



Northern
Territory
Government

**TERRITORY GOVERNMENT RESPONSE TO THE
*REVIEW OF THE NORTHERN TERRITORY
ENVIRONMENTAL ASSESSMENT AND
APPROVAL PROCESSES***

November 2015

SUPERSEDED BY CURRENT GOVERNMENT POLICY

1 The Review

In 2014 the Territory Government requested Dr Allan Hawke AC provide recommendations on reforming the Northern Territory's environmental assessment and approval processes to ensure:

- their cost effective, transparent and efficient implementation
- the requirements necessary for implementation of the Commonwealth's 'one stop shop' policy initiative for environmental assessments and approvals are catered for
- structural and administrative efficiencies are maximised
- appropriate environmental standards are delivered with reduced regulatory timeframes, duplication and uncertainty.

Dr Hawke delivered his Review report to Government in May 2015.

In undertaking the Review, Dr Hawke considered public submissions made to previous reviews and sought submissions from Government Agencies and the NT EPA. The Review finds that many of the criticisms contained in earlier reviews remain despite the creation of the NT EPA in 2013. The Review recognises the importance of an independent environmental authority for the Northern Territory while acknowledging that in order to obtain the full benefit of such an authority it requires appropriate and effective tools. The Northern Territory's environmental regulatory framework does not yet contain those tools.

The Review found that many issues raised through previous consultation processes had not been addressed. Dr Hawke found that, in large part, this situation can be attributed to the fact that legislation governing environmental impact assessment and approvals processes has remained largely unchanged for over 30 years.

1.1 Structural Reform Options

The Review presents three options for structural reform of the Northern Territory's environmental assessment and approvals framework.

Option 1: retains the existing system, but recommends incremental improvement.

Option 2: proposes a 'stand-alone' environmental approval issued by the Environment Minister following an environmental impact assessment by the NT EPA.

Option 3: builds on the existing integrated project authorisation framework by retaining integrated project approvals issued by sectoral Ministers (such as the Minister for Mines and Energy or Minister for Planning) under relevant legislation *provided that* this legislation has been accredited by the Environment Minister as providing for all matters necessary to provide acceptable and appropriate development and support sustainable use of the environment.

1.2 Individual Recommendations

In addition to the three structural reform options presented in the Review, Dr Hawke makes 22 recommendations for improvements to the environmental assessment and approvals system.

Delivery of these commitments requires a complex program of reform touching on many areas of Government.

In general terms each of the recommendations can be broadly supported by the Territory Government, pending consultations with stakeholders on the detail of how the recommendations will be implemented. Further detail on the Territory Government's position against each recommendation is detailed in section 2 below.

SUPERSEDED BY CURRENT GOVERNMENT POLICY

2 Response to the Review

| Number | Recommendation | Territory Government Response |
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| 1 | <p><i>That the NT Government strengthen integrated assessment and approvals processes, as follows:</i></p> <ul style="list-style-type: none"> • <i>establish criteria, performance standards and benchmarks for all approvals containing environmental conditions. These are the standards against which sectoral approval processes can be accredited.</i> • <i>consider the following as a necessary starting point:</i> <ul style="list-style-type: none"> ○ <i>the authorising legislation provide for environmental issues to be considered;</i> ○ <i>the legislation permit the application and enforcement of environmental conditions;</i> ○ <i>the legislation permit consideration of ESD principles in decision making;</i> ○ <i>the agency has access to adequate skills and expertise;</i> ○ <i>there is public consultation and a positive framework for proponents to build community confidence;</i> ○ <i>decision making processes and reasons are transparent; and</i> ○ <i>there is a formal compliance and enforcement policy that includes graduated compliance responses and penalties, regular compliance reporting, compliance auditing and the capacity for directed compliance investigations;</i> • <i>establish the Environment Minister as the decision maker for projects not subject to approval by an accredited approval process;</i> • <i>accreditation should be issued by the Environment Minister following consultation with, among others, relevant colleagues and the EPA;</i> • <i>where there is an EPA Environmental Assessment Report and/or advice, require responsible decision makers to publish a statement setting out how those</i> | <p>Support</p> <p>Further consultation required on detail of implementation</p> |

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| | <p><i>recommendations are reflected in specific approval conditions;</i></p> <ul style="list-style-type: none"> • <i>reinforce the existing requirements for publishing Statements of Reasons in circumstances where EPA recommendations are not implemented;</i> • <i>require proponents to report annually and publicly on compliance with environment-related conditions of approval; and</i> • <i>require the NT EPA to undertake regular assurance monitoring and reporting on the operation of the system to the Environment Minister.</i> | |
| 2 | <p><i>Formalise the process for major projects facilitation.</i></p> <ul style="list-style-type: none"> • <i>unambiguous criteria for granting major project status;</i> • <i>recognising that major project facilitation is intended to reduce transaction costs for proponents, not to supplant the decision making process;</i> • <i>establishing a clear oversight process for coordination of various decisions, particularly where a project requires multiple decisions from multiple line Ministers or their delegates; and</i> • <i>reporting arrangements to the Government on major projects progress.</i> | <p>Completed</p> <p>The Territory Government has developed a Major Project Policy Framework</p> |
| 3 | <p><i>The EPA's role should be enhanced and focused to:</i></p> <ul style="list-style-type: none"> • <i>provide independent evaluation of the impact of projects and recommend risk-based and outcome-focused environmental approval conditions. Recommendations to decision makers by the NT EPA to manage environmental risk must be expressed in clear terms with performance statements that can be monitored effectively;</i> • <i>ensure that the Environmental Impact Assessment (EIA) process is consistent with ESD principles;</i> • <i>undertake assurance monitoring and reporting of the environmental approvals system, within a formal assurance monitoring framework and policy set by Government;</i> • <i>on request of the Minister, provide advice on issues affecting the NT's capacity to manage emerging environmental issues and actions necessary to enhance</i> | <p>Agreed</p> |

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| | <p><i>community and business confidence in the environment protection regime; and</i></p> <ul style="list-style-type: none"> <i>provide independent advice to the Minister on the operation of the bilateral agreements with the Commonwealth Government under the Environmental Protection and Biodiversity Conservation Act.</i> | |
| 4 | <p><i>Create an enforceable “call-in” power for actions that are likely to have a significant environmental impact and have not been referred by a proponent or responsible entity. The “call-in” regime should:</i></p> <ul style="list-style-type: none"> <i>be a discretionary decision of the Environment Minister acting on EPA and/or Departmental advice;</i> <i>enable the Environment Minister to issue a time-limited stop work order for any action likely to have a significant environmental impact that has not undergone environmental assessment and approval;</i> <i>enable the Environment Minister to impose, subject to natural justice, enforceable conditions on a project in the event that a proponent does not submit a Notice of Intent (NoI) in response to a call-in; and</i> <i>create an offence of substantially commencing without prior authorisation a project that is subject to an assessment process.</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 5 | <p><i>Streamline the EIA process by creating a tiered assessment system that is responsive to the degree of environmental risk associated with particular developments, the capacity to manage the risks, and the performance of the proponent, which would:</i></p> <ul style="list-style-type: none"> <i>remove the existing Public Environment Report (PER) process and make the EIA process more flexible, with the capacity to select timeframes for assessment that reflect the environmental risks associated with a project;</i> <i>simplify EIA guidelines to focus on risk assessment and adaptive management responses rather than comprehensive descriptions of the environment;</i> <i>formalise assessment by NoI and enable the EPA to recommend environmental conditions at the NoI phase where the activity is well understood and the receiving environment is not particularly sensitive. As far as practicable, these conditions should be standardised;</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| | <ul style="list-style-type: none"> • <i>enhance the Nol phase to encourage proponents to bring forward risk-based outcomes-focused arrangements that incorporate performance based adaptive management practices;</i> • <i>reward good practice based on “earned trust” so that proponents who produce high quality documentation and management plans and build community trust are rewarded with a lighter assessment touch while those with poor documentation or practice are subjected to greater prescription;</i> • <i>when seeking advice from Government agencies on an Nol, the EPA should concurrently circulate a draft decision for comment including potential conditions; and</i> • <i>failure to comment in the prescribed time should be regarded as concurrence with the recommendations.</i> | |
| 6 | <p><i>Create a clear trigger in the EA Act and the EAAPs setting out the circumstances in which a Nol (or a referral) is to be submitted to the EPA for consideration as to whether environmental assessment and approval is required. The trigger should require referral when:</i></p> <ul style="list-style-type: none"> • <i>a proponent intends to undertake an action (or series of actions); and</i> • <i>it is reasonable to conclude that the action(s) is likely to have a significant environmental impact; and/or</i> • <i>there is likely to be a significant impact on a Matter of National Environmental Significance.</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 7 | <p><i>Clarify the referral process to make it clear that a proponent has the responsibility to either:</i></p> <ul style="list-style-type: none"> • <i>submit a Nol for their project to the EPA themselves if there is likely to be a significant environmental impact; or</i> • <i>ensure that the relevant sectoral decision making agency has referred the action to the EPA.</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| 8 | <p><i>The EPA should be empowered to publish an “adequacy score card” concurrently with a proponent’s EIA documentation. This scorecard:</i></p> <ul style="list-style-type: none"> • <i>should focus on the adequacy of the environmental risk assessments and the sufficiency or completeness of the performance based management arrangements proposed; and</i> • <i>a draft of the scorecard should be provided to the proponent ahead of publication and the proponent given the opportunity to correct their documentation.</i> • <i>Consideration should be given to using peer review to outsource preparation of the adequacy scorecard. If “Supplementary Reports” are required to correct information deficiencies then these Reports should be subject to public disclosure prior to the EPA proceeding to finalise recommendations.</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 9 | <p><i>The Terms of Reference for EIAs and the subsequent Assessment Reports should be issued with clear statements about the length of time for which they will be valid. The length of time should be based on the likelihood of significant change to material environmental concerns</i></p> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 10 | <p><i>Enhance trust and confidence in the effectiveness of the sectoral one-stop-shop environmental assessment process by:</i></p> <ul style="list-style-type: none"> • <i>requiring responsible decision makers to report publicly on how they have put EPA recommendations into project approval conditions; and</i> • <i>requiring proponents to report annually and publicly on compliance with environment related conditions of approval.</i> | <p>Agreed</p> |
| 11 | <p><i>Charge the NT EPA with assurance monitoring and reporting on the operation of the system. This monitoring should have a performance improvement orientation, as opposed to a compliance orientation, and should focus on:</i></p> <ul style="list-style-type: none"> • <i>the integrity of the assessment system – in particular whether systems are in place and operating effectively – to ensure that actions requiring assessment or approval are being appropriately identified and assessed;</i> • <i>the effectiveness of the sectoral one-stop-shops, including compliance with transparency and reporting commitments;</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| | <ul style="list-style-type: none"> • <i>the operation of risk management arrangements within the assessment and approval system to ensure that they are robust, well-modulated and used to achieve ESD outcomes;</i> • <i>the extent to which the system is delivering risk-based, adaptive and outcomes-focused decisions;</i> • <i>the operation of relevant quality assurance arrangements;</i> • <i>the extent to which proponents are demonstrably building community confidence;</i> • <i>the compliance of proponents with disclosure and environmental performance reporting obligations; and</i> • <i>the effectiveness of compliance and enforcement monitoring and reporting.</i> | |
| 12 | <p><i>The overall capacity, capability and robustness of the NT environmental management system will be enhanced if there is a clear separation between the role of independent environmental assessment and provision of advice to Government on environmental policy. This can be achieved by:</i></p> <ul style="list-style-type: none"> • <i>ensuring that environmental policy development, including the development of guidelines, compliance and enforcement policies is performed within the Department of Lands, Planning and the Environment under the direction of the responsible Minister; and</i> • <i>as with other respected independent statutory bodies the EPA's back office support, including professional and technical expertise, and administrative services, will continue to be provided by the line Department.</i> | Agreed |
| 13 | <p><i>The Government should consider modernising the approach to managing the impacts on threatened species currently set out under the Territory Parks and Wildlife Conservation Act. This would include consolidating the threatened species management functions.</i></p> | <p>Support in-principle Further consultation required on detail of implementation</p> |

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| 14 | <p><i>The NT should develop an environmental offsets policy as a priority, based on the “avoid, mitigate, offset philosophy”. In the interim, the NT Government could adopt the Commonwealth Offsets Policy.</i></p> <p><i>An NT-specific offsets policy should consider the conservation value of large scale threat reduction such as fire and feral animal management in offsetting the residual impact on native flora and fauna, and protected species. In this context, large scale land management undertaken by indigenous land holders and ranger groups has an important role to play in offsetting the ecological impact of localised development.</i></p> | <p>Agreed</p> |
| 15 | <p><i>Strengthen long term strategic land use planning so that environmental considerations and constraints – including threatened species impacts – are considered when strategic land use decisions are being made. This could be done at the time of formulating strategic area plans and/or planning scheme amendments. The resultant plans and policies should promote ESD of future urban land.</i></p> <p><i>Strategic Planning documents should clearly set out the environmental constraints associated with the planning area, level of environmental risks associated with the development concept, and establish a set of outcome performance criteria to be met by individual developments under the plan.</i></p> <p><i>In order to comply with the proposed Approvals Bilateral (cl 8.2) the NT Government should work towards ensuring that all environmental information is discoverable, accessible and re-usable by the community, proponents and other Government agencies.</i></p> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 16 | <p><i>The Planning Act should be amended to:</i></p> <ul style="list-style-type: none"> <i>• require strategic planning to, as far as possible, establish outcome-based environmental performance standards that will apply to subsequent developments. The standards should cover management of at least the potential significant impacts on matters of National Environmental Significance, NT threatened species and communities, water resources, natural environments and habitats. Standards could also include management of construction impacts such as noise and dust;</i> <i>• require consultation with the EPA during the strategic planning process on the environmental risk assessment and performance standards. Moreover, the</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| | <p><i>Government may also wish to require the EPA to make recommendations to the Minister whether the plan:</i></p> <ul style="list-style-type: none"> ○ <i>has considered all relevant environmental risks;</i> ○ <i>has factored these risks into the final design appropriately;</i> ○ <i>and that, if implemented, the scheme is not likely to jeopardise continued functioning of important ecosystems; and</i> ○ <i>that the outcomes will not be inconsistent with ESD;</i> <ul style="list-style-type: none"> ● <i>require assessment of environmental risks at the zoning stage of development with the aim of ensuring that subsequent development is ecologically sustainable. The assessment and associated ESD decision should be published along with the zoning decision; and</i> ● <i>exempt land development from further need for environmental impact assessment by the EPA in circumstances where the environmental risks have been assessed during the zoning.</i> | |
| 17 | <p><i>Outside the areas subject to planning controls, the Department of Lands, Planning and the Environment, in consultation with the EPA, the Department of Mines and Energy and the Department of Land Resource Management, should undertake high level bioregional strategic environmental assessments. The purpose of such assessments should be to facilitate strategic environmental risk analysis and establish the environmental performance guidelines that subsequent development projects in these regions would need to meet.</i></p> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 18 | <p><i>Test and accredit the integrated approval process under the Mining Management Act where the Minister for Mines and Energy grants project and environmental approval to mine developments against the criteria established under Recommendation 1, subject to:</i></p> <ul style="list-style-type: none"> ● <i>consultations between the Department of Mines and Energy and the EPA to ensure that the guidelines for preparation of the environmental component of Mining Management Plans are fit for purpose;</i> ● <i>establishing as a performance standard for Mining Management Plans that “adverse effects on the environment are managed to reduce environmental</i> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| | <p><i>damage to as low as reasonably practicable”;</i></p> <ul style="list-style-type: none"> • <i>guidance for the preparation of Mining Management Plans to ensure that they are risk-based and outcome-focused. Actions to manage environmental risk must be expressed in clear terms with performance statements that can be monitored effectively;</i> • <i>increase transparency and confidence in the process by providing public Statements of Reasons for key decisions including:</i> <ul style="list-style-type: none"> ○ <i>the decision to, or not to, refer Mining Management Plans to the EPA; and</i> ○ <i>the judgement about the acceptability of the environmental controls in Mining Management Plans;</i> • <i>the likelihood that the anticipated residual environmental impact is as low as reasonably practicable;</i> • <i>publication of the environmental impact management sections of Mining Management Plans. Commercial-in-confidence exemptions should be strictly limited;</i> • <i>publication of annual mine environmental management performance reports prepared by proponents; and</i> • <i>development of a compliance reporting strategy that facilitates appropriate publication of compliance audits.</i> | |
| 19 | <p><i>Streamline the requirements for Mining Management Plans and Environmental Mining Reports so that they can be used as the NoI under the EA Act. This will remove the considerable duplication currently undertaken in preparing multiple documents covering essentially the same issues.</i></p> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |
| 20 | <p><i>Grant approval to Mining Management Plans for periods related to the scale of environmental risks and the likely effectiveness of proposed management interventions. These approvals should be granted for periods of up to five years, subject to annual performance reporting, to reduce transaction costs for industry and approval agencies without increasing environmental risk.</i></p> | <p>Support in-principle</p> <p>Further consultation required on detail of implementation</p> |

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| 21 | <p><i>Consider amending the Waste Management and Pollution Act and the Water Act to create a single regulatory regime for management of mine site water, waste and pollution both on and off-site. Responsibility for administering this arrangement might be delegated to the Department of Mines and Energy under appropriate monitoring and reporting arrangements when the Acts are triggered by mine-related activities.</i></p> | <p>Support in-principle</p> <p>Government is committed to the removal of the exemption of mining and petroleum activities from the Water Act.</p> <p>Further consultation required on detail of implementation for the remaining recommendations</p> |
| 22 | <p><i>Ensure that all primary decision making legislation used to authorise projects and developments provides for the decision maker to:</i></p> <ul style="list-style-type: none"> • <i>consider environmental issues, including relevant international obligations, national policies, guidelines and plans;</i> • <i>consider cross-border issues;</i> • <i>implement, via conditions, any advice of the NT EPA;</i> • <i>impose risk-based environmental conditions, including offsets and requirements for management plans;</i> • <i>require public reporting of performance monitoring; and</i> • <i>enforce conditions.</i> | <p>Agreed</p> <p>Further consultation required on detail of implementation</p> |