

Environmental Regulatory Reform Discussion Paper

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Introduction

The NT Government is implementing a range of environmental reforms. These are outlined in the *Healthy Environment, Strong Economy* policy.

The reform program will be undertaken in two stages:

- **Stage 1** will consider changes to the environmental impact assessment (EIA) process and legislation. It will include the establishment of an environmental approval to be issued by the Minister for Environment and Natural Resources at the end of the environmental assessment process.
- **Stage 2** will consider changes to the Northern Territory's *Waste Management and Pollution Control Act, Litter Act, Mining Management Act*, petroleum legislation and potentially other legislation that has a role to play in protecting the environment, particularly from wastes and pollution.

This paper relates to Stage 1 of the reform program.

The road to reform

There have been a number of reviews of the NT's environmental impact assessment and approvals system in recent years. The most significant of these are:

- the former Environment Protection Authority's (former EPA's) comprehensive report *The Environment Protection Authority's Final Advice on Improving Environmental Assessment in the Northern Territory* (2010)¹
- the *Review of the Northern Territory Environmental Assessment and Approval Processes* (2015) by Dr Allan Hawke AC²
- the Northern Territory Environment Protection Authority's (NT EPA's) *Roadmap for a Modern Environmental Regulatory Framework for the Northern Territory* (2017)³.

At the national scale there have been a number of reviews looking at environmental regulation, including the Australian Productivity Commission's *Major Project Development Assessment Processes* (2013)⁴.

In addition, Government and the NT EPA have received submissions from industry, non-government organisations and individuals on a range of other environmental related matters. These submissions often raised issues relating to the assessment or approvals system. Examples include those submissions about:

- environmental impact assessment guidelines prepared by the NT EPA between 2013 and now
- advice prepared by the NT EPA including its *Recommendations Concerning Preservation of the Threatened Biodiversity of the Howard Sand Plains Site of Conservation Significance* (2015)⁵
- the NT's draft *Balanced Environment Strategy*
- the NT's draft *Petroleum (Environment) Regulations*.

We have considered information from these sources, and others, to develop proposed reforms to the assessment and approvals system.

1. Available at <https://ntepa.nt.gov.au/about-ntepa/advice-policies-publications/publications/former-epa-publication>

2. Available at <https://denr.nt.gov.au/environment-information/environmental-policy-and-reform/hawke-ii-review>

3. Available at <https://ntepa.nt.gov.au/about-ntepa/advice-policies-publications/advice-to-minister>

4. Available at <http://www.pc.gov.au/inquiries/completed/major-projects>

5. Available at <https://ntepa.nt.gov.au/about-ntepa/advice-policies-publications/advice-to-minister>

How this work fits with the NT EPA's Roadmap

The NT EPA provided its Roadmap for a *Modern Environmental Regulatory Framework for the Northern Territory* (Roadmap) to the Minister for Environment and Natural Resources in late January 2017.

The Roadmap identifies the NT EPA's suggestions for reforms to the assessment and approvals system, and includes some information about other reforms (such as those associated with removing duplication in environmental regulation). Many of the NT EPA's suggestions are similar to, or build on, suggestions made in other reviews of the assessment process.

The Roadmap is an important resource for us in identifying proposals for reform; however it is only one piece of information that is being considered. The NT EPA's views must be considered in conjunction with the range of views received from other groups and individuals.

Under the relevant legislation, the Minister for Environment and Natural Resources must provide the NT EPA with a formal response to the Roadmap. This response will identify how the Government intends to implement the NT EPA's recommendations. If the Government does not intend to implement any of the recommendations, it will provide its reasons.

We will continue to engage with the NT EPA, as we will with other organisations, throughout this reform process.

Please provide any comments you may have on the NT EPA's Roadmap.

Purpose of this paper

This paper is intended to provide a snapshot of the reform process for environmental impact assessment and project approvals.

We acknowledge all of the work that has previously been undertaken by individuals and organisations in preparing submissions for Government. We have prepared this paper to build on that work and seek feedback on our direction. It identifies our understanding of your views about the existing assessment and approval system and how we intend to address issues you have previously raised and recommendations you have made. It also identifies those issues that we need more information about to help us develop new legislation. It identifies topics which have not been addressed in previous submissions and those for which there is not a clear path forward.

Guiding principles

Underpinning our reform process are principles that support our values and commitments. These are:

- certainty – the system rules are robust, clear, transparent and consistent
- efficiency – the system is as cost effective, timely and streamlined as possible
- outcome and risk focussed – the system focusses on the environmental outcomes that are sought to be achieved and takes a risk based approach to assessment and approval processes
- responsive – the system is able to respond to changing knowledge and circumstances, and supports innovation
- accountable – players in the system are accountable for their decisions and actions
- public participation – the public is encouraged and supported to participate in the assessment and approval system.

What our system is designed to achieve

Our proposed system has been designed for the Territory, but taking into consideration the Australian Government's requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in order to maximise efficiencies and minimize inconsistencies for businesses working across jurisdictions.

It will:

- be informed by clear environmental objectives
- ensure actions that are likely to have a significant impact on the environment will undergo environmental impact assessment
- result in an environmental approval being granted (or refused if appropriate) for assessed actions
- provide certainty about what actions need to be referred for assessment and require a subsequent approval
- provide a range of assessment options reflecting the degree of risk and potential impacts of actions
- provide a holistic assessment of impacts on the natural environment, human health, the NT economy and society
- place environmental protection and management responsibilities on proponents
- be transparent and ensure accountability through the publication of statements of reasons for decisions and decision making criteria
- support public involvement throughout the process by providing access to, and opportunities to comment on, proposed actions.

Please see Appendix 1 for a high level overview of the current process (Figure 1) and our proposed new system (Figure 2).

Relationship between the assessment system, environmental approvals and project approvals

Our proposed new system will provide a more robust and streamlined environmental impact assessment system, and result in an environmental approval issued by the Minister for Environment and Natural Resources.

The environmental approval will not replace project approvals, such as mining authorisations issued by the Minister for Primary Industry and Resources, but those project approvals will no longer contain requirements for managing the environmental impacts of the project.

The environmental impacts of projects that go through the assessment system will be managed through the environmental approval. The environmental impacts of projects that do not go through the assessment system will be managed under the new environment protection act and other legislation designed to deliver good environmental outcomes.



The key ways in which our proposed system differs from current arrangements are:

CURRENT ARRANGEMENTS	PROPOSED ARRANGEMENTS
Government departments decide if a project may have a significant effect on the environment and refer projects to the NT EPA for environmental impact assessment.	Guidance material will be developed to assist proponents to undertake a self-assessment of the potential environmental impacts of their projects, and identify if the project needs to be referred to the NT EPA for environmental impact assessment. The inclusion of appropriate checks and balances, including 'call-in' powers and stop work orders, will ensure that all appropriate projects are referred for assessment.
Responsible Ministers give project approvals. These approvals may include conditions to manage the environmental impacts of the project. Depending on the Responsible Minister's legislation, he or she may not be able to impose conditions to manage all of the environmental impacts of the project. Sometimes there is no Responsible Minister with the power to give a project approval.	The Minister for Environment and Natural Resources will have the power to issue an environmental approval. This Minister will be able to impose conditions to manage all of the environmental impacts of the projects.
There is no clear definition of what a 'significant effect on the environment' means. There are no clear 'triggers' for which projects will or won't require assessment, and limited guidance for proponents and decision makers in this area. There is no clear decision making framework to assist proponents and the community to understand assessment decisions by the NT EPA or approval decisions by Responsible Ministers.	Territory Environmental Objectives will identify matters of importance to the Territory. The objectives will inform decision making throughout the assessment and approval processes and inform compliance and enforcement activities.
The assessment system is designed to only assess individual projects. There is no capacity to conduct strategic assessments.	Our processes will allow the NT EPA to undertake both project based assessments and strategic assessments.
There are limited assessment tiers, limiting the opportunity to make risk based assessment decisions.	We will provide a range of assessment pathways designed to reflect the level of potential risk posed by the project.
The NT EPA must assess any project referred to it that may have a significant effect on the environment. This includes projects that would not be likely to be approved. There is no opportunity for proponents to receive early 'go-no go' decisions.	We will create an early 'go-no go' decision point. This will provide more certainty for industry and the community from the beginning. The NT EPA will be able to recommend to the Minister that a proposed project is unacceptable. If the NT EPA makes this recommendation at the referral stage, the Minister will be able to advise the proponent that an environmental approval will be refused, or may require the NT EPA to conduct the assessment process.
Opportunities for public participation in the assessment and approval system are limited to opportunities to comment on draft Terms of Reference and draft environmental impact statements; i.e. after the decision that assessment is required (or not required) has been made.	There will be more opportunities for public participation including opportunities to comment on referral information to inform the NT EPA's decision on assessment.
Proponents must rely on common law legal principles to challenge a decision in the assessment process.	We will include appropriate pathways for decisions in the assessment and approval process to be reviewed (appealed).

Topics and themes

This section identifies what stakeholders have previously identified and the potential responses to address those concerns and suggestions.

Purpose and principles of assessment systems

Identified issues

Previous stakeholder comments have highlighted the importance of identifying the purpose of assessment systems; ie ‘what is EIA intended to achieve?’ In response, you have stated that the system needs to ensure that all actions that may have a significant direct or indirect impact on the environment are assessed, planned and conducted to avoid significant adverse impacts. It needs to be a process that considers the immediate and long term/ ongoing impacts of a project, including consequences to cumulative environmental, social, health and cultural impacts.

In addition, there have been calls for the inclusion of the mandatory assessment of the climate change impacts of proposed projects, and identified the need for the EIA system to support strategic planning within the Northern Territory.

A broad range of principles that should be achieved by the EIA process have been identified. These principles reflect the multiple purposes of assessment. In general, you identified the importance of the process in guiding, promoting and supporting the ecological sustainable development principles for the Northern Territory. You want a robust process to protect the environment as well as a system where cultural/ social considerations are of equal importance to economic and biophysical considerations. Many of you have made reference to the polluter pays and precautionary principles.

There is a need to focus on governance principles, such as transparency and clarity, to ensure the Northern Territory has a process with reduced ambiguity, duplication and inconsistency. This includes; ‘regulatory efficiency’, ‘effectiveness’, ‘timeliness’ and the need for a ‘robust framework’, while ensuring there is effective oversight and quality assurance of the system – issues important for gaining industry and community trust. Comments received refer to the need for a risk based system that recognises low impact activities versus major project development; one that rewards good practice, and encourages innovation. Enforceability is a further key issue raised supporting the inclusion of appeal processes and appropriate penalties and offences.

Community participation has been identified as an important principle for an assessment system. This includes ensuring community are better included in the assessment process, building a process that allows for community input, and ensuring Aboriginal people and traditional environmental knowledge are included and recognised in the process.

What we are considering

Environmental impact assessment (EIA) systems are intended to improve environmental outcomes by ensuring that the environmental risks of projects are properly assessed and considered in the decision making process.

We are reviewing the EIA process within the Northern Territory with the intention of introducing new legislation and a new system. The guiding principles will guide this process.

Our system will ensure that any project with the potential for direct or indirect impact on the environment is assessed and subject to an Environmental Approval (with associated conditions). Proponents will be required to undertake and provide a self-assessment of their project before making a referral to the NT EPA. The NT EPA will use this referral document to determine whether an Environmental Approval will be required and the level of environmental assessment. This approach demands a proponent consider the environmental impact and associated management of their project before engaging with the environmental impact assessment process, providing incentive to design a project which can be conducted in a manner that minimises environmental impact. The level of environmental assessment required will reflect the environmental risks of the project.

Increased Powers

Responsible agencies as well as the NT EPA will have the power to refer and call in a project. The new legislation will introduce powers that allow a stop work order to be issued on any project that has the potential for environmental impact that has not been referred to the NT EPA or is yet to receive an Environmental Approval or is being conducted in breach of conditions contained on an Environmental Approval.

We will support the environmental assessment system with a framework of Territory Environmental Objectives (TEOs). These will ensure environmental assessment documents, and subsequent environmental approvals, are focused on matters (and places) that are significant to the Territory.

The reform process will introduce strategic environmental assessments which can be used to support strategic planning within the Northern Territory.

Our new legislation will contain appropriate tools that we can use to ensure it is complied with. It will contain offences and penalties that are designed to deter proponents from contravening the assessment and approval requirements.



Defined assessment triggers

Issues identified

Lack of certainty in the current system is a significant concern. Certainty is sought in a number of areas including: how is a project directed into the environmental impact assessment regime, what triggers the assessment process, how decisions about requiring an assessment and the level of assessment are made.

It has previously been highlighted that the gateway to the environmental assessment process needs to be supported by transparency, clear criteria and accountability mechanisms. It has been identified that specific industry types or actions should be subject to environmental assessment as well the implementation of clearly defined triggers (based upon significance) to support a project being directed into the assessment system.

Criteria or issues that should be part of the decision making about a project triggering EIA have also been identified. These include the need to weight or account for the cultural, social and economic value placed on a landscape or area of flora and fauna, matters associated with climate change and greenhouse gas emissions and other matters.

It has been highlighted that there is a need for better defined triggers, and further clarity on what constitutes 'significant development'. It has been proposed that definitive criteria or a scale or table to define significance in order to reduce subjectivity is established. Suggestions for how significance can be determined and on what basis or information significance could be judged include; applying the precautionary principle; drawing on traditional knowledge; using scientific knowledge to the exclusion of public concern etc.

What we are considering

We have proposed a framework of TEOs that will support the Territory's environmental assessment system. These objectives will ensure environmental assessment documents, and subsequent environmental approvals, are focused on matters (and places) that are significant to the Territory. The proposed TEOs will reflect the breadth of the definition of 'environment' contained within the environmental assessment legislation. They will capture matters associated with biodiversity, land management, water quality and use, air quality, marine environment, economic growth and stability, climate change, waste and resource recovery, and cultural and social values.

By putting in place a set of environmental objectives the Northern Territory will have a framework where the environmental assessment process, conditions of an environmental approval and subsequent compliance and regulatory work are all speaking to a consistent set of objectives.

The advantages of having a framework of TEOs are:

- Environmental issues or places that are important to the Northern Territory are publicly communicated.
- Every project is assessed for its risk to the environment against a common set of environmental objectives.
- Environmental assessment documents are focused only on those environmental objectives where there is an identified significant risk.
- An environmental approval of a development proposal will be based upon demonstrated compliance with the environmental objectives.

Our proposed system will allow the TEOs to be used in a number of ways:

1. The Northern Territory community will be able to refer to the TEOs when reviewing and/ or commenting on development proposals as part of the environmental assessment process.
2. The TEOs will assist proponents to undertake a self-assessment of their project to determine the need for a referral to the NT EPA.
3. The NT EPA will use the TEOs to judge whether a development proposal poses risk to a locality or environmental issue identified as important to the Territory and therefore requires environmental assessment and approval.
4. The TEOs will focus the decision made by the Minister for Environment and Natural Resources (Minister) to approve or refuse a development proposal.

The TEOs will be supported by guidance setting out:

- matters to be considered to judge whether a TEO is likely to be affected by a development proposal (for use by the community, a proponent and the NT EPA)
- evaluation criteria to determine the significance of potential impacts on a TEO (for use by the proponent and the NT EPA)
- supporting standard terms of reference for each TEO (for use by the proponent and the NT EPA).

The proposed environmental assessment legislation will provide the process for the Minister to establish TEOs - these can be Territory wide objectives or TEOs specific to a place, region or species. The TEOs will be gazetted.

Over the next few months we will be seeking your views on the draft TEOs and the supporting guidance.

In addition to the TEOs the legislation will also allow for specific developments to be identified that will require an environmental approval.



Assessment processes commensurate with risk

Issues identified

There are limited levels of assessment in our existing system; it provides an 'all or nothing' approach.

It has been identified that the system needs to reflect risk, that is, the level of assessment required for a project must reflect or be proportionate to the projects' scale and risk and that the assessment process that allows for assessments of varying scale, rather than just at the environmental impact statement (EIS) level.

It has been strongly presented that provisions that allow for strategic environmental assessment (SEA) to be undertaken.

SEA is recognised as a mechanism that would assist in the development of regional plans (detailed community plans) as well as Indigenous business enterprises, allowing a holistic approach to the environmental assessment (rather than communities trying to navigate through individual assessment processes).

SEA is also identified as a way of allowing bioregional assessments to be undertaken (or other appropriate ecologically based scale) permitting a strategic inter- project assessment of potential impact and pressure within a locality.

SEA can be used as a tool to assess an industry type, identifying both the risks associated with the industry as well as the opportunities it may bring. This approach allows an informed decision on the support (or not) and regulation of that industry within the Northern Territory.

What we are considering

We are proposing to introduce a scale of environmental assessment that is based upon the risk of potential significant impact on the environment (as communicated through the TEOs), as follows:

- **Assessment through Supplementary Information:** This process will allow a project to be assessed based upon the referral information, and, if necessary, additional information ('a supplement').
- **Environmental Impact Statement:** This level of assessment would be triggered by larger, major projects. Under our proposals, a proponent can choose to streamline the process by electing to be assessed at the level of an EIS, or the NT EPA can determine that a project that has been referred is to be assessed at the EIS level.
- **Public Inquiry:** The Public Inquiry process will be able to examine a project as a whole or to examine specific elements of a project (while the remainder of the project is being reviewed under a different level of assessment).
- **Strategic Environmental Assessment:** This allows an assessment to be locality/region based, or industry-specific based, or catchment based, or issue based etc. An SEA may inform strategic planning, or the development of policy, or allow multiple industries to examine cumulative impacts on a locality. An SEA may be requested with a referral or initiated by the NT EPA. The NT EPA may opt to use the SEA provisions to support strategic advice to the Minister on a particular environmental issue, or industry type etc.

It is also intended to introduce a power for the NT EPA to recommend an application be refused at the point of a referral as well as at the conclusion of an assessment.

Quality of information used in decision making processes

Issues identified

The quality, type and breadth of information as well as the timing of when information should be provided have been identified as issues. This includes:

- Decisions on developments need to be supported with good baseline data. Some commentators also provided support for pooling data to increase the availability of baseline information for all users (coupled with a single access point).
 - Data collection by industry should be the minimum required for approval authorities to confirm compliance.
 - Cost of gathering and providing information needs to be considered.
 - A schedule or regulation outlining minimum standards and requirements for an EIS should be considered.
 - Information to support assessments should include climate change/ carbon emission reporting, health related information, wellbeing and safety, potable water supplies and water usage, management/ operational and closure plans (particularly in regard to acid and metalliferous drainage), state of species information (abundance rather than presence) etc.
 - Information that allows true consideration of alternate, less impacting land uses should be included and considered during the assessment process.
- Traditional environmental knowledge is an untapped resource and should be acknowledged and formally recognised within the NT's environmental impact assessment system.
 - The environmental history of the proponent (and any subsidiary's) in both the Northern Territory and other jurisdictions should be considered and inform the decision making process.
 - All information should be publicly disclosed.



What we are considering

A framework of TEOs will be established to support the proposed environmental assessment and approval regime. These objectives give focus to the types of information that a proponent will need to gather in order to make a judgement on whether to refer their project to the NT EPA and to demonstrate their project can be undertaken in a manner that minimises the potential impact on values captured in the TEOs. The TEOs will be supported with public guidance and criteria on which a judgement of significance can be made against each TEO. It will be the responsibility of a proponent to demonstrate, through information, any claims made about the significance (or not) of impact on the TEOs.

One of the advantages of establishing the framework of TEOs is that it ensures that a proponent and a project only focusses on the objectives where there is the potential for significant impact, containing the cost for proponents and ensuring that EIA documents are not bulked with information on issues of negligible consequence.

We also propose to give the NT EPA the power to reject a referral made by a proponent on the basis of inadequate information. Our proposed 'adequacy review' will let the NT EPA prepare a report (or scorecard) about the adequacy of EIS documents prepared by proponents.

Stop work orders and other penalties will be included in the legislation and can be used by the NT EPA to ensure a project does not proceed in the absence of adequate information to properly consider its environmental risks. Penalties will be introduced for the provision of false or misleading information.

The introduction of an environmental approval also has implication on the level of detail required in an environmental assessment document. Predictions of impact (or predictions on the significance of potential impact) that have not been fully investigated/ substantiated with the collection of baseline information may result in a project being refused or more stringent conditions being placed on the approval.

Other initiatives include:

- Requirements for the Minister to consider the proponent as a 'fit and proper person' in granting an approval.
- Public disclosure of NT EPA and government decision making throughout the assessment and approval processes.
- Access to baseline data.

Questions to consider:

What other initiatives could be introduced to improve the quality of information available in the assessment and approval process?

What mechanisms could be introduced to better access and use Indigenous traditional knowledge in the system?

Encouraging public participation

Issues identified

Providing opportunities for public participation in the decision making process and commented on the timeframes required for meaningful public engagement is essential.

Public participation is recognised as a vital part of the development process and some comments received sought for public comment periods to be included throughout the assessment process. It has been suggested that both written and oral submissions should be accepted to allow the widest selection of society to be involved.

Public participation in the process, coupled with public access to information and transparency and accountability within the assessment process is considered an important need within the process. Some commentators have previously suggested that appropriate rights and obligations should be enshrined in law, rather than policy or guidelines. Others suggested the need for comprehensive and mandatory rights to public access to information, notification and consultation at all stages of a project assessment and approval (including post-approval) process.

Gaining community trust has been highlighted as one of the benefits of increased public participation and it was stated that this would increase if participation extended to the community right to appeal.

Comments were mixed on proponents and/ or community being able to review and/ or comment on draft environmental assessment reports and draft environmental approvals. It was suggested that if consultation on these documents was to be limited to proponents and government agencies then their input and comment was to be made publicly available.

Concerns have been raised about the time provided for consultation. There is a view that cost-effectiveness and timeframes are the main drivers of an EIA process and as a consequence communities/ public are required to make a fast decision or consideration on a project that can have a long-term impact. At the same time, some commentators raised the cost associated with consultation as a concern.

In respect to Indigenous communities, it has been identified that timeframes need to account for cultural protocols, and consultation methods need to be sensitive to language and culture. Commentators suggested that the assessment process should define (and be supported by) a community consultation process that is culturally and socially appropriate for the specific circumstances associated with a proposal.



What we are considering

We are proposing a system that allows public participation at each of the major decision points of the process.

PUBLIC INPUT SOUGHT IN DECISION	PUBLIC INFORMED OF DECISION
All referrals to be publicly available and input sought on whether a project should require an environmental approval and the associated level of environmental assessment .	NT EPA publishes statement of reasons to communicate its decision on a referral.
Draft Terms of Reference will be publicly available for public input (current process).	
	Final Terms of Reference published (current process).
Draft EIS publicly available for public input and comment (current process).	
Supplement to the EIA document (that is, referral or EIS) to be available for public input and comment.	The Supplement to provide additional information required to assess the project. It should also include a summary of comments/ concerns raised in submissions to the draft EIS with associated information on how these have been addressed.
Draft Environmental Assessment Report to be available for proponents and government agency review OR to be publicly available for review and comment.	Comments received on the draft Environmental Assessment Report to be published.
	Environmental Assessment Report published (current process).
Draft Environmental Approval to be publicly available for review and comment.	
	Environmental Approval published and accompanied by a public statement of reasons explaining why the approval was granted.

In addition to these opportunities for public comment informing decisions of the NT EPA and the Minister, the NT EPA and Minister will be required to release public statements of reasons for their decisions. This will help the community to understand how their views have been considered in the decision making process and why certain decisions have been made. The statements of reasons will be proportionate to the scale and impact of the decision, with simple statements of reasons for less complex projects and more detailed statements for more complex projects.

It should not be assumed that the additional steps for public participation will add to EIA timeframes as the timeframes involved can be incorporated into existing process. For example, it is intended that the legislation will place a timeframe on how long the NT EPA has to make a decision on a referral document and the public comment period will be incorporated within this timeframe, rather than be additional to the NT EPA's timeframe. Similarly, the period of time provided to the public to review and comment on a Supplement can also be incorporated within the NT EPA's timeframe to assess the Supplement (which will be defined in the legislation).

Timeframes associated with making the draft Environmental Assessment Report available for either the proponent and/ or the public to review and provide comment are additional to current process. These timeframes would likely reflect the quality of EIA documents available to the NT EPA as well as the effectiveness of the engagement and consultation undertaken by the proponent with its affected community.

In this regard, we suggest that there should be more upfront engagement with the community during project planning stages. This could be achieved by requiring all referral documents to include a consultation report to ensure community input from the earliest point possible, preferably with project planning.

It is intended to incorporate the step of providing the NT EPA with a copy of the draft EIS and draft Supplement for an adequacy review before lodging the documents for public review. This should assist proponents in preparing documents that provide adequate information and reduce public concerns about the quality of information.

To improve public access to EIA information, all EIA documents (including those prepared by the NT EPA) will be required to be supported by plain English summaries, and where relevant, translated into local language. Separately we will develop a new web portal that will make it easier for the community to find information about assessments and approvals.

We will also require proponents to demonstrate why information is confidential and should not be released as part of the assessment and approval process. We will introduce requirements limiting the circumstances in which 'confidentiality' can be claimed. These situations will include, for example, where information is culturally confidential (as advised by a Land Council), subject to legal privilege, or there are other legal requirements that the information is not released. There will be specific limits on when 'commercial in confidence' claims can be made.

In addition, we are seeking your views on whether some members of the community should have rights to seek review of decisions made in the assessment and approval process.

Questions to consider:

Should draft Environmental Assessment Reports be made available for review? Either to proponents or publicly? What value is there for either proponents or the public by making the draft reports available for review?

Should upfront engagement with the community be legislated so that all referral documents are required to contain a consultation report as well as an ongoing stakeholder engagement plan?

How can meaningful community engagement be achieved in the EIA process while keeping timeframes manageable?

Should draft EIS documents that are provided to the NT EPA before publication (for adequacy review) include a consultation report (outlining the outcomes of engagement through the EIA process and how this has informed the draft EIS) as well as a proposed stakeholder engagement plan to illustrate how the public is to be engaged through the exhibition period? Should an EIS document fail its adequacy review if it does not provide evidence of ongoing engagement and community input into the project?

Improving environmental outcomes and accountability

Issues identified

The current system is both largely discretionary in the decisions made about a project and limited in provisions to support public access to the reasons for the decisions made. The integration between the environmental assessment process for a project and the subsequent approval process is not always clear. Accordingly governance, transparency and accountability have been identified as important issues needing to be addressed through the reforms, specifically:

- decisions on what projects will require environmental assessment and why
- approval decisions
- compliance reporting and enforcement outcomes.

It has been highlighted that there is a need for public criteria which must be considered before issuing an approval.

The accountability of the Minister, government agencies and the NT EPA has been raised and it has previously been suggested the process introduce accountability mechanisms for consultants undertaking EIA work.



What we are considering

The proposed introduction of the TEOs coupled with a schedule of development types that will require an environmental approval (and therefore environmental assessment) will assist in removing the discretion out of the decision-making for EIA. This will be coupled with the public being able to comment and participate in the process at all stages of decision making. Public Statements of Reasons will provide an account of how a decision was made, including the evidence that formed the basis for the decision.

The introduction of an environmental approval also ensures that the outcomes of an environmental assessment process will directly inform the subsequent approval of a project in a manner that is transparent. The Minister will be responsible for issuing an environmental approval and will be required to provide and table a public statement of reasons if the approval does not reflect the conclusions and advice within an environmental assessment report and draft approval document provided by the NT EPA.

The legislation will include provisions that allow the NT EPA to reject a referral if the information is found to be inadequate. It is also intended to introduce offence provisions for providing false or misleading information.

Making the best use of our community's eyes and ears

Issues identified

The Territory is a large place with a small, dispersed population and the ability for government and/ or the NT EPA to effectively regulate development has been questioned.

Questions were asked about how the Minister and the NT EPA would know if a development was being undertaken in a remote part of the Northern Territory if a referral had not been made.

Similarly, how effectively the Minister and/ or the NT EPA could respond if a development in a remote area was in breach of its environmental approval.



What we are considering

There are a number of options available to improve the provision of information to the Minister and the NT EPA about regional and remote development. Some of these options will require legislation, while others could be implemented through policies and processes:

1. Authorise Land Councils and government agencies to make a referral to the NT EPA where there is concern or questions on whether a development/ works has an environmental approval (in recognition that these organisations have regionally based staff and/ or officers who travel remotely). The referral would be public and the NT EPA would be required to provide a formal response to the referral that also becomes public.
2. Allow any member of an organised environmental community, or industry organisation, such as the Environment Centre NT (ECNT), Amateur Fishermen's Association NT (AFANT) or the NT Cattlemen's Association (NTCA) to make a referral to the NT EPA where there is concern or questions on whether a development/ works has an environmental approval (in recognition of the broad net of members within these groups). The referral would be public and the NT EPA would be required to provide a formal response to the referral that also becomes public.
3. Allow an affected stakeholder to make a referral to the NT EPA where there is concern or questions on whether a development/ works has an environmental approval (in recognition of the thinly dispersed population of the Northern Territory). The referral would be public and the NT EPA would be required to provide a formal response to the referral that also becomes public.

4. Allow any member of the public to make a referral to the NT EPA where there is concern or questions on whether a development/ works has an environmental approval (in recognition of the thinly dispersed population of the Northern Territory). The referral would be public and the NT EPA would be required to provide a formal response to the referral that also becomes public.
5. Encourage members of the community to notify the NT EPA about a development. This would be a private process, similar to reports to the NT EPA's Pollution Hotline. This notification would not result in a formal response by the NT EPA but would require the NT EPA to provide an informal response to the person making the notification. Where a number of notifications were received in relation to a particular development, the NT EPA could make the informal response public.

Another way we can improve environmental outcomes in remote areas is to allow third-parties to seek injunctions where unapproved works are proceeding or works are not in compliance with an environmental approval. That is, to give affected stakeholders the ability to seek an injunction if they, or their property is being impacted in a manner that threatens their health or livelihood.

Questions to consider:

Do you support any of the options outlined above? Please provide information to explain why an option is supported.

If you do not support third-party referrals, please provide information to support this position. Are there other mechanisms to address the issue of regulating consistently and fairly across the whole of the Territory?

Should the legislation include provisions that allow for third-party injunctions and if so, how broadly should these be applied (that is, to the public or to defined groups?). Please outline the concerns you have if you do not support third-party injunctions.



Introducing review (appeals) processes

Issues identified

The importance of review (appeals) processes to maintain accountability and integrity in the assessment and approval system has been identified as important.

There are two types of processes that allow a person affected by a decision to appeal that decision:

1. **Judicial review** allows a person to challenge the process that was used to make a decision; i.e. was the decision lawful? These types of challenges are made to a court.
2. **Merits review** allows a person to challenge the 'merits' of the decision, i.e. whether the decision was the best decision. These types of challenges are often made to a tribunal or other type of review panel.

A person must have legal 'standing' to bring a challenge. Some environmental legislation has broad legal standing provisions allowing many different organisations and members of the community to challenge a decision. Other legislation limits legal standing to the proponent (or applicant).

Views on who should have the right to seek a review, and the type of review that should be available, have been mixed in the past. In general terms, community and environmental groups support third parties (i.e. people other than the proponent) having the right to challenge a decision made during the assessment or approval process. Industry groups have raised concerns that third parties may use review rights to disrupt or delay appropriately approved business activities. Many of these concerns relate to actions by competitors and special interest groups.

What we are considering

Who can seek review?

Consistent with our guiding principles we are proposing to allow limited third parties the right to appeal decisions. We propose the following groups should be allowed to appeal a decision:

- Proponents (or applicants).
- A person who is, or is potentially, directly affected by the decision. This may include for example a neighbouring land owner whose property is traversed to access the development site, or a downstream land owner who uses water that may be impacted by the activity.
- Members of an organised environmental, community or industry organisation (such as ECNT, AFANT or the NTCA).
- Land councils and local government bodies.
- A person who made a legitimate submission during the assessment or approval process. This would include for example a community group or individual who made a submission in response to referral information or a draft environmental impact statement.



Questions to consider:

How can this proposal be improved to strike the appropriate balance between providing business certainty and ensuring accountability in decision making? What groups or entities should be included or not included? Please provide information to explain your position.

Do you have any suggestions for how we can ensure frivolous and vexatious applications are minimised or avoided?

What can be reviewed?

It has previously been identified that some decisions should be reviewable to improve accountability and transparency of the process.

Questions to consider:

Which decisions made in the assessment, approval and monitoring system should be reviewable? Please provide information to explain your position.

Should a statement or recommendation made in an assessment report be subject to review?

Who will hear reviews?

Government's *Healthy Environment, Strong Economy* position paper proposes the NT Civil Administrative Tribunal (NT CAT) be responsible for hearing reviews. The Productivity Commission suggests that judicial review may be more appropriate for decisions made by a Minister.

There are a number of options available:

1. All decisions are reviewable by NT CAT. This would be merits review.
2. All decisions are reviewable by the court. This would be judicial review.
3. All assessment decisions (made by the NT EPA) are reviewable by NT CAT and all approval decisions (made by the Minister) are reviewable by the court. This would create an opportunity for merit review of assessment decisions, and judicial review of approval decisions.
4. All assessment decisions (made by the NT EPA) are reviewable by the Court and all approval decisions (made by the Minister) are reviewable for NT CAT. This would create an opportunity for judicial review of assessment decisions, and merit review of approval decisions.

Questions to consider:

Which option from above is best for the Territory? Please provide information to explain your position.

What alternative option do you suggest we consider?

Might your position change depending on who is given responsibility for decisions in the assessment and approval processes? i.e. Might your position change if the NT EPA was not responsible for decisions in the assessment system?

Roles and responsibilities

Issues identified

It has been highlighted that the roles and responsibilities of the Minister, the NT EPA and government agencies in the assessment and approval system are not well understood.

The NT EPA currently has three areas of responsibility:

- strategic assessor – conducting the environmental impact assessment process under the *Environmental Assessment Act*
- strategic advisor – providing independent strategic advice on environmental legislation, policy and other matters relevant to the protection and management of the environment
- operational regulator – with responsibilities for managing wastes and pollution under the *Waste Management and Pollution Control Act (WMPC Act)* and the *Environment Protection (Beverage Containers and Plastic Bags) Act*.

In relation to the NT EPA clarification of its role, both in the assessment system and in the environmental management system more broadly is needed. Prior feedback has called for a strengthening and broadening of the NT EPA's role in environmental management, alongside feedback that some functions currently performed by the NT EPA should instead be undertaken by a government department.

Some concerns have been identified with government regulators being required to perform a 'dual function' of promoting industrial development while regulating environmental impacts. Others have focused on streamlining processes and reducing 'double handling' between various regulators. Such considerations will be addressed through the second stage of the environmental reform process.

What we are considering

We will adopt measures to improve role clarity, create more streamlined approaches, and remove duplication and double handling consistent with our guiding principles. We will prepare guidance material to better explain the roles and responsibilities of players in the system.

We will also consider the role of the NT EPA in the environmental management framework. We have identified options including:

1. The NT EPA retains its three existing responsibilities: assessor, advisor, regulator.

Under this option, the NT EPA's regulatory responsibilities will be expanded as the reform program progresses and government develops a fully functioning environment protection act addressing management of wastes and pollution, environmental regulation of mining and energy activities, and other appropriate environmental matters.

The NT EPA would also be responsible for ensuring compliance with the environmental approval issued by the Minister.

2. For the NT EPA to fulfil a different combination of responsibilities, i.e.
 - strategic assessor and advisor, or
 - strategic advisor and operational regulator, or
 - strategic assessor and operational regulator.

Introducing environmental offsets

Questions to consider:

What combination of responsibilities should the NT EPA be given? Please provide information to explain why an option is supported. What improvements to the environmental management system will be achieved as a result of the NT EPA having these responsibilities?

If you consider the NT EPA should not retain any of its existing responsibilities, who should be tasked with those responsibilities as the alternative? Please provide information to explain your position.



Issues identified

Offsets are measures that compensate for the residual adverse impact of an action on the environment at one site by undertaking activities at another site. They are universally recognised as part of a mitigation hierarchy in which offsets are applied as a last resort, after all reasonable steps to avoid and mitigate environmental impacts have been exhausted.

A number of issues have previously been identified in relation to environmental offsets. These have included; that a cautious approach to the introduction of offsets be applied, in terms of their use (they should be a last resort, after applying management and mitigation measures), the public perception of using offsets (buying an approval) and their basis (based on sound science-based methodologies).

It has also been highlighted that there is a need to ensure that the legal underpinning of offsets reflect the scale of a project and accordingly are relevant and proportionate, and the type of offset (direct offset, biodiversity offset etc.).

Both community and industry have previously recognised the value of offsets, stating that they were a critical tool and that developers should build infrastructure and contribute to community services for the purpose of social and cultural advancement (therefore supporting indirect offsets).

What we are considering

The legislation will support the 'avoid, mitigate, offset' hierarchy and will allow the Northern Territory to introduce requirements for proponents to provide environmental offsets as part of the project approval process. Policy and guidance will need to be formed to support this provision of the legislation. It is anticipated that this will occur once the legislation is in force. We will conduct specific consultation in relation to developing and implementing an offset policy in the Northern Territory.

How you can have your say

You are invited to give feedback about any matter discussed in this paper. You are also welcome to provide any comments on improvements to the environmental regulatory framework generally.

To ensure your comments are as effective as possible please:

- clearly identify the issue you are addressing, with reference to a section of this paper if applicable
- clearly state your point of view, and provide any information you may have that supports your view
- suggest any alternatives you believe will result in a better outcome.

We are particularly interested in your responses to the questions raised in this paper.

Unless you advise us otherwise, we will treat any comments you make as public documents. This means a copy of your comments will be published on our website, and we may cite your submission in other documents that we prepare.

If you do not wish us to make your comments public, or you do not want your identity to be made public, please ensure you include this information with your comments.

Please submit your comments online at:

www.denr.nt.gov.au/land-resource-management/consultation-publications

You can also provide comment by:

Sending a written submission to Environment Policy, Department of Environment and Natural Resources, GPO Box 3675, Darwin NT 0801

Email: environment.policy@nt.gov.au

PUBLIC COMMENT CLOSES: Wednesday 14 June 2017



Should upfront engagement with the community be legislated so that all referral documents are required to contain a consultation report as well as an ongoing stakeholder engagement plan?

How can meaningful community engagement be achieved in the EIA process while keeping timeframes manageable?

Should draft EIS documents that are provided to the NT EPA before publication (for adequacy review) include a consultation report (outlining the outcomes of engagement through the EIA process and how this has informed the draft EIS) as well as a proposed stakeholder engagement plan to illustrate how the public is to be engaged through the exhibition period? Should an EIS document fail its adequacy review if it does not provide evidence of ongoing engagement and community input into the project?

Making the best use of our community’s eyes and ears

Do you support any of the options outlined? Please provide information to explain why an option is supported.

If you do not support third-party referrals, please provide information to support this position. Are there other mechanisms to address the issue of regulating consistently and fairly across the whole of the Territory?

Should the legislation include provisions that allow for third-party injunctions and if so, how broadly should these be applied (that is, to the public or to defined groups?). Please outline the concerns you have if you do not support third-party injunctions.

Introducing review (appeals) processes

How can this proposal be improved to strike the appropriate balance between providing business certainty and ensuring accountability in decision making? What groups or entities should be included or not included? Please provide information to explain your position.

Do you have any suggestions for how we can ensure frivolous and vexatious applications are minimised or avoided?

Which decisions made in the assessment, approval and monitoring system should be reviewable? Please provide information to explain your position.

Should a statement or recommendation made in an assessment report be subject to review?

Any other comments?

A large rectangular area with a thin orange border, containing numerous horizontal dotted lines for writing.

Appendix 1

Figure 1: Current process

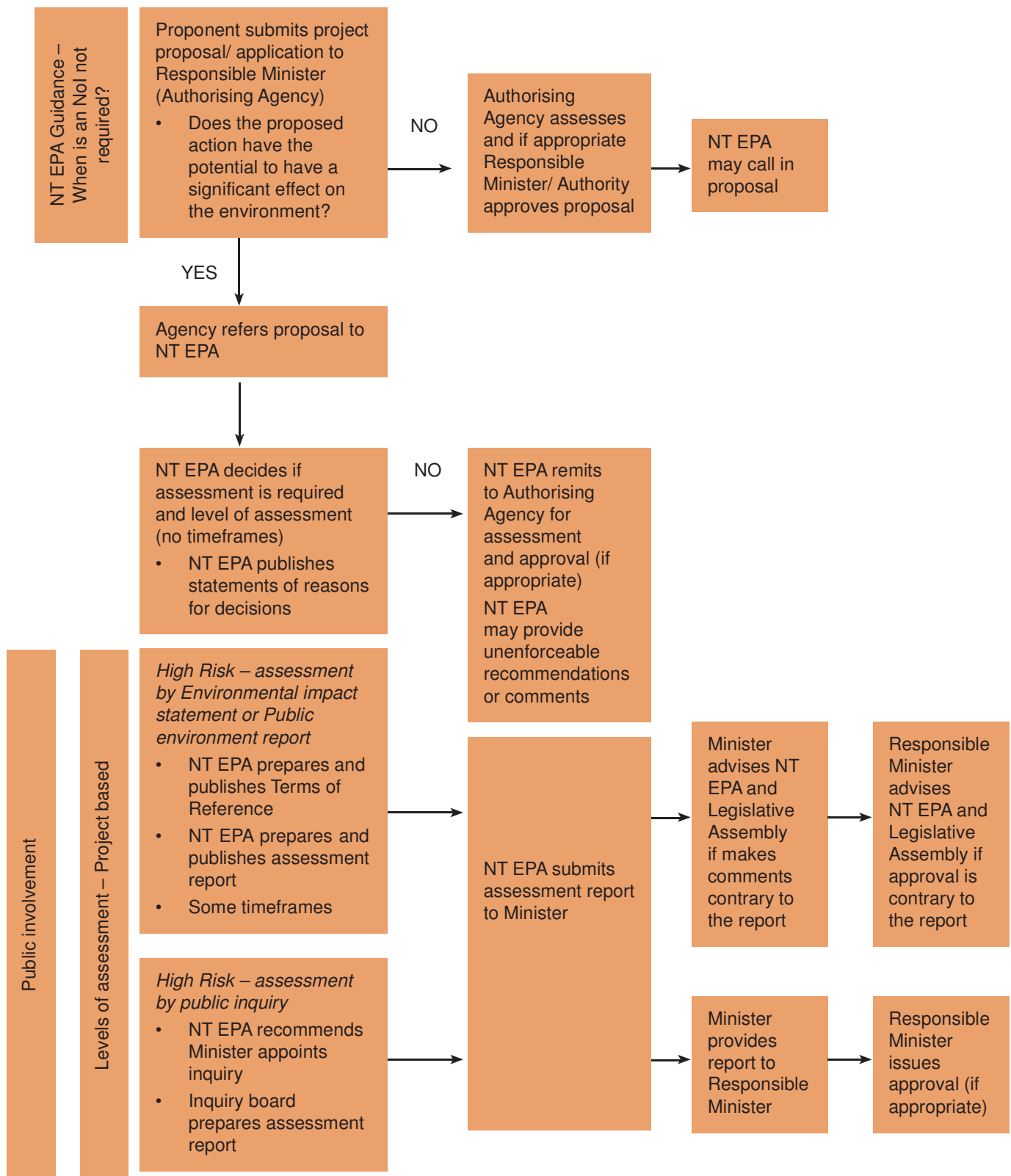


Figure 2: Proposed assessment and approvals system

