

Consultation Response

Draft Greenhouse Gas Emissions Management for New and Expanding Large Emitters

Engagement Program December 2020 – February 2021

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Introduction

The draft Greenhouse Gas Emissions Management for New and Expanding Large Emitters policy (draft policy) was released for targeted consultation in December 2020. This followed a series of one-on-one meetings to introduce the draft policy to key stakeholders and take on board initial feedback and questions. Appendix 1 lists the recipients of the targeted consultation.

The Northern Territory (NT) Government released the 'Northern Territory Climate Change Response: Towards 2050' (Climate Change Response) and the supporting 'Delivering the Climate Change Response: Towards 2050 A Three Year Action Plan for the Northern Territory Government' (Action Plan) in July 2020. Development of the policy is an action in the Action Plan.

The intent of the policy is to ensure the greenhouse gas emissions (emissions) produced by new and expanding development actions that are likely to exceed specified emissions thresholds are appropriately managed. This means they will be required to avoid, mitigate and manage their emissions in accordance with the Northern Territory (NT) Government's expectations and in context of the target of net zero greenhouse gas emissions by 2050 (net zero emissions target).

In response to the consultation, the Department of Environment, Parks and Water Security (DEPWS) received ten written submissions as well as verbal comment from another three organisations through the one-on-one meetings.

This report provides a summary of the key issues raised during the consultation process and outlines the NT Government's response and subsequent outcome for the final 'Greenhouse Gas Emissions Management for New and Expanding Large Emitters' policy (Large Emitters Policy or Policy).

1. Efficacy of the draft policy

A number of organisations questioned the efficacy of the draft policy to address emissions from development actions, particularly with respect to the Territory achieving its net zero emissions target. The draft policy was described as being weak in its requirements and minimal in its capture of proposed development or existing actions.

It was argued that the draft policy was not supported by science and did not speak to the objectives of the *Environment Protection Act 2019* (EP Act), specifically the objective for ecologically sustainable development. Without a clearly communicated objective it was felt the draft policy did not communicate a proposed management goal for emissions from development actions in the Territory. Some submissions argued that the draft policy was open to interpretation and lacked clear definitions or direction. It was recommended that the draft policy should be strengthened by clearly articulating a requirement for proposed developments to demonstrate how their operations will achieve the Territory's net zero emissions target. It was also recommended that the draft policy articulate clear, time bound emissions targets (that are grounded in research and reflective of the Territory circumstance) to support the move to net zero emissions by 2050.

Some submitters argued that the application of the draft policy was too limited, given the reliance on an environmental approval under the EP Act and the proposed thresholds. Submissions referred to examples of land clearing and onshore petroleum exploration activities which have not required environmental impact assessment and an environmental approval, and expressed concern that the policy would not apply to these activities.

The industry submissions argued that petroleum exploration and appraisal activities should be excluded from the policy, referring to the approach taken by the Australian and Western Australia Governments.

A number of submissions argued that the policy should apply to existing projects with significant emissions for the Territory to achieve its net zero emissions target. One submission recommended that an expansion of a development action should trigger the application of the policy to the whole of the action (not just the expansion). This was countered by another submission that argued against the retrospective application of the policy.

1.1. Government's Response

The Policy is one of a number of actions related to the management of emissions being undertaken by the NT Government as part of its response to climate change impacts. It forms part of a suite of policy and regulatory initiatives designed to support the NT Government's commitments to decarbonise the Territory's economy and achieve the Territory's net zero emissions target, which include:

- the Northern Territory's Greenhouse Gas Emissions Offsets Policy and Technical Guidelines
- an Emissions Reduction Strategy for the Territory.

The Emissions Reduction Strategy will provide an economy-wide approach to reducing emissions, informed by detailed analysis of the Territory's possible emissions growth trajectories and reduction pathway opportunities out to 2050. The emissions analysis project is well underway by the Office of Climate Change, with a final report anticipated to be delivered by the expert consultant by the end of 2021. Public consultation on a draft Emissions Reduction Strategy will occur in 2022.

The Policy is not intended to deliver the net zero emissions target alone. It is an important early step in the Territory's transition to a low carbon economy that targets those projects that are still in development and therefore have the greatest opportunity to be designed, and approved, in a manner that limits their emissions. As discussed below, the Policy is intended to guide decisions under NT environmental legislation, so its application is necessarily limited to the assessment and authorisation processes established by that legislation.

Adopting the Policy provides a transparent and practical means to establish the NT Government's expectations on emissions management for new and expanding large emitting projects while the Emissions Reduction Strategy is developed.

The Policy does not set emissions reduction targets for development projects. Such targets will be established through environmental assessment and authorisation processes, providing discretion to proponents and decision-makers to establish emissions targets in consideration of the individual circumstances of a project. This will encourage initiative and tailored solutions for individual projects and circumstances.

In response to stakeholder concerns about the lack of clear guidance on emissions targets, the Policy identifies that a Greenhouse Gas Abatement Plan (GGAP) is expected to demonstrate how the project will *contribute meaningfully* to the Territory's net zero emissions target. It also identifies that the NT Government considers a *meaningful contribution* to be the default position of net zero emissions by 2050. A project may be able to deviate from the default emissions reduction target if the proponent can justify why an alternative target would be more appropriate for their project.

The Policy will apply to all onshore petroleum activities, from exploration and appraisal to production and decommissioning. The emissions threshold (100 000 tonnes CO₂-e) will be applied to all of an interest holder's onshore petroleum activities in a given year, maximising the Policy's coverage of onshore petroleum activities and ensuring that cumulative impacts can be assessed and managed, as required by the EP Act and *Petroleum (Environment) Regulations 2016*.

2. Existing statutory and policy landscape

Many submissions raised concern about the lack of statutory power to support the draft policy and questioned how the policy related to the EP Act, the responsibilities of the Northern Territory Environment Protection Authority (NT EPA), other Territory policies as well as the policy position of climate action by the Australian Government.

Some submissions were critical that climate change action in the Territory is not supported by specific climate change legislation and regulation, and is instead reliant on a sub-section of the EP Act that describes the purpose of the environmental impact assessment process. Submitters also expressed concern that the reliance of the draft policy on the regulatory provisions of an environmental approval under the EP Act will limit the application of the policy to projects that require environmental impact assessment under the EP Act.

There was some confusion about whether the threshold triggers proposed in the draft policy represented triggers for environmental impact assessment, raising questions about the role of the NT EPA. One submission questioned the relationship between the draft policy and the NT EPA's environmental factors and objectives, expressing concern that the NT EPA may require an environmental impact assessment for a development action despite it not triggering the thresholds under the policy, creating uncertainty. A separate submission recommended that an emissions referral trigger be developed under the EP Act.

Questions were raised about the regulatory tools required to support policy implementation. One submission recommended that the Minister for Environment have regard to a GGAP when determining environmental approval for a development action and argued that the Minister must impose a binding condition on the environmental approval for the implementation of the GGAP, including compliance requirements. A number of submissions questioned how compliance with a GGAP was to be actioned as well as the implications of non-compliance, stating that the draft policy did not provide this detail.

Submissions communicated confusion about the interplay between the draft policy and an emissions offsets policy for the Territory. One submission objected to the use of emissions offsets at the Territory level due to an existing Australian Government offsets policy. A second submission argued that offsets should be allowed by the draft policy (the draft policy does recognise the role of offsets) whereas other submissions sought clarification about the use of offsets, specifically how 'residual emissions' is defined and how offsets will be regulated.

Submissions also expressed concern about how the draft policy sat with the Australian Government's climate change response, with some submitters lobbying for a nationally consistent approach to emissions reduction. Some submissions argued that the Australian Government should take the lead on climate change response and that duplicative and inconsistent requirements should not be imposed by a single regulatory agency in a single jurisdiction to a limited number of projects. There was also concern about additional reporting requirements with reference to the existing emissions reporting mechanisms of the Australian Government. In addition, there was a cautious response to the draft policy allowing development of bespoke emissions calculation methodologies where accepted Australian Government methodologies exist.

The petroleum industry raised concerns with the layering of regulation for the industry in the Territory. It argued that the existing regulatory regime is capable of managing emissions without the requirement for the draft policy and its proposed application to the EP Act. It also argued that exploration and appraisal activities should be excluded from the draft policy as the Territory's *Petroleum Act 1984* restricts the ability of industry to address emissions (through a beneficial use) from exploration and appraisal actions.

2.1. Government's response

The Policy will operate within the Territory's regulatory framework. While regard has been given to the Australian Government's climate change response, particularly in terms of the Safeguard Mechanism under the *National Greenhouse and Energy Reporting Act 2007* (Cth), the Territory's policy position is a separate initiative that supports administration of NT legislation.

The Policy does not establish new obligations on proponents; it clarifies what is already required by the NT's environmental legislation. The Territory's EP Act and *Petroleum (Environment) Regulations 2016* require decision makers to consider environmental impacts and risks when conducting assessments and determining whether to approve development projects. This obligation includes requirements to consider a project's contribution to climate change (i.e. the project's emissions).

In response to stakeholder concerns about the draft policy only applying to projects that require assessment and an environmental approval under the EP Act, the Policy has been amended to broaden its application to environmental authorisations generally. The Policy will apply to development projects that require an environmental authorisation to be granted under Territory environmental legislation. This could include onshore petroleum activities requiring approval under the *Petroleum (Environment) Regulations 2016* that do not also require assessment under the EP Act, addressing concerns about the application of the Policy to the onshore petroleum industry and potential for duplicative assessment processes.

The role of the NT EPA under the EP Act is to decide when a project requires assessment, and advise the Minister for Environment on its assessment of a project, including a recommendation on whether it should be approved and conditions that should apply. The Policy will assist the NT EPA to advise the Minister for Environment on the assessment of development projects by providing a clearer indication of what the NT Government considers to be a large emitting activity and how they are to contribute to the net zero emissions target. The NT EPA is not bound to any direction or control from the NT Government, but it may have regard to the government's policies and objectives for environmental management and economic development.

The Policy makes it clear that if a project meets the emissions threshold, the proponent must develop and implement a GGAP. To facilitate a streamlined assessment process, a proponent should submit a GGAP for assessment as part of the project's usual assessment process. The GGAP will be assessed by the NT EPA if assessment is required under the EP Act or *Petroleum (Environment) Regulations 2016*, and considered by the responsible Minister (most likely the Minister for Environment) in deciding whether to approve the project. The requirement for a GGAP and its implementation will be conditioned in the relevant environmental authorisation, making it an enforceable requirement. If the statutory obligation is not complied with, the compliance and enforcement provisions available through authorising legislation can be used to secure compliance.

A GGAP must commit to measures to avoid, mitigate or offset emissions, consistent with the environmental decision-making hierarchy in the EP Act. Decision makers will be responsible for assessing GGAPs and determining if the commitments contained in the plan are appropriate and sufficient, taking into consideration the type of project that is occurring, and the timeframe over which it will occur. Where a proponent commits to emissions offsets in its GGAP, or a decision maker imposes an emissions offsets requirement, these will be guided by the Greenhouse Gas Emissions Offsets Policy and Technical Guidelines (Emissions Offsets Policy) which will inform the design and delivery of emissions offsets in the Northern Territory. The Emissions Offsets Policy is being developed in consideration of the Australian Government's Safeguard Mechanism and the desire to avoid duplication.

The Policy is intended to apply to all development projects, providing a more consistent, certain and equitable regulatory environment. Excluding certain activities from the Policy, such as onshore petroleum exploration, would not remove such activities from the existing requirements to consider emissions under Territory environmental legislation. The flexibility built into the Policy allows tailored emissions management responses for different types of activities.

To ensure consistency and alignment with emissions calculation methodologies, and to alleviate concerns about alternate methods being used, the Policy requires emissions estimates to be calculated in accordance with the approaches recognised by the Australian Government.

3. Proposed thresholds

Many submissions questioned the proposed thresholds contained in the draft policy, arguing that there was no policy or scientific justification for the proposed thresholds provided. These submissions argued either that the thresholds were too high, did not capture cumulative emissions, or that separate thresholds were not required for different activities.

The threshold for a land use activity was criticised as being too high, with one submission noting this would equate to a clearing proposal of 6 000 hectares (ha). One submission also questioned the definition of 'land use activity' versus 'industrial activity' and raised concern that the draft policy did not capture emissions resulting from the use of land after a clearing activity. There was also criticism that the term land use activity did not capture clearing of previously cleared vegetation or regrowth. While submissions expressed a view that the threshold was too high they also acknowledged that the NT EPA has previously not required the environmental impact assessment of land clearing projects of similar sizes. According to some submitters, this means that the proposed threshold, when coupled with the requirement for an environmental approval, will not result in clearing actions necessarily falling under the draft policy.

Some of the submissions questioned how the land use activity threshold was to be applied, noting it has a threshold 'generated from a single land clearing action or cumulatively from multiple land clearing actions on a property'. It was questioned whether the classification of 'large emitter' occurs once the emissions from land clearing on that property exceed the threshold, and if so, how far back in time clearing events need to be considered in estimating cumulative emissions. It was further questioned that if, as a result of multiple clearing applications the threshold is met, would that mean further applications would be subject to the environmental impact assessment process and would a GGAP capture both past and future emissions or just future emissions.

There were similar questions about how cumulative emissions over the life cycle of a proposal were to be captured by the proposed threshold for industrial activities, if a one off emission period doesn't trigger the threshold.

Many of the submissions questioned why a separate threshold was proposed for land use activity with a number of submissions arguing for a single threshold.

Submissions recommended that the thresholds be regularly reviewed as the policy and technological landscapes change.

3.1. Government's response

Emissions thresholds are required to define 'large emitters', and accordingly, when the Policy applies. In determining the thresholds, the NT Government has considered thresholds used for similar policy and regulatory purposes in Australia, current policy in the Territory, and Government's objectives to grow the economy and achieve the net zero emissions target.

The thresholds in the Policy are the same as those proposed in the draft policy. Separate thresholds apply for industrial projects and land use projects to account for differences in their operations and emissions profile. Emissions from industrial projects vary as a project moves through construction, operations and decommissioning stages, but can be readily estimated on an annual basis. In contrast, land clearing emissions are the result of a one-off activity conducted at a discrete point in time.

The threshold for industrial projects has been set to align with thresholds that apply under the Australian Government's Safeguard Mechanism (100 000 tCO₂-e per financial year) and the Western Australia Government's 'Greenhouse Gas Emissions Policy for Major Projects'.

The higher land use threshold of 500 000 tCO₂-e reflects the one-off nature of emissions from land clearing, compared to more constant emissions from industrial projects over many years. It also represents a pragmatic approach to balancing the NT Government's objective of developing and diversifying the Territory economy with its goal of achieving net zero emissions by 2050. The threshold for land use projects applies to a discrete clearing event, or cumulatively to more than one clearing event on the same property over time from commencement of the Policy, with the Policy not intended to apply retrospectively. This will ensure that the cumulative impacts of clearing are assessed and regulated. The Policy relies on the Territory's existing regulatory framework for land clearing to define terms such as 'regrowth'.

The Policy will be reviewed in two years to ensure large emitters are effectively contributing to the Territory's net zero emissions target, and consideration can be given to any changes in international obligations and Australian Government policy. This will allow for review of the thresholds applied in the Policy.

4. Emission Scopes

The inclusion and exclusion of emission scopes by the draft policy was also an issue raised by many submissions, either arguing for the draft policy to apply only to scope 1 emissions or for all emissions scopes to be captured in threshold calculations and/ or GGAPs.

Some submissions argued for the draft policy to be limited to scope 1 emissions only, stating that this is a consistent policy position with the Australian Government and Western Australia. They argued that the inclusion of scope 3 emissions would be difficult, creating uncertainty.

Other submissions argued that the exclusion of scope 2 and 3 emissions from emissions thresholds calculations was not substantiated by the draft policy and does not reflect the actual emissions caused by some industry types. One submission stated that the draft policy position of estimating thresholds only on scope 1 emissions was a pragmatic approach, but argued it missed an opportunity to influence the reduction of all emissions through the design of proposed actions.

A couple of submissions pointed to recommendation 9.8 of the 'Scientific Inquiry into Hydraulic Fracturing in the Northern Territory' (the Inquiry) '*that the NT and Australian Governments seek to ensure that there is no net increase in the life cycle greenhouse gas emissions emitted in Australia from any onshore shale gas produced in the Northern Territory*'. It was argued that this captures scope 3 emissions and all stages of onshore gas production (including exploration and appraisal).

4.1. Government's response

The Policy establishes thresholds that are estimated solely on scope 1 emissions. As explained above, this aligns the Policy with similar regulatory and policy approaches in other jurisdictions.

Although the thresholds are based solely on scope 1 emissions, a proponent is expected to consider scope 1 and scope 2 emissions in developing a GGAP and identify measures to manage both scope 1 and scope 2 emissions. Including scope 2 emissions in this way provides greater flexibility for proponents to identify avoidance and mitigation measures to meet emissions targets.

The Policy requires a GGAP to include estimates of scope 1, 2 and 3 emissions. Requiring estimates of scope 3 emissions increases transparency about the life cycle emissions of a project. The Policy does not require commitments to manage scope 3 emissions given the challenges associated with the Territory regulating scope 3 emissions.

Since it accepted the recommendations of the Inquiry, the NT Government has adopted a development goal of a \$40 billion economy by 2030, and committed to the net zero emissions target. The NT Government has also committed to a target of 50% renewable energy by 2030. A significant amount of work is underway to implement each of these commitments, guided by the Territory Economic Reconstruction Commission Implementation Plan and the Climate Change Response.

The Territory is focused on achieving its economy-wide target of net zero emissions by 2050 and recognises that meaningful emissions reductions from the onshore petroleum industry will be required to achieve the target.

The Inquiry charged both the Northern Territory and Australian Governments with implementing recommendation 9.8. The Inquiry Panel recognised that the NT Government has limited control over full life cycle emissions from gas production in the Territory, with a shared commitment from the Australian Government required to meet recommendation 9.8.

The Policy will apply to all onshore petroleum activities in the Territory, not just production, and guide the regulation of emissions from those activities to the extent that they are within the Territory's sphere of control.

5. Greenhouse Gas Abatement Plan

Many submissions sought detail about GGAPs, seeking guidance on the expectations of a plan, reporting requirements, as well as the inclusion of targets and timeframes. There was also concern about whether all proponents would have the technical ability to develop a GGAP.

Some submissions argued that a GGAP should reflect emissions targets and timeframes set by policy (rather than the proponent of a development action) which are aligned to environmental objectives and contemporary scientific knowledge. It was also recommended that there should be annual reporting against a GGAP and the draft policy should be clear on compliance and offence provisions and public reporting. One submission argued that the draft policy should refer to the NT EPA's stakeholder engagement guidelines to ensure Aboriginal engagement by a proponent when preparing a GGAP.

5.1. Government's response

The Policy clearly identifies the information that must be contained in a GGAP. This includes overarching and interim emissions targets and the requirement for a GGAP to demonstrate how the project will contribute meaningfully to the Territory's net zero emissions target, as explained above.

The Policy requires public reporting on implementation of a GGAP and progress against emissions targets. Compliance will be in accordance with existing regulatory tools and compliance policies.

All development projects are encouraged to undertake culturally appropriate engagement with Aboriginal stakeholders. This expectation extends to the development of a GGAP as necessary.

Appendix 1 - Recipients of the targeted consultation

Organisation
Environment Institute Australia and New Zealand (EIANZ)
Association of Mining and Exploration Companies (AMEC)
Australian Petroleum Production and Exploration Association (APPEA)
INPEX
Environment Centre Northern Territory (ECNT)
Environmental Defenders Officer Northern Territory (EDO)
Northern Territory Cattlemen's Association (NTCA)
Arid Lands Environment Centre (ALEC)
Northern Land Council (NLC)
Minerals Council Australia Northern Territory Division (MCA)
Land Development Corporation
Northern Territory Farmers
Northern Territory Land Corporation
Power and Water Corporation
Territory Generation
South 32
Origin Energy
Tiwi Land Council
Central Land Council
Anindilyakwa Land Council
Northern Territory Environment Protection Authority