

# Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019

## EXPLANATORY STATEMENT

Issued by the Director of National Parks in compliance with section 15G of the *Legislation Act 2003*

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### PURPOSE AND OPERATION OF THE INSTRUMENT

#### INTRODUCTION

The *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) provides for the establishment of townships in ‘Commonwealth reserves’ (as defined in the EPBC Act) and the approval of town plans by the Director of National Parks (**Director**) for the use and development of those townships. The EPBC Act also provides that town plans may adopt, with or without modification, any law of the Northern Territory.

The *Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019* (**Jabiru Town Plan Approval 2019**) approves a new town plan for the town of Jabiru, being the town plan comprising the Schedule to the instrument (**Jabiru Town Plan 2019**). In that Schedule, the Jabiru Town Plan 2019 adopts the *Jabiru Town Plan 2019* (NT) (**Jabiru Town Plan 2019 (NT)**), being a specific planning scheme for the town of Jabiru pursuant to section 8 of the *Planning Act 1999* (NT) (**Planning Act**). The Jabiru Town Plan 2019 (NT) is a law of the Northern Territory, and is adopted in full, without modification, and as in force on the day the Jabiru Town Plan Approval 2019 commences. To provide context for readers of the Jabiru Town Plan 2019, the Schedule reproduces the Jabiru Town Plan 2019 (NT) in full.

The town of Jabiru, located within the Commonwealth reserve known as Kakadu National Park (**Park**), was established to support mineral exploration in the Kakadu region, in particular within the Ranger Project Area. The Ranger Project Area is defined in Schedule 2 of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The uranium mine within the Ranger Project Area is scheduled for closure and remediation by 2026 and planning is underway to transition the economy of the town of Jabiru away from mining and to support traditional owner aspirations for redevelopment of the town. To support this transition, the Northern Territory Minister for Infrastructure, Planning and Logistics (**NT Minister**) proposed to the Director on 16 September 2019 a new town plan for the town of Jabiru that adopts the Jabiru Town Plan 2019 (NT). The Jabiru Town Plan 2019 provides a planning framework for use and future development of the town of Jabiru.

Through making the Jabiru Town Plan Approval 2019, the Director approves the Jabiru Town Plan 2019 under subregulation 11.10(2) of the *Environment Protection and Biodiversity Conservation Regulations 2000* (**EPBC Regulations**) and in accordance with sections 388 and 389 of the EPBC Act and subsection 8.2.7 of the *Kakadu National Park Management Plan 2016-2026* (F2016L00002) (**Management Plan**). As the Jabiru Town Plan 2019 is made subsequent to the *Jabiru Town Plan 1981* (F2009B00160) (**Jabiru Town Plan 1981**) it displaces the Jabiru Town Plan 1981 as the town plan for the town of Jabiru. The Jabiru Town Plan 1981 ceases to operate as a town plan for the town of Jabiru on the date that the Jabiru Town Plan Approval 2019 comes into force.

Under regulation 11.13 of the EPBC Regulations, the Director's power to revoke an existing town plan is limited to circumstances where the management plan for the relevant Commonwealth reserve no longer provides for an approved town plan, or because of changed circumstances, an approved plan is no longer necessary. Consequently, the Jabiru Town Plan 1981 has not been formally revoked, and will continue to be registered and shown as in force on the Federal Register of Legislation (**FROL**) until it sunsets on 1 April 2020. However, it will not operate as a town plan for the town of Jabiru after the Jabiru Town Plan Approval 2019 comes into force, as the Jabiru Town Plan 2019 will displace the Jabiru Town Plan 1981.

In accordance with section 51 of the *Legislation Act 2003* (**Legislation Act**), the Attorney-General issued a deferral certificate on 6 December 2018 to defer sunseting of the Jabiru Town Plan 1981 from 1 April 2019 until 1 April 2020. This was done to allow the finalisation of the Jabiru Town Plan 2019 and its approval under the Jabiru Town Plan Approval 2019.

The Jabiru Town Plan Approval 2019 is a legislative instrument for the purposes of subsection 8(4) of the Legislation Act and must be registered on FROL.

## **OUTLINE**

The Director's power to approve a town plan for the town of Jabiru that adopts a law of the Northern Territory, and the requirements to do so, are contained in the EPBC Act, the EPBC Regulations, and the Management Plan.

### *The EPBC Act*

Section 388 of the EPBC Act provides for the use and development of townships in Commonwealth reserves, including in the Kakadu region. Pursuant to section 388, townships must be used or developed in accordance with that section (subparagraph (1)(b)(i)), a management plan for the relevant Commonwealth reserve (subparagraph (1)(b)(ii)) and a town plan prepared and approved in accordance with the EPBC Regulations (subparagraph (1)(b)(iii)).

Section 389 of the EPBC Act sets out a range of mandatory and discretionary requirements for town plans and management plans for Commonwealth reserves that include a township. Subsection (1) requires a management plan to include provisions for the use and development of the township. Subsection (2) requires a town plan to make detailed provisions for such use and development as specified in: the relevant management plan (subparagraph (2)(a)); and the EPBC Regulations (subparagraph (2)(b)). Subsection (3) allows a town plan to adopt the text of, with or without modification, a law of the Northern Territory as in force at a specified time or from time to time.

Accordingly, subsection 389(3) of the EPBC Act enables the Jabiru Town Plan 2019 to adopt the Jabiru Town Plan 2019 (NT) as in force at the commencement date of the Jabiru Town Plan Approval 2019.

### *The EPBC Regulations*

Subdivision 11.3.2 of the EPBC Regulations gives the Director power to approve a town plan for the purposes of section 388 of the EPBC Act.

Subregulation 11.10(2) of the EPBC Regulations gives the Director power to approve a town plan should it be provided for in the management plan for the relevant Commonwealth reserve. In the case of the Jabiru Town Plan 2019 and the Park, this power is enlivened by subsection 8.2.7 of the Management Plan. Subsection 8.2.7 of the Management Plan provides the Director with an express

power to approve a new town plan for the town of Jabiru that adopts a planning scheme prepared by the Northern Territory Government.

Subregulation 11.10(3) of the EPBC Regulations requires the Director to inform the Minister for the Environment of the action the Director proposes to take before making a decision to approve a town plan.

### *The Management Plan*

Section 8.2 of the Management Plan sets out the requirements that must be followed before the Director can approve a new town plan for the town of Jabiru that adopts a planning scheme prepared by the Northern Territory Government. This section reflects the requirements of subparagraph 388(1)(b)(ii) of the EPBC Act.

Subsection 8.2.6 of the Management Plan preserves the application of the Jabiru Town Plan 1981 for the town of Jabiru while a new town plan is finalised.

Subsection 8.2.7 of the Management Plan allows the Director to approve a new town plan for the town of Jabiru in accordance with subregulation 11.10(2) of the EPBC Regulations that adopts a planning scheme prepared by the Northern Territory Government. The Director may only make such an approval after obtaining the approval of the Kakadu National Park Board of Management (**Board of Management**) and complying with subsection 8.2.8 of the Management Plan.

Subsection 8.2.8 of the Management Plan requires that the Director must:

- consult and, if possible, reach agreement with, the Mirarr people;
- consult with, and have regard to, the views of other relevant Bininj / Mungguy (being the terms adopted by the Management Plan to refer to Aboriginal residents and traditional owners of the Park) and the Northern Land Council;
- consult the Jabiru Town Development Authority;
- consult the West Arnhem Regional Council; and
- only approve a new town plan for the town of Jabiru if it will provide more benefits than costs to the natural and cultural environment of the Park, to Bininj / Mungguy, and to the appropriate use, appreciation and enjoyment of the Park by the public.

The combined effect of subdivision 11.3.2 of the EPBC Regulations, sections 388 and 389 of the EPBC Act, and section 8.2 of the Management Plan is to establish the requirements which must be complied with by the Director in approving a new town plan for the town of Jabiru, and to empower the Director to make such an approval. In approving the Jabiru Town Plan 2019 through the Jabiru Town Plan Approval 2019, the Director has complied with these requirements. Further details of the Director's compliance with these requirements is set out below under the headings 'Statement of Compatibility with Human Rights' and 'Consultation'.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

The *Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019 (Jabiru Town Plan Approval 2019)* is a legislative instrument made under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, the *Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations)* and the *Kakadu National Park*

*Management Plan 2016-2026* (F2016L00002) (**Management Plan**). The Jabiru Town Plan Approval 2019 approves a new town plan for the town of Jabiru, being the town plan comprising the Schedule to the instrument (**Jabiru Town Plan 2019**). Both the Jabiru Town Plan Approval 2019 and the Jabiru Town Plan 2019 approved under it are compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (**Human Rights Act**).

The Jabiru Town Plan 2019 will impact on Aboriginal residents and traditional owners whose place of residence or country is situated within the ‘Commonwealth reserve’ (as defined in the EPBC Act) known as Kakadu National Park (**Park**), and this measure engages their right to self-determination as contained in the international instruments listed in the Human Rights Act. In the Management Plan, those persons are referred to as ‘Bininj / Munggyu’. The right to self-determination is contained in article 1 of the *International Covenant on Civil and Political Rights* and article 1 of the *International Covenant on Economic, Social and Cultural Rights*. The United Nations Committee on the Elimination of Racial Discrimination has stated that the right to self-determination involves 'the rights of all peoples to pursue freely their economic, social and cultural development without outside interference'.

The Management Plan promotes the right to self-determination by requiring both the close participation of, and consent from, relevant Bininj / Munggyu before approval to the Jabiru Town Plan 2019 through the Jabiru Town Plan Approval 2019 could be given. Practically, this involved the Director of National Parks (**Director**) taking four important steps in the approval process.

Firstly, initial consultations were held with the Mirarr people and other Bininj / Munggyu about the future development of the town of Jabiru. These consultations were undertaken primarily by the Northern Territory Government with the assistance of the Northern Land Council.

Secondly, feedback and traditional owner aspirations from these consultations were incorporated into a draft version of the Jabiru Town Plan 2019. This included the creation of a masterplan reflecting the vision of the Mirarr people (as traditional owners of the country on which the town of Jabiru is situated) for the future development of the town. That masterplan is included in the planning scheme which underpins the Jabiru Town Plan 2019.

Thirdly, approval of that planning scheme was obtained from the Kakadu National Park Board of Management established under the EPBC Act (**Board of Management**). In accordance with the EPBC Act, a majority of members appointed to the Board of Management are nominated by the Park’s traditional owners, which means Bininj / Munggyu whose country is located within the Park are represented.

Finally, consultations were held on the penultimate draft of the Jabiru Town Plan 2019 with various entities, including representatives of relevant Bininj / Munggyu, in accordance with the Management Plan. As a result of those final consultations, no further changes to the Jabiru Town Plan 2019 were required prior to it being approved by the Director.

## **REGULATORY IMPACT ANALYSIS**

The Office of Best Practice Regulation (**OBPR**) has confirmed that a Regulation Impact Statement is not required for the Jabiru Town Plan Approval 2019. The OBPR reference is ID 25103.

## **CONSULTATION**

Extensive consultations were conducted by the Director, including in accordance with the

Management Plan, prior to the approval of the Jabiru Town Plan 2019 through the Jabiru Town Plan Approval 2019 and under subregulation 11.10(2) of the EPBC Regulations.

Consultations were conducted in accordance with the Management Plan and undertaken with: the Gundjeihmi Aboriginal Corporation on behalf of the Mirarr people (**GAC**); the Northern Land Council in its own capacity and on behalf of other relevant Bininj / Munguuy (**NLC**); the Jabiru Town Development Authority (**JTDA**); the West Arnhem Regional Council (**WARC**); and the Northern Territory Government as represented by the Department of Infrastructure, Planning and Logistics (**DIPL**).

In consultation with: the GAC; the NLC; the JTDA; the WARC; and the Director, DIPL composed a draft version of the Jabiru Town Plan 2019 (NT), that now underpins the Jabiru Town Plan 2019, for further consideration by those entities and the Director. The draft Jabiru Town Plan 2019 (NT) was publically exhibited as a draft specific planning scheme for a period of 28 days in accordance with the Planning Act.

Following public exhibition, DIPL received submissions which resulted in changes to the draft Jabiru Town Plan 2019 (NT). These changes included incorporating a masterplan proposed by GAC on behalf of the Mirarr traditional owners of the town of Jabiru. The masterplan document reflects the Mirarr people's aspirations for future development of the town of Jabiru. Further amendments were also made to reflect comments made by providers of essential and other services to the town and, on the Director's request, to incorporate measures to protect the values of the Park and reflect requirements of the: EPBC Act; EPBC Regulations; Management Plan; and Legislation Act.

In 2018, DIPL presented a penultimate draft of the Jabiru Town Plan 2019 (NT) to the Director for consideration prior to it being formally provided to the Director as a town plan for the town of Jabiru in accordance with subregulation 11.10(1) of the EPBC Regulations. As required by the Management Plan, the Board of Management approved the penultimate draft of the Jabiru Town Plan 2019 (NT) in December 2018. As further required by the Management Plan, the Director consulted and reached agreement with GAC (on behalf of the Mirarr people) on the penultimate draft, and consulted with the NLC (in its own capacity and on behalf of other relevant Bininj / Munguuy), the JTDA, and the WARC on that draft of the Jabiru Town Plan 2019 (NT).

The final consultations conducted by the Director on the penultimate draft of the Jabiru Town Plan 2019 (NT) did not result in any amendments being requested to that document. On 31 July 2019 the Director subsequently advised the NT Minister that the Director would be pleased to receive that document, once made as a specific planning scheme of the Northern Territory for the town of Jabiru under the Planning Act, for consideration as a new town plan to be approved under subregulation 11.10(2) of the EPBC Regulations.

Consequently, on 16 September 2019 the NT Minister proposed to the Director under subregulation 11.10(1) of the EPBC Regulations that the Director approve a new town plan for the town of Jabiru that adopts the Jabiru Town Plan 2019 (NT) made by the NT Minister as a specific planning scheme under the Planning Act. As required by subregulation 11.10(3) of the EPBC Regulations, the Director notified the Commonwealth Minister for the Environment of the Director's intention to approve the Jabiru Town Plan 2019 after receiving the NT Minister's proposal.

On being satisfied that all necessary approvals and consultations had been obtained or completed in accordance with the EPBC Act, EPBC Regulations, and the Management Plan, and that the Jabiru Town Plan 2019 will provide more benefits than costs to the natural and cultural environment of the

Park, to Bininj / Mungguy, and to the appropriate use, appreciation and enjoyment of the Park by the public, the Director approved the Jabiru Town Plan 2019 through the Jabiru Town Plan Approval 2019. The Jabiru Town Plan 2019 (NT), as in force under Northern Territory law on commencement of the Jabiru Town Plan Approval 2019, is now incorporated in full and without modification in the Schedule to that instrument and comprises the Jabiru Town Plan 2019.

**More information**

As a legislative instrument, the Jabiru Town Plan Approval 2019 is available on the FROL.

Further information may be requested from the Director about the Jabiru Town Plan Approval 2019 and the Jabiru Town Plan 2019.

# **Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019**

## **NOTES ON CLAUSES**

### **Clause 1 – Name**

Clause 1 provides that the name of the instrument is the *Environment Protection and Biodiversity Conservation (Jabiru Town Plan) Approval 2019*.

### **Clause 2 – Commencement**

Clause 2 provides that each provision of the instrument will commence, or be taken to have commenced, in accordance with the table set out in clause 2.

### **Clause 3 – Authority**

Clause 3 provides that that the instrument is made under subregulation 11.10(2) of the *Environment Protection and Biodiversity Regulations 2000 (EPBC Regulations)* for the purposes of subsections 388 and 389 of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* and subsection 8.2.7 of the *Kakadu National Park Management Plan 2016-2026 (Management Plan)*.

### **Clause 4 – Definitions**

Clause 4 defines key terms used in the instrument.

### **Clause 5 – Schedule**

Clause 5 provides that the items set out in the Schedule to the instrument have effect according to the terms of the schedule.

### **Clause 6 – Approval of Jabiru Town Plan 2019 as a Town Plan for the Town of Jabiru**

Clause 6 provides that the Director of National Parks approves the Jabiru Town Plan 2019 as a town plan for the town of Jabiru under subregulation 11.10(2) of the EPBC Regulations.

Clause 6 also provides that the Director's approval is an approval for the purposes of sections 388 and 389 of the EPBC Act and subsection 8.2.7 of the Management Plan.

## **SCHEDULE – JABIRU TOWN PLAN 2019**

### **Item 1 – Jabiru Town Plan 2019**

Item 1 provides that the Schedule to the instrument is the Jabiru Town Plan 2019, and that the Jabiru Town Plan 2019 adopts the Jabiru Town Plan 2019 (NT) in full and without modification.

Item 1 also provides that the Jabiru Town Plan 2019 (NT) is reproduced in the Schedule to the instrument.