

# Environmental impact assessment system

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It may contain references to policy positions, approaches, documents or other information that has been superseded.

## Introduction

The Environment Protection Act 2019 (the Act) and its supporting draft Environment Protection Regulations 2019 introduce considerable improvements to the Northern Territory's (the Territory) environmental impact assessment system. This will result in a process that is contemporary, fit for purpose, responsive to the Territory's circumstances and in keeping with the principles of ecologically sustainable development.

The Northern Territory Environment Protection Authority (NT EPA) conducts the environmental impact assessment process. At the completion of the process, the NT EPA will provide an assessment report and either a draft environmental approval or statement of unacceptable impact to the Minister for Environment and Natural Resources (the Minister) who is responsible for granting, or refusing, an environmental approval to conduct the action.

## Purpose of the system

The environmental impact assessment and approval system in the Territory ensures that projects do not have an unacceptable impact on the environment, now and into the future. This means that the impact assessment system:

- ensures that environmental considerations are explicitly addressed and incorporated into the development decision making process
- anticipates and identifies approaches to avoid, minimise, manage or offset the adverse significant biophysical, social, cultural and other relevant effects of development proposals
- protects the productivity and capacity of natural systems, and the ecological processes which maintain their functions
- promotes development that is sustainable and optimises resource use and management opportunities
- supports public involvement in decision making and allows for community values and knowledge to be both heard and incorporated into decisions about development in the Territory.

## What needs to be assessed

Actions that may have a potentially significant impact on the Territory's environment (including the biophysical, social and cultural environments) require impact assessment. Under the Act an 'action' includes any of the following:

- a project
- a development
- an undertaking
- an activity or series of activities
- works
- a material alteration of any of the above.

In addition, a person may refer a strategic proposal that may have a potentially significant impact on the Territory's environment for impact assessment. Assessment of strategic proposals negates requirements for individual assessments of actions if those actions are considered during the assessment of the strategic proposal. Under the Act a strategic proposal includes any of the following:

- a policy
- a program
- a plan
- a methodology.

## The process

There are five key stages in the environmental impact assessment and approval system:

1. Pre-referral
2. Referral
3. Environmental impact assessment
4. Environmental approval
5. Post approval monitoring and compliance

### Pre-referral stage

The pre-referral stage refers to the proponent undertaking a self-assessment of their project to determine the need for a referral. This is done by considering the potential for the project to have significant environmental impact, or, if referral triggers have been declared, whether they apply. Referrals may be based on the following:

1. Significance-based referral. If the proposed action has the potential for a significant impact on the environment, it must be referred to the NT EPA.
2. Activity-based referral. If the proposed action is identified as an activity to which a referral trigger applies, it must be referred to the NT EPA.
3. Location-based referral. If the proposed action is to be located in an area to which a referral trigger applies, it must be referred to the NT EPA.

In the longer term, environmental objectives will be developed to help proponents gauge significant impact and a decision on whether or not to refer their project to the NT EPA. In the interim, the NT EPA has published the 'NT EPA Environmental Factors and Objectives' which identify those matters to be considered when determining whether an action may have a potentially significant impact on the environment.

While the Minister also has the power to declare location or activity triggers, there is no requirement to do so. It's expected that referral triggers will only be declared in exceptional circumstances. This would be when there is a genuine and defensible need for potential developments of a certain activity type or in a certain location, to be referred to the NT EPA because of their potential for significant environmental risk.

Consistent with section 43 of the Act, proponents should also undertake consultation with potentially impacted communities at the pre-referral stage.

## Referral stage

The referral informs the NT EPA about a project in order for it to determine whether the project will require an environmental impact assessment and environmental approval.

When a referral is first received the NT EPA will conduct a preliminary review to determine whether the referral:

- is or may be required and
- contains sufficient information to inform stakeholders about the proposed project and its potential to have a significant impact on the environment.

The NT EPA will also consider whether the referred project is clearly just one element of a larger project that should be considered more holistically in order to appropriately assess potential cumulative impacts.

If the preliminary review identifies that the referral is, or may be, required and contains sufficient information to inform stakeholders about the proposed project and its potential to have a significant impact on the environment, then the NT EPA must accept the referral. The NT EPA may only refuse to accept the referral if it does not meet either of these criteria, or it considers the referred project is part of a larger action that requires assessment. For example, a referral to build a new house in an existing subdivision would not be required and would be refused on the basis that the referral was not required; while a referral for a new water treatment facility to be associated with a new dam that did not include information on the dam may be refused on the basis that it forms part of a larger action that requires assessment.

The NT EPA may only request further information on the referral if the NT EPA considers the referral contains a material omission (for example, if the proposal is for a marina and shopping centre but only discusses potential terrestrial impacts and does not include any potential impacts to the marine environment).

The decision to accept or refuse a referral must be made within 15 business days of receiving the referral. If the NT EPA does not make a decision, then the referral is deemed to have been accepted.

All accepted referrals will be open for public consultation. This provides the public with an opportunity to become aware of the project and to provide input on whether the project should require an environmental approval and therefore environmental impact assessment. The public consultation period will be 15 business days.

At the same time, the referral is provided to relevant government agencies for their advice on the potential for the project to have significant impact on the environment.

At the conclusion of this consultation phase, the NT EPA will make a determination on whether or not a project requires environmental impact assessment based on:

- the referral
- any further information provided to the NT EPA
- any submissions received from other government agencies or the public.

Environmental impact assessment will be required if the project is determined by the NT EPA to have potential for significant impact on the environment.

If the NT EPA determines environmental impact assessment is not required, the proponent can proceed with obtaining whatever other authorisations are required for the project.

Based on the information before it, the NT EPA may consider that the action is likely to have significant impacts that cannot be appropriately avoided, mitigated or managed, and therefore poses an extreme and unacceptable environmental risk. If the NT EPA decides this, it may, at this time, recommend that the Minister refuse to give an environmental approval for the project. If a proponent is issued with an 'early refusal', it cannot resubmit substantially the same project for impact assessment within 12 months. The proponent may however submit a revised project for consideration by the NT EPA.

The NT EPA must make its determination on the referral within 20 business days after the close of public comments and must also publish a statement of reasons for its decision.

## Environmental impact assessment stage

The environmental impact assessment process is designed to provide the NT EPA with information on which to make an informed recommendation to the Minister about whether an environmental approval should be granted or refused.

At the same time it determines that environmental impact assessment is required, the NT EPA will identify the method of environmental impact assessment to be undertaken.

The methods of environmental impact assessment, also known as tiers of assessment, are:

1. Assessment on referral information – where the NT EPA is able to prepare an assessment report based on the original referral and any additional information and submissions provided as part of the acceptance of the referral.
2. Assessment by Supplementary Environmental Report (SER) – where the NT EPA is able to prepare an assessment report based on the original referral, any additional information and submissions provided as part of the acceptance of the referral, and an SER that provides additional information in relation to specific aspects of potential significance.
3. Assessment by Environmental Impact Statement (EIS) – where the NT EPA requires an EIS that addresses approved Terms of Reference. This form of assessment substantially mirrors the Territory's current EIS process under the Environmental Assessment Act 1982.
4. Assessment by inquiry – where the NT EPA, or a panel appointed by the NT EPA, will undertake an inquiry that addresses the approved Terms of Reference.

The draft Regulations also provide for a modified "proponent initiated EIS" process which will allow proponents to develop their own draft terms of reference for an EIS and submit these to the NT EPA with its referral information. This will enable proponents to take a more active role in the impact assessment process and reduce the overall assessment timeframe without compromising environmental outcomes.

In addition, the draft Regulations enable the NT EPA to use the assessment by inquiry process in conjunction with any other form of impact assessment where it considers this is appropriate.

The NT EPA's assessment report will inform the Minister's decision whether to issue an environmental approval for the project and the conditions such an approval may contain.

## Environmental approval stage

The introduction of an environmental approval ensures that a project that has the potential for significant, irreversible impact on the environment does not proceed without appropriate controls to ensure that those impacts are avoided, mitigated and managed or offset to the greatest extent possible.

While the NT EPA will prepare a draft environmental approval (or statement of unacceptable impact), it's the Minister who is responsible for deciding whether to grant an environmental approval or not, and what conditions should be imposed on the approval.

An environmental approval will include conditions that target the management of potentially significant impacts on the environment.

Environmental impacts that are not considered to be significant will be managed through operational authorisation processes under existing project approval legislation such as the Mining Management Act 2001.

## Post environmental approval monitoring and compliance

Where an environmental approval has been issued by the Minister, the Department of Environment and Natural Resources will then be responsible for monitoring compliance with, and enforcing the conditions of, an environmental approval. The Act contains a range of regulatory tools that can be used to encourage compliance and undertake enforcement action where necessary.