prescription rather than outcome, and results in unnecessary administration.

A further issue relates to conditions or actions which required third party compliance – for example, conditions that require other agencies and/or local government input. Local government in particular often lacks the expertise and resources to provide required, adequate or appropriate input. This same issue applies where conditions require Traditional Owner (TO) involvement, review (eg of documentation/proposals) and input. This adds a further resourcing issue to TO groups and compliance/audit issues for proponents where such groups are unable to participate in meeting the requirements of an environmental condition or action.

Environmental perceptions versus reality

Fueled by tourism and media images, there is a national perception of the entire Kimberley being a pristine environment. Much of the Kimberley, however, is grazed pastoral land – often flat, clay or sand country, which has fed cattle for 100+ years.

There is a sense that regulators see 'the Kimberley' as a singular environment, and therefore developers need to look for bilbies and other iconic species, even where these not recorded within 100-500km. An example is the northern quolls case mentioned earlier. Will the recently discovered Night Parrot be next? It has been observed in the Kimberley, near Broome, 1000km away. This is the equivalent of saying something in Melbourne will be found north of Sydney. Regulators often do not appreciate the scale or the landscape and environmental differences.

Statutory timeframes, policy and other delays in assessment processes

A further issue is an apparent unwillingness, inability or disinclination on behalf of some public servants to progress approvals with any sense of urgency. Our members believe some regulatory agencies are not aligned

with government political priorities. The examples provided earlier regarding the time lapses between government releasing land and developers obtaining permits exemplify this.

3.4 Development of land

Despite apparent lack of communication from agencies, unsecure tenure, exhausting processes which can deter investors and financial institutions, and the uncertainty affecting small business planning which can arise where 'green tape' processes are unwieldy, proponents often accept imperfect environmental conditions in order to get on with development.

Once approvals are in place, proponents can get on with development quite quickly, but are affected by the following issues:

- The costs of implementing management requirements are based on southern (Perth/Canberra) expectations / conditions / access / scale. Scale and remoteness greatly increase the costs of doing business – including environmental monitoring and management – in northern Australia.
- Long processes to make change to EMPs
- The cost and frequency of audits – for example, $100k/year for Ord Stage 2 alone.
- Unrealistic timeframes and incident response requirements – eg getting water quality sample analyses back from laboratories.
- Balancing environmental conditions with employee occupational safety and health requirements – eg surface water sampling in crocodile-infested waters.
- Approval conditions require that developers be responsible for the water quality of an entire catchment when controlling (without tenure!) less than 10% of the land area of the catchment (Ord Stage 2).

Nonetheless, the land or project development phase, once approvals are in place, is often the shortest element of the process.

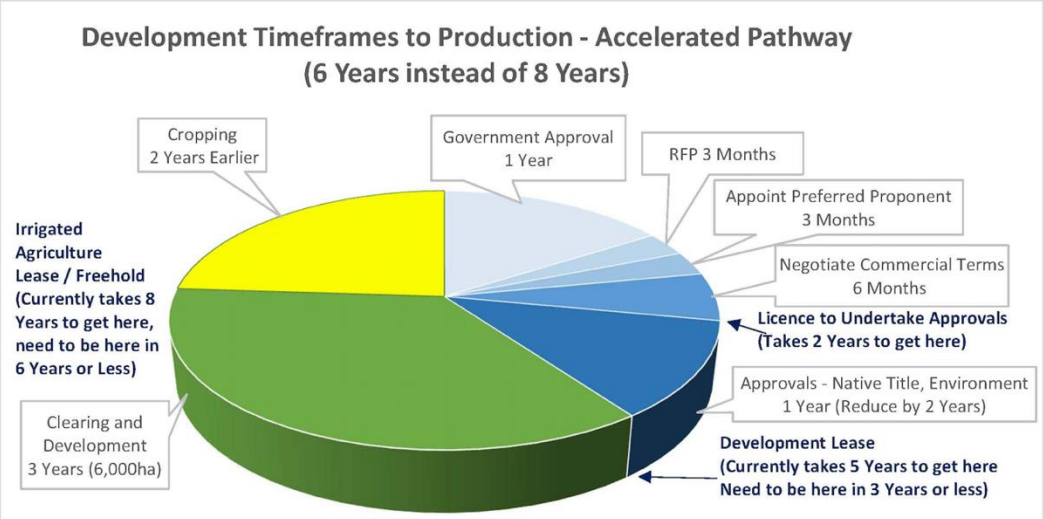
5.0 Summary and Conclusion

This submission to the ***Inquiry into the effect of red tape on the economy and the community: Environmental assessment and approvals*** has sought to provide sentiment and supporting examples in relation to the experiences of East Kimberley Chamber of Commerce and Industry members in obtaining development approvals in north-eastern Western Australia.

A. the effects on compliance costs (in hours and money), economic output, employment and government revenue;

This paper has outlined a number of examples in terms of experiences, time and cost delays when obtaining environmental approvals. Every year delayed is another year of reduced returns and employment. Figure 2 depicts a more realistic timeframe for progressing land into production in northern Australia.

Figure 2 - Accelerated Approvals Pathways



Source: Department of Regional Development, 2016

For any development, reducing the cost from first investment to economic return by 2 years or 25% is substantial, and will be attractive to developers.

B. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;

The EKCCI is yet to see whether the *Bilateral Agreement for Environmental Assessment* results in the anticipated reduction in bureaucratic process over the long term. Indications to date are positive.

Specific areas for potential red tape reduction include where local government or other third parties are mentioned in environmental conditions or management actions, and thus become a party to those conditions or actions. Third parties often don't have the resources and/or inclination to participate.

The WA government amalgamation of regulatory agencies should streamline State processes. EKCCI hopeful that this will be effective and not become unwieldy.

C. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;

Aboriginal benefits to be secured through Indigenous Land Use Agreements (resulting in less reliance on welfare) are delayed when approvals processes are delayed. Aboriginal proponents also face delays in development due to approvals and compliance costs. The Mowanjum Aboriginal Corporation example cited earlier is a clear example of this.

Small businesses and families are also not exempt from the costs and delays associated with obtaining and implementing approvals. The Ceres Farms case provides a clear example of this.

For the broader community, particularly in remote areas where jobs and industry may be limited, time delays and costs associated with approvals processes impact directly on the downstream processing required with scale. If developers don't get the approvals, they don't get the scale required to support processing facilities (for example, with cotton or sugar), and communities don't get the facilities and the jobs.

D. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;

EKCCI members note that processes have improved in recent years with Abbott/Turnbull government, however loss of staff in the Department of Environment and Energy has not assisted with turnaround times on approvals.

E. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;

Subsidies and tax concessions may assist once approvals are in place, however for EKCCI's members and the development processes occurring in northern Australia, the focus needs to be on reducing the time and cost associated with obtaining approvals. Subsidies and tax concessions will not assist if development cannot occur because tenure change and approvals are not efficient.

F. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and

The WA Government is amalgamating its management of environmental regulation functions into a single agency as of 1 July 2017. The EKCCI is hopeful that this will increase communications between stewards of the various environmental legislation and policies, and result in improved turnaround times in granting approvals, with or without conditions, to proponents. This will enable more certainty in proponent/developer decision-making.

G. any related matters.

The EKCCI believes that, at best, the timeframe for developing new lands, including the approvals processes, needs to be reduced to a maximum of 6 years to make it viable for investors. For small businesses, including owner-operated farming enterprises, this issue is particularly important and the approvals times must be reduced even further. Investment uncertainty can be reduced by addressing the issues associated with environmental assessment and approvals processes. This could be done by managing the issues identified in this paper.

If goals of the White Paper on Developing Northern Australia are to be met, there is substantial room for improvement in the delivery of the environmental approvals processes.

ATTACHMENT A: Red tape thwarts asparagus

The West Australian

27 May 2017

Glenn Cordingley

Broome farmer Russell 'Rusty' Dredge at his asparagus trial plot. He's still waiting on land-clearing approval.

A massive horticulture project in the Kimberley lays dormant a year after the former State Government released the 682ha of land as part of its $40 million water for food program.

On June 10 last year, Kimberley Asparagus — an alliance between local pumpkin and melon farmer Russell "Rusty" Dredge and WA Fresh Produce Group — was unveiled as the successful candidate for Skuthorpe horticultural area, 23km east of Broome.

At the time, former lands minister Terry Redman said Kimberley Asparagus was chosen because of its vision for expanding horticultural opportunities.

He said the prospective economic benefits for WA and the Kimberley were significant.

The operation this year was expected to create up to 55 jobs, with the first asparagus harvest in about November/December.

But not one seedling has been planted because the Department of Environment Regulation still has not issued land-clearing permits. It means Mr Dredge has missed the entire 2017 season, with machinery sitting in sheds at a time when mass planting was due to be carried out after a successful growth trial last year.

"The ideal planting window for 2017 is right now as asparagus takes a year to grow. The reality is the jobs and buildings and packing sheds are another year behind," he said.

When contacted by Seven West Media newspaper the Broome Advertiser, a Department of Environment Regulation spokeswoman said the agency was aiming to provide Kimberley Asparagus with its assessment within a week.

Agriculture and Food Minister Alannah MacTiernan said State Government had talked to the Environment Minister about how to ensure timely approvals.